

# DECISIONS

## COMMISSION DECISION (EU) 2017/1959

of 18 July 2017

on the State aid SA.34720 — 2015/C (ex 2013/N) implemented by Denmark Aid for the restructuring of Vestjysk Bank

(notified under document C(2017) 4990)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) (1) cited above,

Whereas:

### 1. PROCEDURE

- (1) In the beginning of 2012, Denmark entered into a dialogue with the Commission to discuss the problems which were being faced at that time by Vestjysk Bank A/S ('Vestjysk Bank' or 'the Bank').
- (2) On 25 April 2012, the Commission adopted a Decision in Case SA.34423 ('the Rescue Decision') (2) finding three measures in favour of Vestjysk Bank and Aarhus Lokalbank (which was absorbed by Vestjysk Bank on 30 March 2012 through a merger) to constitute State aid within the meaning of Article 107(1) of the Treaty and to be temporarily compatible with the internal market for reasons of financial stability. The measures were accordingly approved for six months or, if Denmark submitted an in-depth restructuring plan within six months from the date of the Decision, until the Commission adopted a final decision on that restructuring plan.
- (3) On 18 April 2012, Denmark submitted a preliminary version of the restructuring plan for Vestjysk Bank, which included a draft set of commitments as the starting point for discussions concerning the restructuring plan.
- (4) Between April 2012 and December 2015, the Commission and Denmark discussed the restructuring plan, which has been updated several times, in a series of meetings, phone conferences and written correspondence. Between August 2013 and April 2014, Denmark attempted to sell its stake in the Bank. As a result, the discussions on the restructuring plan were put on hold during that period. The attempt was unsuccessful due to a lack of interested bidders.
- (5) By letter dated 4 December 2015 the Commission informed Denmark that it had decided to initiate the procedure pursuant to Article 108(2) of the Treaty in respect of the aid ('Opening Decision').

(1) OJ C 220, 17.6.2016, p. 23.

(2) Commission Decision in case SA.34423 (OJ C 348, 3.10.2014, p. 2).

(6) On 7 January 2016, the Commission received Denmark's comments on the Opening Decision.

(7) In April 2016, Denmark initiated a new open, unconditional and transparent sales process with the aim of selling its shares in the Bank.

(8) On 17 June 2016, the Opening Decision was published in the *Official Journal of the European Union*<sup>(3)</sup>. The Commission called on interested parties to submit their comments. It did not receive any comments from interested parties.

(9) After the sales process had failed to attract any bids for the Bank, Denmark informed the Commission on 23 November 2016 that the Danish Bank Nykredit had expressed an interest in building a consortium of non-bank investors to acquire and recapitalise the Bank. That transaction, combined with further restructuring efforts, would in Denmark's view restore the long-term viability of the Bank.

(10) Between 23 November 2016 and early June 2017, the Commission and Denmark discussed the new restructuring plan in a series of meetings, phone conferences and written correspondence.

(11) On 14 June 2017 Denmark submitted the final version of the new restructuring plan as well as the signed agreement with the private investor consortium to acquire the Bank's shares. The investor consortium subsequently launched a public takeover bid for the Bank's remaining shares (held by private parties), with closing date 18 July 2017.

(12) By letter of 12 June 2017, Denmark agreed to waive its rights deriving from Article 342 of the Treaty in conjunction with Article 3 of Regulation No 1<sup>(4)</sup> and to have this Decision adopted and notified in English.

## 2. BACKGROUND

### 2.1. Vestjysk Bank today

(13) First established in 1874, Vestjysk Bank is classified as a non-systemically important financial institution by the Danish Financial Supervisory Authority ('DFSA') and is currently the 15th largest bank in Denmark, with a market share of less than 0,3 %. On the basis of the most recent available data (from 31 March 2017), the Bank has a balance sheet of DKK 19,5 billion (EUR 2,6 billion), DKK 14 billion of deposits (EUR 1,9 billion), DKK 12,4 billion of total loans (EUR 1,7 billion), 15 branches and 438 employees (full time equivalent 'FTE').

(14) The Danish State is the majority shareholder of the Bank, controlling 81,47 % of the share capital and voting rights in Vestjysk Bank. Vestjysk Bank is listed on the Copenhagen Stock Exchange.

(15) The Bank's business model combines local retail lending with a large exposure to the agricultural and commercial real estate sectors. The Bank is mainly active in Denmark's Jutland Region.

### 2.2. The aid measures temporarily approved in the Rescue Decision

(16) In 2012 Vestjysk Bank received State aid in order to merge with Aarhus Lokalbank, another Danish regional bank active in the Jutland Region. At the end of 2011 Vestjysk Bank had a balance sheet of DKK 29,2 billion (EUR 3,9 billion) and Aarhus Lokalbank DKK 4,4 billion (EUR 600 million) respectively.

<sup>(3)</sup> Cf. footnote 1.

<sup>(4)</sup> Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

(17) In 2009, both Vestjysk Bank and Aarhus Lokalbank had received aid under the Danish recapitalisation scheme. The aid granted to the Bank was provided in the form of hybrid capital of DKK 1 438 million <sup>(5)</sup> and DKK 177,8 million <sup>(6)</sup> totalling DKK 1 615,8 million (approximately EUR 216 million) and corresponding to 6,2 % of Risk Weighted Assets (RWA). As a consequence, the Danish State was already the major shareholder in both banks (it had a stake of 53,1 % in Vestjysk Bank and 45,2 % in Aarhus Lokalbank) prior to the merger <sup>(7)</sup>.

(18) On 28 February 2012, Denmark informed the Commission that Vestjysk Bank and Aarhus Lokalbank were about to merge as each faced an increased risk of becoming a distressed bank. The merger of the two banks was intended to counter the funding challenges of the banks by creating one continuing entity, Vestjysk Bank, and to strengthen its position as a regional bank.

(19) In order to execute the merger Denmark notified the following measures in respect of Vestjysk Bank to the Commission:

- Measure 1 – Completion of an increase in the capital of the Bank with net proceeds of between DKK 250 and DKK 300 million;
- Measure 2 – Raising of new subordinated loan capital with a principal of DKK 200 million;
- Measure 3 – Sale of a minority shareholding for DKK 175 million (EUR 23 million) that the Bank owned in a Danish mortgage credit institution to the Danish Central Bank;
- Measure 4 – Individual State guarantees for new bonds for up to DKK 8,6 billion (EUR 1 154 million).

(20) On 25 April 2012 the Commission temporarily approved Measures 1, 3 and 4 as rescue aid for a period of six months or, if Denmark submitted an in-depth restructuring plan within six months from the date of the Decision, until the Commission had adopted a final decision on that restructuring plan. Measure 2 was funded entirely by private investors and was, as a result, found not to constitute State aid.

(21) On 28 June 2012, Vestjysk Bank received a final binding undertaking from the Danish Financial Stability Company <sup>(8)</sup> in respect of Measure 4, which limited the individual State guarantees for liabilities to DKK 6,8 billion (EUR 914 million).

(22) The gross proceeds from Measure 1 amounted to DKK 318,7 million, (net proceeds of DKK 300 million) and the participation of the State amounted to DKK 166 million (EUR 22 million). Measure 3 gave rise to a capital relief effect of 0,60 % by reducing RWA of the Bank.

(23) The final amount of support resulting from the implementation of the three measures described in the Rescue Decision was DKK 7 293,7 million (EUR 979 million).

### 2.3. The lack of a robust restructuring plan and the Opening Decision

(24) On 18 April 2012 Denmark submitted a preliminary version of the restructuring plan for Vestjysk Bank on a stand-alone basis, which included a draft term sheet for possible commitments. That submission was followed by numerous updates and amendments, aimed at providing for additional action to restore the long term viability of the Bank, as the latter failed to achieve its projected profitability.

<sup>(5)</sup> In 2012 DKK 287,6 million (EUR 39 million) plus accrued interest of DKK 8,7 million (EUR 1,2 million) was converted into shares.

<sup>(6)</sup> In 2012 DKK 142,2 million (EUR 19 million) plus accrued interest of DKK 5 million (EUR 0,7 million) was converted into shares.

