

COMMISSION DECISION (EU) 2018/1840**of 10 August 2018****on the State aid SA.33229 (2018/N-4) (ex 2017/C-3) — Slovenia — Amendment of the restructuring commitments of Nova Ljubljanska Banka d.d.***(notified under document C(2018) 5537)***(Only the English version is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), 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 and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By decision of 7 March 2011 ('the first rescue Decision') ⁽²⁾, the Commission authorised for a period of six months, based on the submission of a restructuring plan, the EUR 250 million State recapitalisation of Nova Ljubljanska Banka d.d. ('NLB') which Slovenia had notified to the Commission on 14 January 2011.
- (2) By Decision of 2 July 2012 ⁽³⁾ ('the second rescue and opening Decision'), the Commission approved a second rescue recapitalisation of NLB, while at the same time opening an in-depth investigation based on concerns in relation to the restructuring plan submitted. The Commission doubted whether the plan allowed NLB to return to viability, while it also deemed the plan insufficient in terms of burden-sharing and in relation to the adequacy of measures to address undue distortions in competition.
- (3) By Decision 2014/535/EU ('the 2013 Decision') ⁽⁴⁾, the Commission approved State aid to NLB on the basis of an amended restructuring plan and a list of commitments submitted by Slovenia, one of which required Slovenia to sell a 75 % minus one share ('75 % - 1') stake in NLB by 31 December 2017 or, alternatively, to have NLB divest six foreign Balkan subsidiaries.
- (4) On 13 April 2017, Slovenia requested the Commission to authorise a delay of a second tranche of NLB shares representing at most a 25 % minus one share ('25 % - 1') stake in NLB and it notified the Commission of amended commitments. On 11 May 2017, the Commission concluded that those amended commitments continued to ensure the compatibility of the aid in favour of NLB with the internal market ('the 2017 amendment Decision') ⁽⁵⁾.
- (5) On 8 June 2017 ⁽⁶⁾, the Slovenian authorities decided to put NLB's sale process on hold and on 9 June 2017, the Slovenian Minister of Finance informed the Commission of that decision by phone.

⁽¹⁾ Commission decision in case SA.33229 ('the 2018 opening Decision') (2018/C) (ex 2017/N-3) — Slovenia — Amendment of the restructuring commitments of Nova Ljubljanska Banka (OJ C 121, 6.4.2018, p. 15).

⁽²⁾ Commission Decision in Case SA.32261 (2011/N) — Slovenia — Rescue recapitalisation in favour of NLB (OJ C 189, 29.6.2011, p. 2).

⁽³⁾ Commission Decision in Case SA.34937 (2012/C) (ex 2012/N) and SA.33229 (2012/C) (ex 2011/N) — Second recapitalisation of NLB and Restructuring of NLB (OJ C 361, 22.11.2012, p. 18).

⁽⁴⁾ Commission Decision 2014/535/EU of 18 December 2013 on State aid SA.33229 (2012/C) — (ex 2011/N) — Restructuring of NLB — Slovenia which Slovenia is planning to implement for Nova Ljubljanska banka d.d. (OJ L 246, 21.8.2014, p. 28).

⁽⁵⁾ Commission Decision in case SA.33229 (2017/N-2) — Slovenia — Amendment of the restructuring decision of NLB (OJ C 254, 11.7.2017, p. 2).

⁽⁶⁾ See the following press release: http://www.vlada.si/en/media_room/government_press_releases/press_release/article/138_regular_government_session_government_rejects_minimum_offer_price_for_nlb_59951/

- (6) In the autumn of 2017, numerous contacts took place between the Commission and Slovenia. Slovenia also shared a number of non-papers with the Commission ⁽⁷⁾. On 21 December 2017, Slovenia formally notified the Commission of further amended commitments.
- (7) By letter dated 26 January 2018 (‘the 2018 opening Decision’), the Commission informed the Slovenian authorities of its decision to initiate the procedure laid down in the first subparagraph of Article 108(2) TFEU in respect of the request to confirm the compatibility of the aid granted to NLB on the basis of the further amended commitments.
- (8) On 2 March 2018, Slovenia submitted its comments on the 2018 opening Decision.
- (9) On 6 April 2018, the 2018 opening Decision was published in the *Official Journal of the European Union* and interested parties were called upon to submit their comments. Within the one-month period following that publication, the Commission received comments from four parties, which were forwarded to the Slovenian authorities on 16 and 18 May 2018. On 15 June 2018, Slovenia by way of reply submitted its observations on those comments.
- (10) On 26 March 2018, 4 April 2018, 30 May 2018, 21 June 2018, 29 June 2018 and 9 July 2018 Slovenia submitted new non-papers, which included a series of proposed groups of commitments.
- (11) By letter dated 13 July 2018, Slovenia submitted to the Commission a new set of State aid commitments (‘amended commitments’), with among others new deadlines for the sale of a 75 % - 1 stake in NLB. For reasons of legal certainty, Slovenia also notified a proposed measure on 25 July 2018, as a no aid measure, under which Slovenia would compensate NLB against any potential consequences of court cases relating to foreign currency deposits which is a historic issue dating back to before the break-up of Yugoslavia.
- (12) By letter dated 16 July 2018, Slovenia agreed exceptionally to waive its rights under Article 342 TFEU ⁽⁸⁾ in conjunction with Article 3 of Regulation (EC) No 1 ⁽⁹⁾ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE AID MEASURE

2.1. Description of the beneficiary

- (13) NLB is the largest bank in Slovenia with a market share of 23 % (calculated by reference to its total assets) ⁽¹⁰⁾. A more detailed description of NLB can be found in recitals 11 to 22 of the 2013 Decision. In terms of its shareholders’ structure, since the State recapitalisations of 2012 and 2013, NLB is a 100 % State owned company ⁽¹¹⁾.
- (14) Also as a result of the State aid NLB has received, NLB had a core equity tier 1 ratio of 16,6 % as at the end of March 2018. NLB has also improved its profitability and has reported at the end of 2017 a net profit of EUR 225 million, which equates to a return on equity of 14,4 %. Table 1 contains details on NLB’s key financial information ⁽¹²⁾:

Table 1

Key consolidated financial information of NLB:

	31.3.2018	31.12.2017	31.12.2016
Total assets (in EUR million)	12 425	12 238	12 039
Risk-Weighted Assets (in EUR million)	8 634	8 547 ⁽¹⁾	7 862

⁽⁷⁾ As explained more in detail in recitals 5, 6 and 7 of the 2018 opening Decision.

⁽⁸⁾ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 202, 7.6.2016, p. 47).