<sup>(7)</sup> Following a recapitalisation under the recapitalisation scheme in 2009 and a conversion of the capital injection into share capital on 20 February 2012, Vestjysk Bank raised State hybrid core capital with an original principal of DKK 1,44 billion (EUR 194 million), of which DKK 287,6 million (EUR 39 million) plus accrued interest of approximately DKK 8,7 million (EUR 1,2 million) was converted into shares in Vestjysk Bank. In the period 2009 — 2011 Vestjysk Bank paid coupons amounting to a total of DKK 312,8 million (EUR 42 million) to the Danish State. The coupon interest rates were set at 9,69 % and 10,19 % per annum, depending on whether they included the conversion option fee. Aarhus Lokalbank has raised State hybrid core capital with an original principal of DKK 177,8 million (EUR 24 million), of which DKK 142,2 million (EUR 19 million) plus accrued interest totalling DKK 5 million (EUR 0,7 million) was subsequently converted into shares in Aarhus Lokalbank. In the period 2009 — 2011 Aarhus Lokalbank paid coupons amounting to a total of DKK 25,9 million (EUR 3,5 million) to the Danish State. The coupon interest rates were set at 10,92 % and 11,42 % per annum, depending on whether they included the conversion option fee.

<sup>(8)</sup> The State-owned entity established to take care of the State aid measures that were introduced in Denmark in the context of the financial crisis.

(25) In August 2013, Denmark informed the Commission that it planned to sell Vestjysk Bank and the discussions concerning the restructuring of the Bank on a stand-alone basis were hence suspended.

(26) In April 2014 Denmark informed the Commission that the sale of the Bank had been cancelled as none of the potential buyers had submitted an offer. Discussions concerning the restructuring of the Bank on a stand-alone basis therefore resumed. However those discussions did not produce a final and robust restructuring plan that could ensure that the viability of the bank could be restored, and the Commission decided to initiate the formal investigation procedure pursuant to Article 108(2) of the Treaty.

#### 2.4. **Grounds for initiating the procedure**

(27) In its Opening Decision of 4 December 2015 the Commission questioned whether

- (a) the draft restructuring plan was apt to ensure the Bank's return to viability;
- (b) competition distortions had been limited to a minimum;
- (c) burden sharing had been adequately implemented with respect to one of the repurchasing transactions <sup>(9)</sup> carried out in 2013.

### 3. THE FORMAL INVESTIGATION PROCEDURE

#### 3.1. **Denmark's reply to the Opening Decision**

##### 3.1.1. *The existence of aid in Measures 1 and 3*

(28) In its reply Denmark confirmed that it accepts Measure 4 is State aid, but also repeated the position it put forward at the time of the Rescue Decision, disputing that Measures 1 and 3 constitute State aid within the meaning of Article 107(1) of the Treaty. More specifically, Denmark submits the following:

- Measure 1: Denmark considers that the completion of the capital increase does not constitute State aid as this was done in full accordance with the market economy investor principle and as a consequence the measure does not constitute State aid.
- Measure 3: Denmark argues that the sale of a minority shareholding in a Danish mortgage credit institution to the Danish Central Bank does not constitute State aid as the transfer did not involve State resources, as the Danish Central Bank is an independent institution and, in any case, did not constitute an advantage for the Bank, as the price was calculated according to a pre-defined methodology that applies to any shareholder.

##### 3.1.2. *Viability*

(29) Denmark submitted that Vestjysk Bank is a viable yet at this point in time vulnerable bank. In the opinion of Denmark, the Bank is coming to the end of the restructuring phase and is on the way to entering a phase of stabilization.

(30) In addition, Denmark claims in its submission that the Bank has a solid basis for continuing core-earnings but, due to the low solvency buffer, the Bank is vulnerable to external macroeconomic factors, mainly factors that influence the agricultural sector due to the large exposure to this segment.

<sup>(9)</sup> The repurchasing transaction in question concerned subordinated debt with a nominal value of NOK 40 million (approximately EUR 5.2 million). This repurchase was completed on 13 June 2013 and was performed at an average price of 62 % of the principal, i.e. 2 percentage points above the market price of 50 % plus the premium of 10 %. Vestjysk Bank thereby overpaid the holders of the subordinated debt instruments by an amount corresponding to 2 % of the principal.

### 3.1.3. Measures to limit the distortions of competition

- (31) Denmark considers that the Bank has actively worked to reduce its commercial footprint by reducing its overall balance sheet and gross lending and focusing its business on its core region composed of parts of Jutland. In addition, the Bank has substantially reduced its number of branches and full time employees as well as reduced its operating costs.
- (32) In addition, the Bank has, since mid-2012, complied with a number of behavioural measures and corporate governance rules, that Denmark had proposed in the context of the draft restructuring plan referred to in recital 24, with the aim to limit the distortions of competition.
- (33) Hence, Denmark concludes that the steps already taken have been more than adequate to limit the distortion of competition produced by the State aid measure.

### 3.1.4. Burden sharing

- (34) Denmark submits that burden sharing has been correctly implemented during the restructuring process. Denmark received a discount in the subscription rate that ensured an adequate remuneration for its participation in the capital increase as well as a risk-based guarantee commission for the individual guarantee which is well above the requirements in the 2011 Prolongation Communication <sup>(10)</sup>.
- (35) With reference to one of a number of liability management exercises completed since 2012 in which a price above the theoretical maximum price for the buyback of subordinated capital was paid, Denmark notes that the amount of such overprice to the benefit of the creditor (and not the Bank) amounted to 2 % of the principal corresponding to NOK 800 000 (about EUR 108 000). As a consequence the Bank paid an equivalent amount to Denmark thus offsetting any inadequate burden sharing this relatively small amount might have caused. The amount was paid in full at the beginning of 2014.

## 3.2. The 2016 stress test and the new sales process

- (36) Upon the request of the Commission, in March 2016 the Danish Financial Supervisory Authority conducted a stress test on the Bank. The stress test was performed without delay and in accordance with European Banking Authority ('EBA') standards. It concluded that if put under stress, Vestjysk Bank's individual solvency requirement could be breached.
- (37) In May 2016, Denmark informed the Commission that it was conducting a process with its financial adviser (SEB) with a view to selling the Bank. Initially, the process was supposed to conclude by late summer 2016 but it eventually took until late autumn 2016 (see also recital 52). The discussions on the restructuring plan were put on hold during that process since the content of such plan would have to take into account the plans a potential buyer of the Bank might have. In this respect, it must be noted that Denmark considered selling the Bank either to another bank (which would possibly integrate it in its own operations) or to a financial investor (which would possibly keep it as a standalone entity). The restructuring plan was hence also to be dependent on the type of buyer.

## 4. THE NEW RESTRUCTURING PLAN — A CONSORTIUM OF INVESTORS COORDINATED BY DANISH BANK NYKREDIT TO ACQUIRE AND RECAPITALISE VESTJYSK BANK

- (38) On 23 November 2016, Denmark informed the Commission that the Danish bank Nykredit had expressed an interest in building a consortium of non-bank investors to acquire and recapitalise the Bank.
- (39) Following several exchanges from November 2016 onwards, Denmark informed the Commission on 29 April 2017 that Nykredit had received sufficient firm commitments from a number of investors to execute the new restructuring plan. On 14 June 2017, Denmark submitted to the Commission the irrevocable undertaking signed

<sup>(10)</sup> 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.

by Denmark and a consortium of private investors on the sale of the Danish State's shareholding in Vestjysk, subject to the lack of any more advantageous offer which might be submitted by other prospective purchasers before 18 July 2017.

(40) A new restructuring plan was drafted by Nykredit in collaboration with Vestjysk and was presented to the Commission by Denmark ('Nykredit plan'). It aims to address the capital needs and long-term viability of the Bank. The main elements of the Nykredit plan are:

- (a) A consortium consisting of long-term Danish investors ('the Consortium') <sup>(11)</sup>, represented by Nykredit, buying the State's entire 81,47 % shareholding at a price of 1 DKK per share or a total consideration of approximately DKK 123 million (approximately EUR 16,5 million). The other (private) shareholders of the Bank also have the possibility to sell their shares to the Consortium for the same price.
- (b) The Consortium guaranteeing the completion of a share issue resulting in approximately DKK 745 million (approximately EUR 100 million) in new equity for the Bank at an assumed subscription price of 1 DKK per share. All remaining existing shareholders will be able to buy new shares on the same terms as the Consortium.
- (c) The issue of approximately DKK 150 million (approximately EUR 20 million) in Additional Tier 1 capital and of DKK 225 million (approximately EUR 30 million) in Tier 2 capital. An additional DKK 75 million (approximately EUR 10 million) of existing Additional Tier 1 capital will remain in place.
- (d) The early redemption at par of approximately DKK 815 million (approximately EUR 110 million) of existing subordinated capital, including the approximately DKK 287,6 million (approximately EUR 38,7 million) in remaining outstanding State-funded Additional Tier 1 capital <sup>(12)</sup>.
- (e) The Bank continuing its efforts to reduce its interest expense (through cheaper funding) and staff and administrative costs [...] (\*) resulting in a better cost-income ratio.

(41) The Bank's business plan which specifies the cost reductions referred to in recital 40(e) among others contains the following projections for the years 2017, 2018 and 2019:

Table 1

**Business plan for the period 2017-2019 and actual figures for 2012 and 2016**

Amounts in DKK million	2012 (actual)	2016 (actual)	2017 (projection)	2018 (projection)	2019 (projection)
Interest expense	727	185	[80-130]	[70-120]	[60-110]
Core income	1 282	1 004	[900-1 000]	[900-1 000]	[900-1 000]
Staff expense	334	311	[260-300]	[250-290]	[240-280]
Administrative and other operational cost	254	178	[150-300]	[145-295]	[140-290]
Loan loss provisions	1 515	416	[200-300]	[200-300]	[200-300]
Net income	- 1 399	80	[150-220]	[220-290]	[270-340]

<sup>(11)</sup> The consortium consists of: Nykredit, Maj Invest (on behalf of customers), Arbejdernes Landsbank, AP Pension, Novo A/S, the C.L. David Foundation and Collection, ISP Pension and Vestjylland Forsikring. The Consortium considers its investment in Vestjysk Bank to be of a purely financial nature. None of the Consortium's members will gain control over Vestjysk (the largest individual investment will make up less than 20 % of the Bank), nor do any of them wish to combine the Bank's activities with their own.

<sup>(12)</sup> The redemption price is 110 % of the principal meaning the repayment will amount to approximately DKK 316 million.

(\*) Confidential information.

Amounts in DKK million	2012 (actual)	2016 (actual)	2017 (projection)	2018 (projection)	2019 (projection)
Return on equity (RoE) after tax (%)	– 106	5,4	[7-11]	[7-11 %]	[7-11]
Cost income ratio (%)	55,3	50,3	[45-55]	[40-50]	[40-50]
Number of staff (FTE)	621,3	459	[375-425]	[340-390]	[340-390]
Number of branches	24	15	15	15	15

(42) On 12 June 2017, the proposed transactions described in points (a) to (d) of recital 40 were announced to the market and shareholders of the Bank. On the same day, the Danish State announced it had conditionally accepted the Consortium's voluntary offer for its 81,47 % stake in the Bank. Third parties still have the possibility to submit a financially more advantageous offer (see also recital 57) before the Consortium's offer expires (that is to say, before 18 July 2017). A formal offer document with more detail of each element of the proposal and a timeline was presented to all of the Bank's shareholders on 19 June 2017. The share issue and the refinancing of the Additional Tier 1 capital are expected to be finalized in the autumn of 2017.

(43) On 13 June 2017, at the request of the Commission, Denmark stated by letter that the proposed transaction does not contain any new measures (for example, guarantees), which could involve any State aid and submitted the agreement with the Consortium to the Commission. On the same day, the DFSA confirmed by letter, following a question by the Commission, that Vestjysk's credit risk policy is in line with the best practices of similar banks. In particular, based on its on-going supervision of the Bank including examination of the credit risk management of the bank in four inspections since 2012, the DFSA concluded that Vestjysk Bank's credit risk policy implements the Danish Executive order on Management and Control of Banks <sup>(13)</sup>.

## 5. DENMARK'S COMMITMENTS UNDERPINNING THE NYKREDIT PLAN

(44) In order to underpin the Bank's return to viability and further limit potential distortions of competition, Denmark has given a number of commitments that are summarised in points (a) to (j) (the full text of the commitments is included in the Annex to this Decision):

- (a) the Restructuring period ends on 31 December 2018 if the Bank reaches a Return on Equity after tax ('RoE') of [7-11] % that year. If such RoE is not reached, the Restructuring period ends on 31 December 2019;
- (b) if the Restructuring period is prolonged until end 2019, the Bank will be required to (re-)price every client relationship (with some limited exceptions) in such a way that it achieves pre-defined profitability targets per client;
- (c) the Bank must comply with an additional solvency buffer in excess of what is required by the applicable law and regulation, and with specific liquidity targets;
- (d) the Bank's balance sheet size for 2017 must not be higher than for 2016 and it must not exceed DKK 20 300 million (approximately EUR 2 730 million) in 2018 and 21 000 million (approximately EUR 2 824 million) in 2019 (if applicable);
- (e) the Bank must rebalance its lending with specific caps to lending in certain sectors (namely, real estate and agriculture, hunting, forestry and fishing);
- (f) the Bank must not provide new lending outside the Jutland Region unless the customer provides own financing of at least [35-45] % and the loan is collateralised, and must not provide new lending outside Denmark;

<sup>(13)</sup> This Executive order implements EBA guidelines on Internal Governance.

- (g) the Bank must not take any exposure with new customers constituting on its own more of 10 % of the total capital;
- (h) the Bank is subject to an acquisition ban and restrictions on advertising;
- (i) the Bank must restructure its risk management and where applicable adjust its pricing in line with predetermined targets;
- (j) the Bank must redeem the subordinated bonds subscribed by Denmark within six months from the adoption of this Decision;
- (k) a Monitoring Trustee must report every six months to the Commission on the evolution of the restructuring plan and the commitments in points (a) to (j).

## 6. ASSESSMENT OF THE MEASURE

### 6.1. Existence of State aid

- (45) The Commission has to establish the existence of State aid within the meaning of Article 107(1) of the Treaty, which provides that 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.
- (46) The qualification of a measure as State aid therefore presupposes that the following cumulative conditions are met: it must be imputable to the State and financed by a Member State or through State resources, it must grant a selective advantage susceptible to favour certain undertakings or the production of certain goods and it must distort or threaten to distort competition and have the potential to affect trade between Member States.
- (47) In recitals 47 to 67 of the Rescue Decision, and in recital 50 of the Opening Decision, the Commission has already assessed the measures under scrutiny and concluded that Measures 1, 3 and 4 constituted State aid within the meaning of Article 107(1) of the Treaty.
- (48) Denmark has not brought forward any new arguments during the formal investigation that it had not already expressed in 2012. The Commission's assessment and conclusion in the Rescue Decision that Measures 1, 3 and 4 (as described in recital 19 of the Rescue Decision) constituted State aid within the meaning of Article 107(1) of the Treaty therefore remains unchanged.
- (49) In addition, the Commission assessed the documents submitted by Denmark, and in particular the irrevocable undertaking mentioned in recital 39, which do not contain any reference to any use of public funds (for example, capital support or guarantees provided by the State) in the context of the sale of the shares.

### 6.2. The aid beneficiary

- (50) The sale of an aided credit institution may entail State aid to the buyers, unless the sale is organised via an open, non-discriminatory and unconditional competitive tender where the assets are sold to the highest bidder<sup>(14)</sup>. For this reason, the Commission has to assess<sup>(15)</sup> whether: (a) the sales process is open, unconditional and non-discriminatory; (b) the sale takes place on market terms; (c) the credit institution or the government, depending on the structure chosen, maximises the sales price.
- (51) In the fourth quarter of 2013, Denmark tried to sell its stake in Vestjysk Bank. Denmark also investigated if a buyer for the Bank's activities in the Aarhus Region could be found. Despite initial interest from several Danish banks<sup>(16)</sup>, it was not possible to complete a transaction, mainly because the potential buyers — on the basis of their due diligence of the Bank's assets — anticipated additional significant write-downs following an acquisition.