⁽⁹⁾ Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

⁽¹⁰⁾ NLB Group presentation, 1Q 2018 Results, page 4.

⁽¹¹⁾ In past years, the ownership structure of NLB has undergone several changes. In 2002, the Belgian bank KBC acquired 34 % of NLB. However, when in 2006 KBC was not able to increase its stake in NLB, KBC decided to no longer consider its existing stake as strategic in nature but recategorised it as a financial participation. KBC completely exited NLB in 2013. As of end 2013, the Slovenian State has become again the 100 % owner of NLB, thereby de facto reversing NLB’s (partial) privatisation of 2001/2002.

⁽¹²⁾ Financial figures referred to in Table 1 are based on the consolidated financial statements of NLB as available on: <https://www.nlb.si/nlb/nlb-portal/eng/investor-relations/financial-reports/prezentacija-nlb-final-2017.pdf> and <https://www.nlb.si/nlb/nlb-portal/eng/investor-relations/financial-reports/prezentacija-nlb-1q2018-final.pdf>

	31.3.2018	31.12.2017	31.12.2016
Net profit after tax (in EUR million)	58	225	110
Non-performing loans/total loans (in %)	8,8	9,2	13,8
Core Equity Tier 1 ratio (in %)	16,6	15,9	17,0
Loan to deposits ratio (in %)	69,8	70,8	74,2
Return on Equity (in %)	13,5	14,4	7,4

(¹) The risk-weighted assets increased in 2017 as a result of increased retail exposures, as a correction of the treatment of NLB's Foreign Exchange position on a consolidated level and due to the treatment of equity investments in non-euro subsidiary banks.

- (15) In terms of its commercial presence, NLB has currently 108 outlets in Slovenia (as at the end of March 2018), down from 143 outlets in 2013. Outside of Slovenia, NLB has foreign subsidiaries in a number of Balkan countries, representing in total EUR 3 800 million in assets and EUR 95 million in after-tax profit (¹³) (end of 2017 figures). Table 2 contains more information on NLB's Balkan subsidiaries:

Table 2

Key financial information of NLB's Balkan subsidiaries

	FYRoM	Bosnia subsidiary 1	Bosnia subsidiary 2	Kosovo	Montenegro	Serbia
NLB's stake (in %)	87	100	97	81	100	100
Market share (in %)	16,4	18,9	5,3	15,7	11,0	1,2
Profit after tax (in EUR million)	40	23,7	8,3	14,2	5,4	3,7
Total assets (in EUR million)	1 236	670	531	584	457	371

- (16) NLB continues to own a 50 % stake in insurance company NLB Vita d.d., Ljubljana ('NLB Vita'), which is a joint venture with Belgian KBC Group NV. At the end of 2017, NLB Vita reported total assets of EUR 446 million (¹⁴) and EUR 7 million in after-tax profit for that year.
- (17) On 31 December 2017, NLB started the process to liquidate its leasing subsidiary in Ljubljana (¹⁵). On 29 November 2017 (¹⁶), NLB's Supervisory Board approved the establishment of a new leasing company, focusing on vehicle leasing, with an initial paid-in capital of EUR 1,5 million. In February 2018, NLB discontinued the process of establishing the new leasing company.

2.2. State aid measures in favour of NLB

- (18) By means of the 2013 Decision and based on commitments submitted by Slovenia, the Commission declared the following State aid measures in favour of NLB compatible with the internal market:
- a first recapitalisation of EUR 250 million, temporarily approved in the first rescue Decision;
 - a second recapitalisation of EUR 383 million, temporarily approved in the second rescue and opening Decision;

(¹³) Source data: see link in footnote 12.

(¹⁴) Measured by 'Assets of covered funds without own resources'.

(¹⁵) NLB's Slovenian leasing subsidiary was listed among the non-core subsidiaries to be divested as part of the commitments on the basis of which the 2013 Decision was adopted.

(¹⁶) Based on the Monitoring Trustee report dated 14 June 2018.

- (c) a third recapitalisation of EUR 1 558 million; and
- (d) a transfer of impaired assets to a State-owned bad bank with an aid element of EUR 130 million ⁽¹⁷⁾.

In total, NLB received State aid measures of EUR 2 321 million, equivalent to 20 % of its risk-weighted assets as of December 2012.

- (19) The commitments submitted as part of the 2013 Decision and the 2017 amendment Decision are described in more detail in Sections 2.3 and 2.4 of the 2018 opening Decision. Regarding the sale of the 75 % - 1 stake in NLB, Slovenia committed, in the context of the 2017 amendment Decision, to the following ('the sale commitment'):

'... [reduction of State's shareholding and foreign banking subsidiaries]

Slovenia will reduce its shareholding in NLB to 25 % plus one share ('Blocking Minority') as follows:

- (a) by at least 50 % by 31 December 2017.

If Slovenia has not entered into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB by at least 50 %, Slovenia and NLB shall grant to the Divestiture Trustee an exclusive mandate to sell NLB's participations in (its foreign Balkan) banking subsidiaries for a minimum price not lower than 75 % of book value.

- (b) having sold at least 50 % of its shareholding in NLB in accordance with subparagraph 14(a), Slovenia will further reduce its shareholding to the Blocking Minority by 31 December 2018.

If Slovenia has not entered into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB exceeding the Blocking Minority by 31 December 2018, Slovenia shall grant to the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to reduce the Slovenia's shareholding in NLB to the Blocking Minority for the [...] (*)

(*) covered by the obligation of professional secrecy.'

- (20) The interrupted sale process is described in detail in Section 2.5 of the 2018 opening Decision.

2.3. Grounds for initiating the procedure

- (21) In the 2018 opening Decision, the Commission opened a formal investigation after it had become clear that Slovenia had breached the deadline set in the sale commitment (described in recital 19). The Commission concluded that, as a result, the aid granted to NLB by Slovenia had become unlawful.
- (22) As regards the amended commitments notified on 21 December 2017, the Commission expressed doubts that those were equivalent to the commitments underlying the 2013 Decision and the 2017 amendment Decision. The Commission doubted whether the aid measures were compatible with the internal market on the basis of those amended commitments.
- (23) As regards NLB's viability, the Commission recalled that the difficulties experienced by NLB in 2012 and 2013 related to the State's influence over its day-to-day operations, and that the analysis of NLB's viability as part of the 2013 Decision was crucially based on a change in NLB's ownership. In the 2018 opening Decision, the Commission raised serious doubts on NLB's long-term viability without such a change in ownership.
- (24) In the 2018 opening Decision, the Commission reached the preliminary conclusion that the delayed sale of NLB *de facto* prolonged its restructuring period. The Commission explained that this logically implied that commitments linked to the restructuring period would be equally prolonged for as long as the sale of the 75 % - 1 stake in NLB had not been finalised.
- (25) Finally, the Commission expressed doubts whether the amended commitments would sufficiently compensate for the delayed sale process.