<sup>(14)</sup> See points 84 and 89-96 of the Commission Notice on the notion of State aid.

<sup>(15)</sup> See point 80 of the 2013 Banking Communication.

<sup>(16)</sup> At least nine banks were contacted in this process, seven of which expressed initial interest in (part of) the Bank. After due diligence, none however submitted an offer.

(52) In the second quarter of 2016, the Denmark initiated a second sales process, after having been approached by the Danish financial investor [...]. [...]’s proposal (see also recital 55) was, however, subject to exclusivity. Denmark therefore decided to first give all other relevant potential buyers <sup>(17)</sup> the opportunity to submit an offer. Denmark contracted an expert investment advisor, SEB, to manage the process. The process was carried out in the second and third quarter of 2016. In the end, none of the contacted buyers <sup>(18)</sup> made an offer due to anticipated additional significant write-downs. [...], who then had *de facto* exclusivity, started its due diligence in October 2016 but ended the process in November 2016 without making an offer.

(53) Both in 2013 and 2016, the sales process was designed as follows:

- (a) the State’s objective was to achieve a sale on market terms that maximized the sales price but no minimum price or other constraints were put forward;
- (b) all potential buyers were provided with access to the same level of information that is to say, details on the Bank’s largest exposures, electronic data room with key documents, management presentation and Q&A process;
- (c) all relevant potential buyers <sup>(19)</sup> were involved in the process and the State had no preference for a particular buyer.

(54) Nykredit was contacted in both sales processes. In 2013, it initially showed interest in the Bank as a whole as part of a consortium, but the consortium was not able to submit a bid. Subsequently, Nykredit was interested in acquiring part of the Bank (Aarhus Region), but did not submit an offer following due diligence. In the second quarter of 2016, Nykredit expressed interest in fronting a consortium, but did not enter the process. However, in October 2016 Nykredit did present preliminary considerations on a framework for a recapitalisation of Vestjysk Bank. In November 2016, Nykredit was then engaged by Vestjysk Bank to explore the potential for raising capital from external investors. This effort resulted in the Nykredit plan, the offer by the Consortium, and the transactions described in recital 40.

(55) The Consortium has offered to acquire the State’s entire 81,47 % shareholding at a price of 1 DKK per share. When the offer was announced on 12 June 2017, the price on the Copenhagen Stock Exchange for a share in the Bank stood at 14,90 DKK <sup>(20)</sup>. However, since no other bids were presented in the context of the two open sales processes, it can be considered that the price offered by the Consortium is the maximum that could be achieved in the current situation. This conclusion is also confirmed by the assessment of an alternative proposal (see also recital 52) that was informally tested by [...] in February 2016. That investor initially considered acquiring control of Vestjysk by buying newly issued shares at a price of 1 DKK per share and confirmed that proposal in September 2016 <sup>(21)</sup>. However, that alternative proposal did not materialise as [...] eventually withdrew after having started due diligence in October 2016. This constitutes an additional benchmark (also 1 DKK per share) to conclude that the Consortium’s proposal is the one that maximises the sales price and that the transaction will take place at market terms.

(56) Denmark has also submitted a fairness opinion prepared by an independent expert at its request. The fairness opinion concludes that the offer consideration of 1 DKK per share is, at this point in time, the best possible market price that can be obtained. To come to this conclusion, the expert took into account, among other things, the information obtained via the two previous sales processes, the Bank’s current capital situation and the uncertainty concerning the State aid case which was pending at the time.

<sup>(17)</sup> In particular, all relevant buyers with a strategic rationale and significant synergies were contacted as well as a potential financial investor (other than [...]) which had indicated an interest during the process.

<sup>(18)</sup> At least seven banks and one financial investor were contacted in this second process, three of which expressed an initial interest. Only two proceeded to the due diligence stage but none made an offer.

<sup>(19)</sup> All potential competitors, even if not formally invited, could participate in the ongoing tender process and the market was made aware of the search for a buyer by SEB who had been tasked by Denmark to find a buyer for its stake in the Bank and to manage the sales process (see footnote 17).

<sup>(20)</sup> It has to be noted that the share has lost over a third of its value since the announcement. As a result, on 28 June 2017, the price for one share was only 9 DKK. Furthermore, the share price development seems to a large extent determined by the about 40 000 private retail investors and this may explain why the Bank’s share price development has not reflected the underlying performance. The shares are also illiquid (only 6 % of share capital traded over the last year) with limited free float (only 18,52 %) further reducing the likelihood that the share price is an accurate reflection of the Bank’s true value.

<sup>(21)</sup> In this scenario the State would not have sold its shares in Vestjysk, but its stake would have gone down from 81 % to 23 % after the share issuance. All subordinated capital, including the State hybrids, would have been redeemed early at their nominal value. Finally, the issuance of new shares would have been complemented by a new Tier 2 issuance for an amount of DKK 275 million.

(57) Finally, under the agreement with the Consortium, the Danish State has the possibility to accept a more advantageous competing bid <sup>(22)</sup> from a *bona fide* third party. However, such a competing bid must realistically make it possible to deal with the past State aid issues, must lead to a repayment of the State-funded Additional Tier 1 capital and must not entail any further State aid. In other words, a competing bid must be at least equivalent to the offer by the Consortium in terms of restoration of the Bank's solvency and profitability. If a competing bid is made, the Consortium has the possibility to match it. As a result, any party willing to invest in the Bank at a higher price has the opportunity to do so. The legal act enabling the Finance Ministry to conclude the sale to the Consortium mentions the possibility of competing bids with a more attractive offer during the offer period, and that possibility was also publically known. <sup>(23)</sup> The Commission considers that this provides further reassurance that Denmark has made every possible effort to maximize the sales price and has given all interested parties the chance to make an offer. However, given the lack of success in the previous attempts to sell the Bank it seems highly unlikely that a competing bid will be made.

(58) On the basis of the above, the Commission considers that the process to sell Denmark's stake in Vestjysk has been open, non-discriminatory and unconditional, resulting in the maximisation of the sales price for the Danish State. Indeed, despite several opportunities to do so (in 2013 and 2016), no bid resulting in a higher sales price and allowing the State to completely exit from the Bank was made. As the Commission has no reason to believe that the offer made and the price paid would not reflect the market price of the Bank, it can be concluded that the private purchaser of the State's shares in Vestjysk is not a beneficiary of the aid measures and thus does not receive aid.

(59) Hence it is concluded that the sole beneficiary of the aid measures is Vestjysk Bank.

(60) Overall, as set out in recitals 49 and 59, it is concluded that this Decision should merely assess the compatibility of the 2012 measures granted to the entity Vestjysk.

### 6.3. Compatibility of the aid

#### 6.3.1. Legal basis for the compatibility assessment

(61) Article 107(3)(b) of the Treaty empowers the Commission to find that aid is compatible with the internal market if it is intended '*to remedy a serious disturbance in the economy of a Member State*'. The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. This has been successively detailed and developed in the seven Crisis Communications <sup>(24)</sup>.

(62) In accordance with the general principle of law *tempus regit actum*, which requires that a rule of law must be non-retroactive, and with the settled case law of the Union Courts, the compatibility of a State aid measure has to be assessed under the legal framework in force at the time of its implementation. Point 90 of the 2013 Banking Communication further specifies that notifications registered by the Commission prior to 1 August 2013 will be examined in the light of the criteria in force at the time of notification.

<sup>(22)</sup> The deadline for such a competing bid is 18 July 2017 at 16h00.