⁽¹⁷⁾ The difference between the transfer price (EUR 617 million) and the market value (EUR 486 million) of the impaired assets.

3. COMMENTS BY INTERESTED PARTIES ON THE 2018 OPENING DECISION AND RELATED OBSERVATIONS FROM THE SLOVENIAN AUTHORITIES

- (26) This section describes the comments received on the 2018 opening Decision and the observations of the Slovenian authorities to those comments.

3.1. Comments by interested parties on the 2018 opening Decision

- (27) The Commission received comments from the following four parties:
- (a) the first party, being an individual who previously held NLB shares, argued that not allowing a further extension of the deadline for NLB's sale would be inconsistent with the Commission's case practice⁽¹⁸⁾. The first party argued that the Commission should minimise the costs for the taxpayer for rescuing banks and that an extension of the deadline until 2019 would not only be in the interest of Slovenia and its taxpayers, but also in the interest of the Commission.
 - (b) the second party, comprising an association of citizens concerned about the functioning of Slovenian institutions, was of view that the measures approved in the 2013 Decision did not distort competition in the internal market and were therefore not State aid. It argued that even where the measures were considered to constitute State aid, they would in any case be compatible aid because of the 2013 bail-in under the 2013 Decision. Furthermore, the second party considered that, with the exception of the corporate governance commitment, NLB had implemented all the commitments of the 2013 Decision. The second party also referred to NLB's high level of profit and argued that NLB's operations had become fully independent from the Slovenian authorities. It argued that any additional commitments would impair NLB's long-term viability prospects. The second party noted that NLB was not the only Slovenian bank that had experienced financial difficulties and that the presence of KBC as a shareholder of NLB at that time had not helped NLB avoid its financial problems. Therefore, the second party concluded that a change in the ownership structure of NLB was not a necessary condition for its viability. The second party also concluded that the commitments should be adapted to take account of changes in the economic and political situation in the Member States and in the Union. In conclusion, the second party argued that the Commission should also take into account the fact that Slovenia was experiencing a severe financial crisis when it decided to grant the State aid to NLB and when the commitments were submitted.
 - (c) the third party, being a Slovenian citizen, argued that the Commission had breached the equality of treatment principle when adopting the 2013 Decision. The third party also considered that the treatment of NLB by the Commission lacked a sound legal basis.
 - (d) the fourth party, being a foreign currency deposit holder of a foreign branch of Ljubljanska Banka d.d., principally commented on the execution of a judgment of the European Court of Human Rights⁽¹⁹⁾ and referred to that part of the judgment relating to the foreign exchange deposits' repayment.

3.2. Slovenia's observations on the comments on the 2018 opening Decision from interested parties

- (28) In its reply of 15 June 2018 to the comments received on the 2018 opening Decision, Slovenia considered that most of the comments relate to older decisions of the Slovenian authorities and to the 2013 Decision. Slovenia underlined that, in 2013, it not only acted as a responsible owner of NLB, but also in order to protect the financial stability of the country. Slovenia stated that it had acted with due care and with the intention to limit the risk of a systemic disturbance to a minimum.
- (29) As regards the comments on foreign currency deposits litigation, as described in point (d) of recital 27, Slovenia considered that those comments were not the subject of the 2018 opening Decision.

⁽¹⁸⁾ Referring to the Commission's State aid Decision for four Italian bridge banks and Novobanco: see Commission Decisions in Case SA.43976 (2015/N) – Portugal — Amendment of the 2014 Resolution of Banco Espírito Santo S.A. (Novo Banco S.A.) (OJ C 390, 21.10.2016, p. 5) and in Case SA.39543 (2015/N), SA. 41134 (2015/N), SA. 41925 (2015/N) and SA. 43547 (2015/N) — Italy — Second amendment to the Resolution of Banca delle Marche S.p.A, Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio de Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A. (OJ C 61, 16.2.2018, p. 1).

⁽¹⁹⁾ Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia (<http://hudoc.echr.coe.int/eng?i=001-145575>).

- (30) Regarding the argument that any additional measures would only impair NLB's long-term viability prospects, Slovenia considered that the Commission's assessment on commitments should be based on its assessment included in the 2013 Decision namely that the sale commitment would prevent State influence in NLB as owner. Slovenia considers that additional compensatory measures of a commercial nature would not contribute to that objective.
- (31) Slovenia highlighted that it is currently not involved in the day-to-day operations of NLB.

4. COMMENTS FROM SLOVENIA

- (32) In response to the 2018 opening Decision, Slovenia expressed the view that the aid measures granted to NLB would continue to be compatible with the internal market on the basis of the amended commitments submitted by Slovenia on 21 December 2017. Slovenia emphasised that the viability of NLB as the aid beneficiary would remain assured and that the overall series of commitments would remain equivalent in terms of burden sharing and compensatory measures.
- (33) According to Slovenia, in order to comply with the commitments submitted as part of the 2013 Decision, NLB implemented a number of measures with the following objectives:
- (a) to strengthen NLB's corporate governance framework;
 - (b) to strengthen NLB's pricing policies and risk management framework;
 - (c) to rebalance NLB's business towards less risky activities;
 - (d) to repair NLB's balance sheet structure; and
 - (e) to restore NLB's long-term profitability.
- (34) As a result of those measures, Slovenia considered that NLB had returned to long-term viability, as it can cover all its costs and continue to earn an appropriate return on equity.
- (35) Slovenia acknowledged that point 15 of the Restructuring Communication ⁽²⁰⁾ explicitly provided that the restructuring period should be as short as possible. Slovenia emphasised however that the delayed implementation of the sale commitment was related to the foreign currency deposit litigation against NLB in Croatia ⁽²¹⁾ which it considered to be outside of Slovenia's control. Going forward, Slovenia indicated that it would devise a credible time schedule for the sale of the 75 % - 1 stake in NLB by the end of 2019, with a major part to be sold already in 2018.
- (36) Slovenia accepted that the existing commitments which related to NLB's sound corporate governance should be extended, but also argued that the need to extend existing commitments which related to undue distortions of competition should be based on a case-by-case assessment. This analysis should take into account the changed market conditions since 2013. In addition, Slovenia argued that any commitments should not impede NLB's viability but rather should help to restore it. In this respect, Slovenia considered that the commitment to divest the Balkan subsidiaries where the sale of its stake in NLB would not take place in time, which Slovenia made in the context of the 2013 Decision, not to be a compensatory measure, as it does not address a market distortion and does not assist or promote the viability of NLB.
- (37) Regarding the Commission's observation that NLB has not yet issued new subordinated debt ⁽²²⁾, Slovenia highlighted that one of NLB's foreign subsidiaries (NLB Banka Skopje) had sold new subordinated debt of EUR 10 million in June 2015 to [...]. Furthermore, Slovenia underlined that NLB had been fulfilling all its regulatory capital requirements and continued to have excess levels of capital to withstand a potential stress situation. Therefore, Slovenia considered committing NLB to issue additional subordinated instruments would not contribute to its long-term viability, also in light of its excess level of liquidity.

⁽²⁰⁾ Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

⁽²¹⁾ The litigation relates to pending Croatian court cases on foreign currency deposits of Croatian depositors (customers of Ljubljanska banka d.d., Ljubljana, Zagreb Branch), an issue which dates back from before the break-up of former Yugoslavia. Since 2017, three court cases have been ruled by Croatian courts of second instance against NLB, with the decision requiring the bank to pay back the principal in addition to interest and litigation costs. In addition, in May 2018 the Croatian Constitutional Court rejected NLB's appeal against a case which the bank lost in 2015.

⁽²²⁾ See recital 58 of the 2018 opening Decision.

- (38) Regarding the Commission's observation that NLB still had a high level of non-performing loans ⁽²³⁾, Slovenia argued that NLB's long-term viability cannot be put into question only based solely on this argument. Furthermore, Slovenia underlined that NLB has significantly reduced its non-performing loan book since December 2013 (by 70 %) as a result of improved risk management processes.
- (39) Regarding the Commission's assessment that Slovenia had not convincingly demonstrated that it had effectively addressed NLB's corporate governance problems ⁽²⁴⁾, Slovenia argued that this statement did not accurately reflect NLB's achievements in this area. Slovenia considered that for in excess of five years, the daily operation of NLB had been conducted by an international management team with a relevant track record and experience, which was completely independent from the Slovenian State. Slovenia also pointed to the following measures undertaken to illustrate how NLB's corporate governance structure had been greatly improved:
- (a) Slovenia has created the Slovenian Sovereign Holding ('SSH') to properly manage all State assets.
 - (b) The Slovenian Sovereign Act has been adopted by the Slovenia legislature and sets out selection criteria for the appointment of members of the Supervisory Board of the SSH.
 - (c) NLB has implemented a two-tier corporate governance system in which the Management Board is responsible for its day to day operations and in which it is supervised by the Supervisory Board.
- (40) Slovenia pointed out that its non-compliance with the sale commitment deadline did not influence the amount of State aid granted in favour of NLB, the conditions and circumstances under which the aid was granted nor NLB's own contribution and burden sharing. Against that background, Slovenia considered that its non-compliance with the sale commitment should not have an impact on the measures required to limit undue distortions of competition in the internal market.
- (41) Slovenia further considered that the 2013 Decision and its commitments only related to the State aid measures granted in 2013 and argued that the previous two State recapitalisations were already authorised by the Commission in its decisions of respectively 7 March 2011 and 2 July 2012 respectively.
- (42) Slovenia also considered that any additional viability measures, burden-sharing measures or measures to limit undue distortions of competition in the internal market would not be necessary or appropriate. Such further measures would, according to Slovenia, violate the fundamental Union principle of proportionality and would contradict the Commission's case practice.
- (43) Slovenia confirmed it also intends to put in place a mechanism, to be financed by the so-called Succession Fund ⁽²⁵⁾, in order to compensate NLB from the legal consequences related to the ongoing litigation in Croatia ⁽²⁶⁾. For this purpose, Slovenia adopted an Act to protect of the value of Republic of Slovenia's capital investment in NLB ⁽²⁷⁾. In its submission of 25 July 2018, Slovenia highlighted that it would continue to make efforts to neutralise or mitigate to the fullest extent possible financial consequences for NLB in order to successfully complete the sale of the 75 % - 1 stake in NLB in a manner that would maximise value for Slovenian taxpayers. Slovenia considers that this mechanism would mitigate the impact of the Croatian litigation on NLB's sale price, would be implemented in the context of the sale process and therefore would not constitute State aid within the meaning of Article 107 TFEU.
- (44) Slovenia included in its submission additional information by means of a report prepared by their financial advisor to show that the compensation mechanism to protect against the consequences of the on-going litigation would also have been offered by a private vendor. The report includes an indicative evaluation of the likelihood of success for the sale of the stake in NLB based on two scenarios with respect to the Croatian foreign deposits litigation: one scenario including the mechanism (with potential payments under the mechanism at a later stage) and another scenario without such mechanism. In essence, the report indicated, based on the recent Court decisions in Croatia, that investors will price in the exposure of the Croatian litigation virtually at 100 % of the

⁽²³⁾ Ibid.

⁽²⁴⁾ Ibid.

⁽²⁵⁾ The Succession Fund of the Republic of Slovenia is a public financial fund which was established to implement the Agreement on Succession Issues, and in this respect to exercise the rights and settle the liabilities of the Republic of Slovenia in the process of division of property, rights and liabilities of the former Yugoslavia and to perform other tasks, related to the succession issues of the former Yugoslavia.

⁽²⁶⁾ The litigation relates to pending Croatian court cases related to foreign currency deposits paid out to Croatian depositors (customers of Ljubljanska banka d.d., Zagreb Branch) following the break-up of Yugoslavia. In some of the recent court decisions, NLB and Ljubljanska banka d.d., Ljubljana have been held jointly and severally liable.

⁽²⁷⁾ Law 52/2018 published on 27 July 2018 in the Official Gazette of the Republic of Slovenia No 52/2018 <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2018-01-2645/zakon-za-zascito-vrednosti-kapitalske-nalozbe-republike-slovenije-v-novi-ljubljanski-banki-d-d-ljubljana-zvknlnb>

maximum exposure. Moreover, the ECB in its supervisory function imposed dividend restrictions because of the ongoing litigation (prior consent of ECB is required for potential dividend pay-outs). Therefore, without the mechanism NLB would be limited in its ability to pay a dividend and this would in all likelihood reduce the number of potential investors. The report concluded that the combined effect of the reduced investor interest and the incremental risk on NLB's cash flows (both as a result of the litigation and the postponement of dividend payments) would result in investors requiring a higher return of equity to ensure a fully-subscribed initial public offering ('IPO'). The combined negative effect on the sale price of the liability ([...] ⁽²⁸⁾) and the higher return on equity requirement from the lower number of investors ([...] ⁽²⁹⁾) would amount to [...]. The report concluded that this figure is higher than NLB's estimate of the maximum nominal amount at risk of [...] stemming from the litigation. The report therefore supports the view that establishing a compensation mechanism in relation to the Croatian litigation to support the sales price of NLB will ultimately lead to higher net proceeds for Slovenia.