<sup>(23)</sup> Folketingstidende E, Aktstykke 114, 29 June 2017. This was also mentioned in the respective press releases of 12 June 2017: <https://www.fm.dk/nyheder/pressemeddelelser/2017/06/staten-indgaar-aftale-om-salg-af-sine-aktier-i-vestjysk-bank> and of 19 June 2017: <https://www.fm.dk/nyheder/pressemeddelelser/2017/06/officielt-tilbud-paa-statens-aktier-i-vestjysk-bank-er-nu-fremsat>

<sup>(24)</sup> 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 ('2008 Banking Communication') (OJ C 270, 25.10.2008, p. 8); 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 Banking sector ('the Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1); Communication from the Commission 'The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules' ('the 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); 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); the 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 2013 ('the 2013 Banking Communication'). (OJ C 216, 30.7.2013, p. 1).

(63) The measures were notified on 13 April 2012. Hence these measures should be assessed in the light of the new restructuring plan, having regard to the Restructuring Communication, the 2008 Banking Communication and the 2010 and 2011 Prolongation Communications.

### 6.3.2. *Burden-sharing*

(64) In the Opening Decision, the Commission took the preliminary view that a repurchase transaction carried out on 13 June 2013 was not in line with the Restructuring Communication's goal of ensuring adequate burden-sharing<sup>(25)</sup>. The transaction was performed at an average price of 62 % of the principal, 2 percentage points above the market price of 50 % plus the premium of 10 %. Vestjysk Bank thereby overpaid the holders of the subordinated debt instruments by an amount corresponding to 2 % of the principal (or NOK 800 000, approximately EUR 108 000).

(65) In its reply to the Opening Decision Denmark submitted that the overpayment that was made was paid back by the Bank to the Danish State in the beginning of 2014, thus offsetting any inadequate burden sharing that that relatively small amount would have caused.

(66) The Commission notes that the payment of the overpayment by the Bank to the State cannot, as such, remedy an insufficient burden-sharing. The overpayment concerns the financial relations between the Bank and the creditors (in the context of burden-sharing), and not the financial relations between the Bank and the State (which determine the amount of State aid). Nevertheless, this circumstance taken together with a set of other circumstances of the present case allow the Commission to conclude that there was adequate burden-sharing. In particular those other circumstances concern the fact that the amount of the overprice was minimal (only EUR 108 000) and that the threshold of 60 % was not as such provided in the Restructuring Communication, which is phrased in a rather flexible manner<sup>(26)</sup>, but in a staff document of the Commission<sup>(27)</sup>.

(67) In view of the above, the Commission considers that the doubts raised in the Opening Decision on the compliance with burden sharing requirements are fully dispelled.

### 6.3.3. *Limiting distortions of competition*

(68) The Bank has limited its commercial footprint by further reducing its branch network by an additional three branches compared to what was submitted by Denmark in its reply to the Opening Decision, bringing the total reduction since the rescue aid to nine branches (the Bank had 24 branches in 2012, 18 branches in 2015 and 15 from the end of 2016 onwards, giving a total reduction since 2012 of 37,5 %). Such a reduction of the branch network, coupled with the characteristics of the Danish banking sector affects the Bank's capacity to generate new business and gather new deposits, thereby contributing to a limitation of the distortions of competition.

(69) The Nykredit plan also shows a greater reduction in the Bank's staff numbers (a [30-40] % reduction by 2017 and a [35-45] % reduction by 2018) than what was projected at the time of the Opening Decision (a [20-30] % reduction by 2017). This increased reduction results from the Bank's efforts to further reduce costs and the efficiency improvements that result from the reduction of the branch network.

(70) At the time of the Opening Decision (see recital 98 of that Decision) the Commission was only informed of a reduction of the branch network with [10-20] % (from 24 branches to [18-22]) and a staff reduction of [20-30] %. Considering the large amount of aid received by the Bank, the Commission questioned whether the projected branch and staff reductions between 2012 and 2017 would sufficiently limit competition distortion. Taking the new reduction targets into account, the Commission considers that the Bank has made an important additional effort to further reduce its commercial footprint and increase its efficiency. Table 2 shows the actual situation in 2012 and 2016, the proposals known at the time of the Opening Decision and the current plans for the coming years.

<sup>(25)</sup> It has to be noted that the burden sharing requirements in force at the time of granting of the measures did not include the write down or conversion of subordinated debt, that only became a requirement after the 2013 Banking Communication entered into force on 1 August 2013.

<sup>(26)</sup> See point 26 of the Restructuring Communication.

<sup>(27)</sup> Explanatory Note of 13 June 2012 by staff of the European Commission's Directorate-General for Competition on 'buybacks of hybrid securities by banks receiving State aid'.

Table 2

**Evolution of reduction in branches, FTEs and cost-to-income ratio**

	Actual	Opening Decision		Actual	New business plan	
	2012	2016	2017	2016	2017	2018
<b># of Branches</b>	24	[18-22]	[18-22]	15	15	15
% Change vs. 2012		[10-20]	[10-20]	– 37,5	– 37,5	– 37,5
<b># of staff (FTE)</b>	621,3	[480-510]	[460-490]	459	[375-425]	[340-390]
% Change vs. 2012		– [20-30]	– [20-30]	– 26,1	– [30-40]	– [30-40]
<b>Cost-to-income ratio (%)</b>	55,3	[50-60]	[50-60]	50,3	[45-55]	[40-50]
% Change vs. 2012		+ [0-7,5]	+ [0-7,5]	– 5,0	– [2,5-10]	– [5-12,5]

(71) Vestjysk has not been able to expand its business since it received the rescue aid, given its bad performance. The size of the Bank's balance sheet has been shrinking in the last five years, with a 39,5 % reduction from DKK 32 865 million at the end of 2012 to DKK 19 895 million at the end of 2016. The same trend can be observed in the Bank's loan book: gross lending went down by about 36 % in the same period, gross lending to agriculture fell by about 26 % while gross lending to the construction and real estate sectors decreased by 48 % and 44 % respectively.

(72) Risk weighted assets also shrank from DKK 25 600 million at the end of 2012 to DKK 16 081 million at the end of 2016 (– 37 %), while in the same period the Bank's workforce decreased from 621 to 459 FTEs (– 26 %).

(73) All the figures shown in recitals 71 and 72 suggest that the Bank's footprint has already been reduced over the last five years, partially out of necessity. However, the aid amount received in 2012 was significant in relation to the RWA of the Bank (8,1 %), and as such specific measures to tackle competition distortions need to be envisaged. At the same time, should be recognised that the Bank will have reduced its staff by almost [30-40] % by the end of 2017 and had already cut branches by 37,5 % by the end of 2016.

(74) In addition to the measures implemented prior to the adoption of this Decision, Denmark offered commitments (see recital 44) aimed at further limiting the distortions of competition during the restructuring period.

(75) Firstly, the Bank's balance sheet size is capped for 2017 at its 2016 level, for 2018 at DKK 20 300 million and for 2019, if applicable, to DKK 21 000 million. Those caps explicitly limit the possibility of the Bank to gather new deposits and to grant new loans during the restructuring period. The capability of the Bank to gain market shares at the expense of its competitors is hence restricted in a way that ensures the limitation of distortions of competition.

(76) In addition, the Bank will not grant new loans outside Denmark, and can only provide new lending outside the Jutland Region if the customer provides own financing of at least [35-45] % and the loan is collateralised. That commitment effectively inhibits the Bank's potential to expand its business outside its core region of activity where it also has its historical base, again protecting market players from a potential aggressive behaviour from the bank.

(77) Finally, the Bank is subject to an acquisition ban. Acquisitions are a standard way for a market player to expand to new activities, products or business areas. Hence the prohibition of acquiring any stake in any undertaking clearly hinders the expansion potential of the Bank. The Bank is also subject to a ban on using the aid measures for advertising purposes, which also protects competitors.

(78) As explained in recitals from 68 to 70, and summarized in Table 2, the Bank has made an important additional effort (compared to what was envisaged at the time of the Opening Decision) to further reduce its commercial footprint, being a small local player, and to increase its efficiency. In this way, the risk of distortions of competition will be limited sufficiently by the end of 2017. Nevertheless, through the commitments given by Denmark the Bank has also taken substantive additional measures to limit distortions of competition during the remainder of the restructuring period which ends at the latest at the end of 2019. For this reason, the Commission considers that the doubts in the Opening Decision regarding the distortion of competition have been sufficiently addressed.