5. UPDATED COMMITMENT LIST SUBMITTED BY SLOVENIA

- (45) On 13 July 2018, the Slovenian authorities submitted a new set of State aid commitments.
- (46) Slovenia sought to amend the sale commitment by proposing to reduce its stake in NLB to the Blocking Minority as follows:
- (1) by at least 50 % plus one share ('50 % + 1') by 31 December 2018
 - (2) the remaining shares exceeding the Blocking Minority by 31 December 2019.
- (47) In its proposed list of amended commitments, Slovenia distinguished between different possible scenarios in relation to the sale of the 75 % - 1 stake in NLB. In those different scenarios, different commitments groups (see recitals 50 to 52) and commitment deadlines would apply, as outlined in Table 3.
- (48) Slovenia submits that where it has not entered into a binding sale and purchase agreement for the sale of its shareholding in NLB in accordance with the amended sale commitment and timetable set out in recital 46, Slovenia will grant to a Divestiture Trustee an exclusive mandate to reduce Slovenia's stake in NLB to the Blocking Minority for the [...].
- (49) In case of favourable market conditions, Slovenia does not exclude the possibility of selling a stake larger than 50 % + 1 up to the entire 75 % - 1 stake by 31 December 2018.
- (50) In relation to the commitments submitted as part of the 2013 Decision, Slovenia proposes to amend and extend the following existing commitments ('Group 1 Commitments'):
- (a) to allocate the seats and voting rights on the Supervisory Board and its committees to independent experts in accordance with paragraph 9.6 of the 2013 commitments amended only insofar that 100 % of the seats will be allocated to independent experts (instead of three quarters previously).
 - (b) to ensure that each state-owned bank shall remain a separate economic unit with independent powers of decision in accordance with paragraph 9.10 of the 2013 commitments.
 - (c) to ensure that Slovenian State-owned companies will by no means be treated more favourably than non-State-owned companies (non-discrimination) in accordance with paragraph 11 of the 2013 commitments.
 - (d) to comply with the acquisition ban as described in paragraph 12.4 of the 2013 commitments.
- (51) In addition, other existing commitments will be extended until the moment Slovenia has reduced its stake in NLB to the Blocking Minority ('Group 2 Commitments'):
- (a) The Reduction of Costs commitment paragraph 2 of the 2013 commitments, amended only insofar that operating costs at Group level (excluded one-off extraordinary costs having non-recurrent nature) can amount to a maximum of EUR [...] on an annual basis.

⁽²⁸⁾ The [...] is based on accrued interest of ~[...] of outstanding principal claimed as part of the ongoing litigation ([...]); the interest calculation is based on the interest calculation from court decisions.

⁽²⁹⁾ The [...] corresponds to a higher return on equity requirement of [...] which is then used to discount the expected dividend payments based on NLB's business plan to calculate the effect on the IPO price.

- (b) The Divestment of non-core subsidiaries commitment from paragraph 4 of the 2013 commitments, amended only insofar that NLB will not re-enter business and activities which it had to divest.
- (c) The Bans of advertising and aggressive commercial strategies commitment from paragraph 12.1 of the 2013 commitments.
- (d) The Capital repayment Mechanism and dividend ban commitment from paragraph 12.2 of the 2013 commitments amended only insofar that based on the audited year-end accounts, NLB will pay to its shareholders at least the amount of its net income, subject to limitations imposed by European or Slovenian regulations and provided that certain minimum capital requirements are met.
- (e) The Monitoring Trustee commitment from paragraph 18 of the 2013 commitments, which will continue to apply until end of 2019.
- (f) The Divestiture Trustee commitment from paragraph 19 of the 2013 commitments.
- (52) In relation to the Return on Equity (‘RoE’) commitment and the other Risk Management and Credit Policies commitments in accordance with paragraphs 10.1 to 10.6 of the 2013 commitments, Slovenia proposes to extend this commitment until at least a 50 % + 1 stake in NLB is sold and amended only insofar that the pricing for new loans will be considered adequate if the new loan contributes to achieving a positive RoE before tax of [...] on either the individual loan or on each client relationship. However, if Slovenia has not reduced its stake in NLB to the Blocking Minority by [...], the RoE commitment will apply again from [...] until Slovenia has reduced its shareholding in NLB up to the Blocking Minority.
- (53) Slovenia also submits the following additional commitments, as compensatory measures for the delayed sale process (‘Group 3 Commitments’):
- (a) NLB will issue a Tier 2 instrument by [...] at the latest to investors who are independent from Slovenia, except in the case of severe market disruptions and subject to the approval of the Commission.
- (b) NLB will close [10-20] outlets in Slovenia by [...].
- (54) In addition, Slovenia further submits that where it has not reduced its stake in NLB up to the Blocking Minority by 31 December 2018, NLB will divest its stake in the insurance subsidiary NLB Vita by [...].

Table 3

Applicable commitments and deadlines in different scenarios

Scenario	Group 1 commitments	Group 2 commitments	Group 3 commitments	NLB Vita	ROE (including Risk Management and credit policies)
Slovenia sells a 75 % - 1 stake in NLB by 31/12/18	Until 31/12/18 except the acquisition ban commitment (until 31/12/19)	Until 31/12/18, except the Monitoring Trustee commitment (until 31/12/19)	Issue Tier 2 instrument by [...] Close [10-20] outlets by [...]	N/A	Until the sale of at least a 50 % + 1 stake in NLB
Slovenia sells a 50 % + 1 stake in NLB by 31/12/18 and the remaining shares exceeding the Blocking Minority by 31/12/2019	Until 31/12/19	Until the sale of a 75 % - 1 stake in NLB, except the Monitoring Trustee commitment (until 31/12/19).	Issue Tier 2 instrument by [...] Close [10-20] outlets by [...]	Sale before [...]	Until the sale of at least a 50 % + 1 stake in NLB and from [...] until the sale of 75 % - 1 of NLB