#### 6.3.4. Restoration of long-term viability

(79) In its Opening Decision, the Commission expressed doubts as to whether the draft restructuring plan submitted at that time provided sufficient grounds to ensure the viability of the Bank within the restructuring period. In particular, the Commission questioned some of the assumptions underlying the restructuring plan and considered there were still considerable uncertainties. Finally, the Commission questioned whether the Bank's capital position was sufficiently strong to endure additional impairments.

(80) On 1 January 2017, the Bank had a total capital ratio of 13,1 %. However, due to the phasing-in of the capital conservation buffer ('CCB') requirement the Bank's total capital requirement has increased to 13,8 % resulting in a capital shortfall of about 0,7 % or DKK 116 million (approximately EUR 15,6 million). If no action were to be taken, the Bank would continue to have a capital shortfall (albeit smaller) on 1 January 2018 (namely 0,4 % of its total capital ratio or DKK 63 million). Following the share issuance and the refinancing of its subordinated capital instruments, the Bank will no longer have a capital shortfall. In particular, on 1 January 2018 the Bank expects to have a capital surplus of approximately DKK 667 million (approximately EUR 90 million) or a buffer of 4,3 % above its total capital ratio requirement. In addition, Denmark committed (see recital 44) that the Bank will maintain a specific amount of excess capital above the regulatory required amount.

(81) The Bank also reviewed its strategy and will further reduce its operating costs (see also Table 1). In particular, the Bank has reduced its number of branches from 24 in 2012 to just 15 at the end of 2016. At the time of the Opening Decision, the Bank had only planned to reduce the number of branches to [18-22]. Over the same-time-period, the Bank has cut its workforce from 621 FTE to [460-490] FTE (– [20-30] %). By the end of 2017 this number will be further reduced to [374-425] FTE (– [30-40] %) and the objective is to reach [340-390] FTE by end 2018 (almost – [30-40] %). The Bank's restructuring plan at the time of the Opening Decision envisaged a staff level of [460-490] FTE at the end of 2017 (which only corresponds to a reduction of [20-30] % compared to the end of 2012). These significant additional cost-cutting measures are reflected in the Bank's cost-income ratio which has dropped from 55,3 % in 2012 to 50,3 % in 2016. This ratio is expected to decrease further to [45-55] % at the end of 2017 and even to [40-50] % by the end of 2018. At the time of the Opening Decision, the Bank still targeted a cost-income ratio of [50-60] % in 2017. Thus, it is clear that the Bank has made important additional cost-cutting efforts compared to those envisaged at the time of the Opening Decision. These extra efforts will contribute to the Bank's profitability and hence to its viability. Specific operating cost targets laid down in the commitments will help to ensure that the Bank implements the remaining cost reductions as envisaged to ensure its viability.

(82) The Bank also plans to further reduce its interest expenses (already down from DKK 727 million in 2012 to DKK 185 million in 2016) by [35-50] % by the end of 2017 and even by [45-60] % by the end of 2018. This significant reduction would be mainly driven by replacing expiring term deposits with an average interest rate

of [0-5] % with new deposits with a rate of only about [0-5] %. Further savings on interest expense are expected to be made through the refinancing of the Bank's subordinated capital base, as part of the restructuring plan (see recital 40). The Bank submitted evidence which demonstrates that these savings are achievable and will also have a positive impact on the Bank's profitability and viability. The Bank can also easily reduce the interest rate on its deposits without eroding its funding as it has a significant deposit surplus <sup>(28)</sup>. Despite the significant reduction in deposit remuneration, the Bank does not project any substantial reduction in its deposit surplus since the decrease in deposits is expected to be lower than the decrease of the loan book.

- (83) The crucial factor for the viability and profitability of the Bank will be its impairment rate over the next couple of years. The Bank currently expects that its loan loss provisions will decrease from DKK 416 million in 2016 to DKK [200-300] million in 2017 and to DKK [200-300] million in 2018. The main reason for the significant drop in the amount of the budgeted provision is the Bank's expectation that its agricultural portfolio, which accounted for the largest part of the impairments in recent years <sup>(29)</sup>, will perform better. This expectation is based on the assumption that prices for key agricultural products (such as milk and pork) will be increasing following a slump in 2015-2016 and the assumption that this trend will not be reversed over the coming years. The Commission's own projections <sup>(30)</sup> indicate that agricultural prices have indeed recovered after a slump in 2015-2016 but will remain more or less flat after 2017. The Bank also expects a slight decrease in the impairments for the real estate sector while for the other sectors combined a modest increase is expected.
- (84) Overall, if the Bank's assumptions materialize, its profitability will improve significantly in the next few years. In particular, the Bank's return on equity after tax <sup>(31)</sup> will increase from 5,4 % in 2016, to [7-11] % in 2017 and [7-11] % in 2018 (see also Table 1). This significant increase in the Bank's profitability is driven mainly by reducing costs and reduced loan losses. Indeed, the Bank's core income (mainly interest and fee income) will stay more or less flat (see Table 1). The Commission considers that the projected reductions in interest expense and staff and administrative costs can in normal circumstances be achieved within the timeframe envisaged by the Bank.
- (85) With respect to the reduction in loan loss provisions, the Commission is of the opinion that the Bank's forecasts depend on optimistic assumptions. The Commission notes positively that, following several DFSA inspections, the Bank has brought its credit risk policy in line with best practices of similar banks, as stated by the DFSA to the Commission (see recital 43).
- (86) The Commission notes that the Bank accepted, in the discussions with Nykredit, a due diligence carried out by Deloitte at the end of 2016, which resulted in additional impairments being booked for an amount of approximately DKK [50-150] million <sup>(32)</sup>. This should reduce uncertainty about provisioning needs going forward.
- (87) Nevertheless, the reduction in loan losses that is expected will be highly dependent on macroeconomic conditions and especially on the performance of the agricultural sector. Given the size of the Bank's agricultural exposures and the large impact the loan loss provisions has had on the Bank's profitability in the past, the Commission has run a sensitivity analysis whereby the loan loss provisions are changed to more prudent levels. In that analysis, the loan loss provisions are set 20 % higher than the respective budgeted amounts for the years 2017 and 2018. Under the revised assumption, the Bank's return on equity would drop by [0-5] % and [0-5] % in 2017 and 2018 respectively but would remain at levels of profitability where the Bank should be able to source further capital from market sources if required. However, the Bank's comfortable capital buffer (see recital 80) would be sufficient to absorb additional loan losses or other downsides and to keep the Bank solvent. For this reason, the chances of the Bank needing new capital or State aid in the next few years seem very limited.

<sup>(28)</sup> The Bank had a loan-to-deposit ratio of 74 % at the end of 2016, and this ratio is expected to amount to approximately 73 % in 2018.

<sup>(29)</sup> Gross impairments on the agriculture and fishing portfolio represented respectively approximately 57 %, 68 % and 78 % of total gross impairments in the years 2014, 2015 and 2016.

<sup>(30)</sup> See [https://ec.europa.eu/agriculture/markets-and-prices/medium-term-outlook\\_en](https://ec.europa.eu/agriculture/markets-and-prices/medium-term-outlook_en)

<sup>(31)</sup> These figures take into account the planned capital increase of DKK 745 million.

<sup>(32)</sup> Deloitte reviewed 135 of the Bank's loan engagements which corresponded to 25 % of all business loan engagements and 40 % of all loan engagements where there is objective evidence of impairment. The Bank extrapolated the findings of this due diligence and on the basis of some assumptions came to the additional impairments needed for its entire portfolio.

(88) Even under a stressed scenario designed by the DFSA, the Bank would continue to have a sufficiently high capital buffer after the private investors' equity injection. The DFSA scenario assumes, among others, lower interest income, higher amortisations, and in total DKK [400-600] million of additional impairments compared to what was foreseen over the years 2018 and 2019. While the Bank would become loss-making in those two years, its solvency ratios would stay comfortably above regulatory requirements. In other words, the actual impairment rates could even be higher without creating a solvency problem for the Bank in the next few years. As a result, even in a stressed scenario, the Bank is unlikely to need new capital or to require new State aid to ensure its solvency.