Scenario	Group 1 commitments	Group 2 commitments	Group 3 commitments	NLB Vita	ROE (including Risk Management and credit policies)
Slovenia fails to sell a 50 % + 1 stake in NLB by 31/12/18, Divestiture Trustee to sell Slovenia's share up to the Blocking Minority	Until 31/12/18, except the acquisition ban commitment (until 31/12/19)	Until 31/12/18, except the Monitoring Trustee commitment (until 31/12/19)	Issue Tier 2 instrument by [...] Close [10-20] outlets by [...]	Sale before [...]	Until the sale of at least a 50 % + 1 stake in NLB and from [...] until the sale of a 75 % - 1 stake in NLB
Slovenia sells a 50 % + 1 stake in NLB by 31/12/18 but fails to sell the remaining shares exceeding the Blocking Minority by 31/12/19	Until 31/12/19	Until the sale of a 75 % - 1 stake in NLB, except the Monitoring Trustee commitment (until 31/12/19)	Issue Tier 2 instrument by [...] Close [10-20] outlets by [...]	Sale before [...]	Until the sale of at least a 50 % + 1 stake in NLB and from [...] until the sale of a 75 % - 1 stake in NLB

6. ASSESSMENT OF THE MEASURES

6.1. Existence of State aid

- (55) According to Article 107(1) TFEU, State aid is 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, in so far as it affects trade between Member States.
- (56) The Commission already concluded in the 2013 Decision that the measures described in recital (18) amount to State aid. That assessment remains unchanged ⁽³⁰⁾.
- (57) The Commission will assess in the recitals 58 to 62 whether the cumulative conditions for a measure to be considered State aid are met for the compensation mechanism described in recital 43 ('compensation mechanism'). As the State aid criteria are cumulative in nature, a measure shall not be considered to constitute State aid when at least one of the State aid criteria is not met.
- (58) The Commission will assess whether the compensation mechanism that Slovenia intends to put in place would confer an advantage on NLB. For that purpose, the Commission will apply the 'market economy operator' (MEO) test, which can be applied to different economic transactions. The Commission observes that the compensation mechanism is provided in the context of a sale of assets and therefore the Commission has to apply the 'private vendor test'. This involves an assessment by the Commission of whether also a hypothetical private vendor would have offered the same compensation mechanism, as part of the same sale process.
- (59) Firstly, the Commission observes that the compensation mechanism relates to court cases which have been pending for a long time and for which investors do not necessarily have extensive valuation experience ⁽³¹⁾. Recently Croatian courts ruled against NLB which brought the issue fully in the spotlight of investors ⁽³²⁾. The dispute dates back from before the break-up of Yugoslavia and it is not linked to NLB's recent operations and activities. The fact that the claims may give rise to the possibility that NLB is held jointly and severally liable with Ljubljanska banka d.d. further complicates the valuation of the claim, as it is more difficult to assess the impact of that claim on NLB only. The Commission understands that these valuation difficulties can lead to problems of

⁽³⁰⁾ Regarding Slovenia's comment (see recital 41) that the commitments only relate to the 2013 recapitalisation, the Commission notes that the first two recapitalisations were temporarily approved in rescue decisions and were only approved as restructuring aid in the 2013 Decision, in light of the Restructuring Plan and the commitments submitted. Therefore, the commitments submitted relate also to the first two recapitalisations.

⁽³¹⁾ As opposed to legal claims which are more common to the company's normal activities such as claims related to product liabilities or mis-selling-related claims.

⁽³²⁾ See footnote 21.

asymmetry of information. In view of these elements, it is understandable that – in the absence of such a mechanism – the investors will price in the issue in a maximalist manner. As investors would price in the most negative scenario possible, the mechanism would allow Slovenian authorities to keep the upside of more favourable court rulings.

- (60) Secondly, the Commission takes note of the information contained in the report submitted by Slovenia which notes, based on investors' feedback, that in the absence of such a compensation mechanism, certain investors will no longer subscribe to the IPO which would have a negative impact on the sale price⁽³³⁾. The report points in this regard mainly to investors who are interested in a dividend-paying investment. In this context, the Commission also takes note that in [...] the ECB, in its supervisory capacity, already imposed dividend restrictions because of the ongoing litigation. As a result NLB has not been allowed to pay a dividend in [...]⁽³⁴⁾. In conclusion, in a 'no mechanism' scenario, the report highlights that, for this reason, there will be a negative impact on the sale price of [...] ⁽³⁵⁾ and the absence of a compensation mechanism would even endanger the completion of the IPO ⁽³⁶⁾.
- (61) The Commission notes that the report, based on reasonable assumptions verified by the Commission, indicates that the negative and maximalist view of investors on the Croatian litigation ([...]) in combination with the reduced interest from dividend investors ([...]) outweighs, by a meaningful margin, the estimated costs for the Slovenian State under the mechanism (maximum [...], but lower in case of more favourable court rulings). Based on these elements, the Commission concludes that the mechanism will have a positive impact on the net proceeds from the sale of NLB.
- (62) Based on the assessment set out developed in recitals 58 to 61, the Commission accepts that a private vendor, in the very specific circumstances of the Croatian litigation, would also grant such a compensation mechanism in the context of a sale process and that therefore Slovenia does not confer NLB with an advantage. As the criteria set out in Article 107(1) TFEU are cumulative, and given that the condition of conferring an advantage is not fulfilled, the presence of additional State aid through the putting in place of a compensation mechanism is excluded.

6.2. Compatibility assessment

- (63) With respect to the comments by Slovenia and by the other parties in sections 3 and 4 of this Decision, the Commission notes that a number of those comments relate rather to the 2013 Decision. The Commission recalls that it will only assess the issues that were raised in the 2018 opening Decision and will not carry out any re-assessment of the 2013 Decision, neither as regards the assessment of the existence of aid assessment carried out at the time, nor the compatibility of that aid based on the commitments provided by the Slovenia in 2013. More specifically, the Commission will not re-assess its conclusion that NLB's long-term viability was crucially based on the commitment to sell its shareholding up to the Blocking Minority. The requirement for the change to NLB's ownership indeed ensured that NLB, at all its levels, would be managed in order to maximise value and would not pursue other short-term or long-term political objectives.
- (64) The Commission considers that the following comments of the other interested parties relate to the concerns and to the preliminary findings included in the 2018 opening Decision:
- (a) the reference by the first party to other State aid cases for which the Commission had granted an extension of sale commitments⁽³⁷⁾ and the argument that an extension of the deadline until 2019 is of overall beneficial to Slovenia and the Slovenian taxpayers.
 - (b) the argument made by the first party that additional commitments would only worsen NLB's long-term viability prospects.

⁽³³⁾ The Commission in recital 28 and 29 of the 2017 amendment Decision already concluded that the transaction was sizeable as compared to investor demand. The Commission observed concretely that the IPO of NLB would be significantly larger as compared to recently observed deal sizes in the CEE market. Moreover, Slovenia is not well represented in market indices, which implies that there is limited natural demand from investors that track an index or use an index as a benchmark. In the 2017 amendment Decision, the Commission concluded on this basis that a more gradual process to sell the shares was warranted. A lower demand by the exclusion of more investors will indeed further reduce the potential IPO price.