(89) On the basis of the above, the Commission considers that the Bank's projected RoE for 2017 would be sufficient to restore the Bank's viability. The Bank would hence meet the requirement laid down in point 15 of the Restructuring Communication that a restructuring should take no more than five years. However, given the Bank's vulnerability to macroeconomic shocks (in particular for the agricultural sector) and the fact that the Bank itself plans to restructure further, the Commission finds it appropriate and prudent to accept commitments by Denmark that run up to the end of 2018 (and that can be prolonged by one year if necessary).

(90) The Commission notes that the commitments put forward by Denmark (see recital 44) provide an additional safeguard regarding the Bank's long-term viability. In particular, in case the Bank were not to achieve an RoE of [7-11] % by 2018, the restructuring period will be prolonged by one year and additional measures will be implemented in order to ensure the Bank's long-term viability. More specifically, in case of such prolongation of the restructuring period, the Bank will be required to (re-)price every client relationship (with some limited exceptions) in such a way that it achieves pre-defined profitability targets per client <sup>(33)</sup>. In this way, the Bank strengthens its revenues in the event that its RoE has not met the [7-11] % target in 2018. As the Bank has already committed to significant cost-cutting measures, while it does not fully control the level of loan losses (which depend on macroeconomic conditions), this measure appears appropriate to bolster the Bank's profitability if the need arises. The Commission therefore considers that the commitments provide further comfort about the Bank's long-term viability.

(91) On this basis, the Commission no longer has doubts concerning the adequacy of the Bank's long-term viability. In particular, following the capital increase, the Bank will have a comfortable buffer above the regulatory capital requirements and will be able to absorb additional impairments, should they arise, without breaching those requirements. In addition, the extra cost savings (reducing interest expense and operating costs) will contribute to an improvement in the Bank's profitability. Overall, as a result of all the actions foreseen in the restructuring plan measures, the Bank's profitability will increase sufficiently to allow the Bank to raise further capital on the market if the need arises. Finally, the commitments will ensure that the remaining cost-cutting measures are implemented, that adequate capital buffers are maintained, and that revenues will be increased if the Bank's profitability falls short of the [7-11] % RoE target. Therefore, the Commission considers that the Bank's most recent restructuring plan provides sufficient grounds to ensure the viability of the Bank and addresses the doubts expressed in the Opening Decision.

## 7. CONCLUSION

(92) On the basis of the foregoing assessment, the Commission's doubts expressed in the Opening Decision have been dispelled. The State aid at issue in this case should therefore be declared compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

HAS ADOPTED THIS DECISION:

### Article 1

The restructuring aid which Denmark has implemented in favour of Vestjysk Bank is compatible with the internal market within the meaning of Article 107(3)(b) of the Treaty, subject to the commitments listed in the Annex.

<sup>(33)</sup> These targets will be applied on a portfolio basis for consumer clients while for business clients they will be applied at the individual client relationship level.

*Article 2*

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 18 July 2017.

*For the Commission*  
Margrethe VESTAGER  
*Member of the Commission*

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## ANNEX

## TERM SHEET (CASE SA.34720) DENMARK — RESTRUCTURING PLAN OF VESTJYSK BANK

## 1. BACKGROUND

The Kingdom of Denmark ('Denmark') shall ensure that Vestjysk Bank A/S ('Vestjysk' or the 'Bank'), implements the restructuring plan submitted on 14 June 2017.

Denmark hereby provides the following commitments (the 'Commitments') which are integral part of the said restructuring plan.

The Commitments shall take effect upon the date of adoption of the European Commission's (the 'Commission') decision approving the restructuring plan ('Decision').

The text of the Commitments shall be interpreted in the light of the Decision and the general framework of Union law, and by reference to Council Regulation (EU) 2015/1589 (').

Denmark shall ensure that Vestjysk shall take the measures necessary to correctly and fully comply with the present Commitments until the end of the Restructuring Period.

## 2. DEFINITIONS

For the purpose of the Commitments, the following terms shall mean:

1. **Core Region:** the region of Jutland.
2. **Decision:** the decision of the Commission authorising the State aid measure and approving the restructuring plan of Vestjysk in case SA.34720 and dated [insert].
3. **Effective Date:** the date of adoption of the Decision.
4. **Funding Ratio:** the ratio of lending over the stable funding in the form of working capital except bonds with a residual maturity less than one year.
5. **LCR:** liquidity coverage ratio.
6. **Monitoring Trustee:** one or more natural or legal person(s), independent from Vestjysk who is approved by the Commission and appointed by Vestjysk, and who has the duty to monitor Vestjysk's compliance with the Commitments.
7. **Restructuring Plan:** the restructuring plan (business plan as updated and submitted to the Commission in June 2017) of Vestjysk approved by the Decision.
8. **RoE:** return on equity after tax.
9. **RoE at client level:** RoE before tax on the client relationship level calculated based on a funding transfer price commensurate with a maturity matching funding cost and adjusted for risk costs. This calculation includes the volume weighted average of all loans with a single client; other fee business or banking transactions contributing to the profitability of the relationship with the same client can also be taken into account, so that a new loan might generate a lower return if it is compensated by revenues of other fee business or banking transactions.
10. **State Hybrids:** The subordinated bonds subscribed by Denmark (in Danish: hybrid kernekapital udsteds under bankpakte II).

For the purpose of the Commitments, the singular of those terms shall include the plural (and vice versa), unless the Commitments provide otherwise.

(') Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

### 3. GENERAL

- 3.1. Denmark undertakes to ensure that the Commitments are fully observed during the implementation of the Restructuring Period.
- 3.2. The Restructuring Period shall end on 31 December 2018, provided that Vestjysk reaches a RoE of [7-11] % on the basis of the final audited annual accounts for 2018 and, if such RoE is not reached for 2018, it shall end on 31 December 2019, based on a final report by the Monitoring Trustee with respect to the commitments applying in that year. The Commitments apply during the Restructuring Period, unless otherwise provided.

### 4. RESTRUCTURING OF VESTJYSK: CAPITALISATION AND REBALANCING OF THE LOAN BOOK

- 4.1. Vestjysk shall throughout the Restructuring Period maintain capital at least equivalent to the higher of (i) 2 % of its total risk exposure amount and (ii) DKK 325 million in excess of the sum of the solvency need and the combined buffer requirement under applicable law and regulation.
- 4.2. Vestjysk shall throughout the Restructuring Period comply with the following liquidity requirements:
  - Vestjysk shall maintain a LCR of at least 100 % measured in accordance with applicable law and regulation.
  - Vestjysk shall maintain excess liquidity coverage of at least 50 % of the liquidity coverage requirement under applicable law and regulation.
  - Vestjysk shall maintain a funding ratio of a maximum of 1 measured in accordance with applicable law and regulation.
- 4.3. Vestjysk's balance sheet size for 2017 shall not be higher than for 2016 and it shall not exceed DKK 20 300 million in 2018 and 21 000 million in 2019 (if applicable).
- 4.4. Vestjysk shall rebalance its lending in the Restructuring Period as follows:
  - Net lending including guarantees to the Real Estate sector shall not account for more than 25 % of the total net lending (loans to clients) including guarantees at any given time.
- 4.5. Net lending measured as average net lending per year to agriculture, hunting, forestry and fishing shall on 31 December of any given year not exceed its share in total net lending as on 31 December 2016 (i.e. 20 % of total loans to clients as defined above) if and to the extent such excess net lending is the result of lending to new customers or an increase of such lending to existing customers.
- 4.6. Vestjysk shall not provide new lending to clients outside the Core Region, unless the customer provides own financing of at least [35-45] % and the loan is collateralised. Vestjysk shall not provide new lending relating to assets outside Denmark.
- 4.7. Large exposures:

Vestjysk may not take on any credit risk exposures with new customers, where any such exposure on its own constitutes more than 10 % of the total capital at the given time.