⁽³⁴⁾ See also the following press release from NLB's 31st Shareholders' Meeting: <https://www.nlb.si/investor-news-27-06-2018>

⁽³⁵⁾ The financial advisor assumes that investors will increase their required return on equity for the investment by [...], which would have a negative impact on the price of NLB shares of [...].

⁽³⁶⁾ The Commission recalls, as explained in recital 44, that the impact of the Croatian issue on the valuation in absolute terms is sizeable.

⁽³⁷⁾ See recital 27(a) of this Decision.

- (65) As regards the comparison with other cases, the Commission recalls that in all cases it assesses compatibility on the basis of the Commission's Communications ⁽³⁸⁾ applicable at the time of the granting of the aid. The Commission also recalls that in this case, the sale of the stake in NLB was required in order to ensure NLB's viability and was part of an overall restructuring aid assessment, while in other cases the sale of assets took place in the context of a liquidation aid assessment.
- (66) The Commission notes that no specific reasons or examples of commitments are provided with regard to those claimed to have a negative impact on the viability of NLB. As noted in recital 55 of the 2018 opening Decision, the Commission will assess whether the new set of commitments preserve the original balance of the 2013 Decision and the 2017 amendment Decision and whether the amended commitments do not negatively affect the viability of NLB, whilst at the same time also remain equivalent in terms of burden-sharing and compensatory measures.
- (67) As Slovenia has notified amended commitments on 13 July 2018, the Commission will assess whether those new commitments could be considered as equivalent to those originally provided in the context of the 2013 Decision and the 2017 amendment Decision. The Commission will not re-assess the commitments that were provided on 21 December 2017 which have been assessed in the context of the 2018 opening Decision.
- (68) A restructuring decision can in principle ⁽³⁹⁾ be amended where the amendment does not entail any additional aid and the amendment is based on new commitments which can be considered as equivalent to those originally provided. In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) TFEU if the overall balance of the original decision remains intact. In order to preserve the original balance, the amended commitments should not negatively affect the viability of the aid beneficiary, with the overall set of commitments remaining equivalent in terms of burden-sharing and compensatory measures, taking into account the requirements of the Restructuring Communication.
- (69) The 2018 opening Decision ⁽⁴⁰⁾ recalls that the viability section of the 2013 Decision was crucially based on a change in NLB's ownership structure to ensure the long-term viability of NLB. In 2013, the Slovenian authorities had indeed committed to eliminate the State's influence on NLB's day-to-day operations. Slovenia is now proposing to sell at least a 50 % + 1 stake in NLB by 31 December 2018 and the remaining shares up to the Blocking Minority by 31 December 2019.
- (70) The Commission can reaffirm NLB's long-term viability if this revised timeline for the sale is very strictly complied with. In this context, the Commission takes a positive note of the fact that amended commitments are to a certain extent linked to the divestment process, thereby setting the right incentives for a faster sale process. The Commission notes for instance that when the shareholding up to the Blocking Minority is sold before 31 December 2019, certain commitments will cease to apply from an earlier date ⁽⁴¹⁾. This should ensure that Slovenia will sell its shareholding up to the Blocking Minority as soon as possible. The Commission concludes that the revised timeline in conjunction with the new set of Slovenian commitments should ensure that both the sale of NLB and the end of the restructuring period are not unduly delayed ⁽⁴²⁾.
- (71) In the 2018 opening Decision ⁽⁴³⁾, the Commission also made other observations pointing at sub-optimal progress on the restoration of viability, such as the lack of new issue of subordinated debt capital, the high level

⁽³⁸⁾ 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 financial sector ('Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1); Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ('Restructuring Communication') (OJ C 195, 19.8.2009, p. 9); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2010 Prolongation Communication') (OJ C 329, 7.12.2010, p. 7) and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2011 Prolongation Communication') (OJ C 356, 6.12.2011, p. 7).

⁽³⁹⁾ The Commission has also exceptionally accepted an amendment of existing commitments in some other cases such as in Commission Decision (EU) 2018/119 of 18 September 2017 on State aid SA.47702 (2017/C) (ex 2017/N) — United Kingdom — Alternative package to replace the commitment for the Royal Bank of Scotland to divest the Rainbow business (OJ L 28, 31.1.2018, p. 49).

⁽⁴⁰⁾ See recital 57 of the 2018 opening Decision.

⁽⁴¹⁾ Notably the commitment to sell [...], the [...] and [...].

⁽⁴²⁾ As explicitly provided for in point 15 of the Restructuring Communication.

⁽⁴³⁾ See recital 58 of the 2018 opening Decision.

of non-performing loans and the corporate governance issues related to nominations to the Supervisory Board ⁽⁴⁴⁾. The Commission notes that Slovenia, in its notification of 13 July 2018, commits that NLB will issue a Tier 2 instrument by [...] and to only have independent experts as members of the Supervisory Board. The Commission considers that those commitments will positively contribute to the viability of NLB. The Commission also takes note of the fact that the non-performing loans share in total loans ⁽⁴⁵⁾ has further decreased in the first quarter of 2018 to 8,8 % (as compared to the 9,2 % ratio at the end of December 2017).