### 5. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

- 5.1. Ban on acquisitions: Vestjysk shall not acquire any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertakings which have the legal form of a company and any package of assets which forms a business.
  - (i) **Exemption:** Vestjysk may acquire stakes in undertakings provided that:
    - (a) The purchase price paid by Vestjysk for any acquisition is less than 0,01 % of the balance sheet size <sup>(1)</sup> of Vestjysk at the Effective Date <sup>(2)</sup>; and

<sup>(1)</sup> For clarification, for the purpose of that Commitment, the size of the balance sheet is equal to Vestjysk Bank's total assets.

<sup>(2)</sup> For clarification, in case the Commission's approval to lift the acquisition ban is obtained, the balance sheet of Vestjysk Bank at the Effective Date of the Commitments shall be calculated to include also the assets of the acquired entities or the acquired assets at the date of acquisition.

- (b) The cumulative purchase prices paid by Vestjysk for all such acquisitions starting with the Effective Date until the end of the Restructuring Period, is less than 0,025 % of the balance sheet size of Vestjysk at the Effective Date.
- (c) The acquisition directly follows from previously existing (before this Decision) contractual obligations assumed with third parties or regulatory related obligations, or is required by a final and mandatory decision taken by a public authority on Vestjysk
- (ii) **Activities not falling under the acquisition ban:** The acquisition ban shall not cover acquisitions (i) that take place in the ordinary course of the banking business in the management of existing claims towards failing firms, including the conversion of existing debt to equity instruments, or (ii) as part of ordinary treasury activities.

5.2. Advertising: Vestjysk must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.

6. RESTRUCTURING VESTJYSK BANK'S RISK MANAGEMENT

6.1. The Bank will further improve and centralise the risk management for its major customers by creating a centralised business banking department.

6.2. The total recurrent operating (staff expenses, branches, administrative and other operational costs) and amortisation costs of Vestjysk shall not exceed DKK [435-475] million in 2017, DKK [420-460] million in 2018 and DKK [405-445] million in 2019 (if applicable) (such figures to be increased by any amount resulting from additional requirements imposed on Vestjysk under applicable law or regulation including without limitation payroll tax (in Danish: lønsumsafgift)).

7. REPAYMENT OF THE STATE

7.1. Vestjysk shall completely redeem its State Hybrids at par together with any accrued interests in accordance with applicable law and regulation, within 6 months of the Effective Day.

8. COMMITMENTS ON CREDIT AND PRICING POLICIES

8.1. Vestjysk will:

8.1.1. In 2017, 2018 and 2019 (if applicable) present a report in the form enclosed to this Decision to the Monitoring Trustee showing a distribution of the pre-tax ROE of the Bank's business clients (which include all SMEs) and, for consumer clients, average gross earnings with credit quality grades as set out in section 8.1.6.

8.1.2. In 2018 and if applicable in 2019, prepare a strategy demonstrating how the profitability of the Bank's client relationships will be increased. This strategy must be sufficiently detailed, clarifying among others the targeted customer segments, proposed income-increasing measures (including the possibility to terminate unsatisfactory client-relationships).

8.1.3. In 2018, price every new loan (considering as new loan any new business not related to an existing transaction) by using an appropriate internal pricing tool or in the case of consumer client exposures using appropriate internal pricing guidelines and a centralised demonstration that pricing guidelines support a gross average earnings per customer of at least DKK [2 800 — 3 300] based on a standardised model family. Pricing for new loans to business clients will be considered adequate if the new loan contributes to achieve a positive RoE at client level of at least [8-12] % pre-tax in 2018.

8.1.4. From 2019 onwards (if applicable) ensure that, to the extent legally possible, every client relationship (and not just new loans) shall be priced in accordance with clause 8.1.3 above. A failure to demonstrate a positive RoE at client level of at least [8-12] % pre-tax for individual business client relationships exceeding an exposure of DKK [2,2-2,7] million at the moment of pricing will lead to an escalation of the credit files to the Management Board for formal approval by a reasoned decision.

If the total amount of exceptions for all business client relationships, regardless of their size, that do not meet the mentioned hurdle rate exceeds [2-3] % of the Bank's audited net loan exposure (at the end of the previous financial year) within the financial year, Vestjysk shall, to the extent legally possible, (i), in relation to business clients, ensure a reduction of the amount of net loan exposure to business clients that does not meet the mentioned hurdle rate by [18-25] % compared to the previous financial year and (ii), in relation to consumer clients, ensure an increase in average gross earnings of [4-8] % from the current level of DKK [2 800-3 300] to the minimum level of DKK [2 800-3 300].

- 8.1.5. For the purpose of these calculations for business clients, new loans will have a credit documentation demonstrating a pre-deal calculated RoE at client level for either the individual loan or other live exposure on single client including fee business or banking transactions. The above-mentioned new loans shall have a credit documentation demonstrating this pre-deal calculated RoE at client-level at the moment of the credit decision and for any financial year thereafter.
- 8.1.6. Credit deals not falling under this pricing policy regime: restructuring cases (credit quality (in Danish: udlånsbonitet) grade of 1 and 2c pursuant to the DFSA's general customer classification system) for which a restructuring or recovery plan (in Danish: kredithandlingsplan) has been prepared and all money market transactions.

#### 9. ADJUSTMENT MECHANISM

- 9.1. If the targets mentioned in section 4.3 in a given year are not achieved due to contingencies outside of the bank's control and if the difference between the actual results and the targets exceeds 7 %, Denmark shall present to the Commission a proposal containing a justification and remedy measures to ensure future compliance with the targets or an adequate compensation, or proposing alternative actions aimed at achieving the same purpose of the initial targets that were not met.

#### 10. REPORTING

- 10.1. Denmark shall ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored.
- 10.2. A Monitoring Trustee shall report semi-annually to the Commission on the evolution of the restructuring plan and the above mentioned commitments until the end of the Restructuring Period. The reference dates for the semi-annual Reporting are the 31 of December and the 30 of June. The Semi-annual Reporting shall be forwarded within 2 months from the reporting dates each year during the Restructuring Period. The final report for reference date 31 December 2019 (if applicable) shall cover the entire year 2019.

#### 11. MONITORING TRUSTEE

- 11.1. Denmark shall appoint a Monitoring Trustee whose mandate is to report to the Commission on compliance by Denmark and by the Bank with the Commitments.
- 11.2. The Monitoring Trustee shall be independent of the Bank and shall possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall not be subject to a conflict of interests throughout the exercise of his mandate.
- 11.3. The Trustee shall be remunerated by the Bank in a way that does not impede the independent and effective fulfilment of the Trustee's mandate.

#### **Appointment Of The Monitoring Trustee**

- 11.4. No later than four weeks after the Effective Date, Denmark shall submit to the Commission for approval a list of two or more persons whom Denmark proposes to appoint as the Monitoring Trustee, with an indication of Denmark's preferred choice. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out above and shall include:
  - (i) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (ii) The outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

- 11.5. The Commission shall have the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Denmark shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Denmark shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.
- 11.6. If all the proposed Trustees are rejected, Denmark shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection.
- 11.7. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Denmark shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

#### **Duties and obligations of the Monitoring Trustee**

- 11.8. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Denmark or the Bank, give any orders or instructions to the Trustee in order to ensure compliance with the Commitments. The Bank and Denmark are not entitled to give instructions to the Trustee.
- 11.9. The Monitoring Trustee shall:
  - (i) Propose to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments. The report should be delivered by 31 December 2017 at the latest;
  - (ii) Monitor the compliance with the Commitments with quarterly reports;
  - (iii) Propose such measures as the Monitoring Trustee considers necessary to ensure Denmark's and the Bank's compliance with the Commitments;

#### **Duties and obligations of Denmark and the Bank**

- 11.10. The Bank shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance, managerial, administrative support and information as the Monitoring Trustee may reasonably require to perform its tasks.

#### **Replacement, discharge and reappointment of the Trustee**

- 11.11. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- 11.12. The Commission may, after hearing the Monitoring Trustee, request Denmark to replace the Trustee; or
- 11.13. Denmark, with the prior approval of the Commission, may replace the Trustee.
- 11.14. If the Trustee is removed, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred in clauses 11.4-11.7.
- 11.15. Besides the removal, the Trustee shall cease to act only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.