- (72) In the 2018 opening Decision ⁽⁴⁶⁾, the Commission had also raised doubts with regard to the effectiveness of the initial proposal of Slovenia to appoint a blind trustee as a compensatory measure. Since Slovenia has no longer included this commitment in its most recent notification, there is no need for the Commission to reach any conclusion in this Decision on the effectiveness of such a blind trustee.
- (73) In the 2018 opening Decision ⁽⁴⁷⁾, the Commission preliminarily concluded that the delay of the sale of NLB *de facto* prolonged the restructuring period. As a number of commitments were logically linked to the restructuring period (see recital (25) of the 2018 opening Decision), the Commission indicated that an extension of the deadline for the sale process should go hand in hand with an extension of other restructuring commitments as well. The Commission notes that Slovenia now proposes to extend almost all of the relevant existing commitments until the sale process is completed. The most relevant existing commitment of the 2013 Decision which is not fully extended until the shareholding is reduced to the Blocking Minority is the [...] commitment. However, the Commission notes that, in addition to the extension of existing commitments, additional compensatory commitments are provided.
- (74) In the 2018 opening Decision ⁽⁴⁸⁾, the Commission also expressed doubts whether Slovenia could not further improve NLB's viability by, *inter alia*, converting the blind trustee to a fully empowered divestiture trustee. The Commission also raised doubts ⁽⁴⁹⁾ whether the removal of the alternative commitment to divest the Balkan subsidiaries would not weaken the existing commitments. The Commission notes that Slovenia has now proposed to grant the Divestiture Trustee an exclusive mandate to sell Slovenia's stake in NLB up to the Blocking Minority if Slovenia does not comply with the sale commitment. The Commission considers that the addition of the divestiture trustee addresses the concerns expressed on the implementation of the sale of the 75 % - 1 stake in NLB, thereby strengthening the credibility of the sale commitment and improving NLB's viability prospects.
- (75) In recital (63) of the 2018 opening Decision, the Commission also expressed doubts whether Slovenia should not consider further structural measures for NLB such as divestments of certain subsidiaries and/or behavioural measures to compensate for the delay to the sale of the stake in NLB and to the restructuring process. As NLB will be active in the market for a longer period without having fully ensured its long-term viability, this could be a source of distortions of competition. The Commission now observes that Slovenia has proposed three additional commitments ⁽⁵⁰⁾ involving the issue of a Tier 2 instrument by [...], the closure of [10-20] additional outlets and the divestment of NLB's participation in NLB Vita (the latter only if Slovenia has not reduced its shareholding in NLB up to the Blocking Minority by the end of 2018). Indeed, the longer the period without having fully ensured its long-term viability, the more compensatory measures are required to ensure that the overall set of commitments remain equivalent in terms of compensatory measures. The Commission considers that the number of outlets Slovenia is proposing to close are significant (relative to the number of outlets NLB has in Slovenia ⁽⁵¹⁾) and will make NLB's commercial presence in Slovenia less prominent ⁽⁵²⁾. The Commission also takes a positive view on the impact of the divestment of NLB Vita both in terms of competition ⁽⁵³⁾ and burden sharing without unduly harming the viability of NLB ⁽⁵⁴⁾. Overall, the Commission concludes that the compensatory measures are sufficient to compensate for the delay in the sale of the 75 % - 1 stake in NLB and the extended restructuring process.

⁽⁴⁴⁾ See recital 36 of the 2018 opening Decision.

⁽⁴⁵⁾ See Table 1.

⁽⁴⁶⁾ See recitals 59 to 62 of the 2018 opening Decision.

⁽⁴⁷⁾ See recital 63 of the 2018 opening Decision.

⁽⁴⁸⁾ See recital 63 of the 2018 opening Decision.

⁽⁴⁹⁾ See recital 65 of the 2018 opening Decision.

⁽⁵⁰⁾ See recitals 53 and 54 of this Decision.

⁽⁵¹⁾ See recital 15 of this Decision.

⁽⁵²⁾ See also point 35 of the Restructuring Communication.

⁽⁵³⁾ See also recitals 15 and 16 of this Decision: the size of NLB Vita is smaller than the foreign subsidiaries NLB had to divest as per the original divestment commitment (also considering that NLB Vita is a 50 % Joint Venture). NLB Vita has a relative small contribution to the overall net income to NLB and the viability of NLB will not be negatively affected.

⁽⁵⁴⁾ See also point 35 of the Restructuring Communication.

- (76) In recital 63 of the 2018 opening Decision, the Commission also raised doubts whether the establishment of a new leasing company, following quickly after the liquidation of the previous leasing company as a result of State aid commitments underlying the 2013 Decision, would not infringe the spirit of the commitment to divest NLB's non-core subsidiaries. The Commission notes that NLB meanwhile has withdrawn all start-up procedures, which removes that doubt.
- (77) The 2018 opening Decision ⁽⁵⁵⁾ also invited Slovenia to clarify that the most recent commitments did not change any other commitments underlying the 2017 amendment Decision (in particular with regard to the acquisition ban). The Commission notes that Slovenia has now clarified in its recent notification ⁽⁵⁶⁾ that the acquisition ban continues to be applicable until 31 December 2019.

7. CONCLUSION

- (78) On the basis of the foregoing assessment of the new set of commitments notified on 13 July 2018, the Commission's doubts on the equivalence of the commitments expressed in the 2018 opening Decision have been dispelled and the conclusions reached in the 2013 Decision and the 2017 amendment Decision are not affected. Therefore, on the basis of Article 9(3) of Council Regulation (EU) 2015/1589 ⁽⁵⁷⁾, the Commission concludes that the State aid provided to NLB is compatible with the internal market on the basis of Article 107(3)(b) TFEU.
- (79) Furthermore, on the basis of Article 4(2) of Regulation (EU) 2015/1589, the Commission concludes that the mechanism providing compensation to NLB for legal consequences related to the ongoing litigation in Croatia does not entail State aid within the meaning of Article 107(1) TFEU.
- (80) The Commission notes that Slovenia has exceptionally accepted to receive the text of this Decision only in English.

HAS ADOPTED THIS DECISION:

Article 1

The replacement of the commitments submitted by Slovenia under Decisions SA.33229 (2012/C) (ex 2011/N) and SA.33229 (2017/N-2) with the commitments notified by Slovenia as set out in the Annex to this Decision is compatible with the internal market within the meaning of Article 107(3)(b) TFEU.

Article 2

The compensation mechanism, in order to compensate NLB from the legal consequences related to the ongoing litigation in Croatia does not entail State aid within the meaning of Article 107(1) TFEU.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 10 August 2018.

For the Commission
Margrethe VESTAGER
Member of the Commission

⁽⁵⁵⁾ See recital 66 of the 2018 opening Decision.

⁽⁵⁶⁾ See recital 50 of this Decision.

⁽⁵⁷⁾ 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).

ANNEX

NEW COMMITMENT REPLACING COMMITMENT 14 OF THE 2017 AMENDMENT DECISION

- (14) **[Reduction of State's shareholding]** Slovenia will reduce its shareholding in NLB d.d. to 25 % plus one share ('Blocking Minority') as follows:

by at least 50 % plus one share by 31 December 2018. In the case of favourable market conditions, Slovenia does not exclude a scenario of selling a larger share than 50 % plus one share up to the whole 75 % minus one share.

If Slovenia does not enter into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB d.d. in accordance with this point 14(a) by 31 December 2018, Slovenia shall grant to the Divestiture Trustee (appointed in accordance with paragraph 19 of the 2013 commitments) an exclusive mandate to reduce the Slovenia's shareholding in NLB d.d. to the Blocking Minority for the [...]. Should the Divestiture Trustee be awarded the mandate to reduce the Slovenia's shareholding in NLB d.d. to the Blocking Minority in accordance with this point 14(a), all commitments defined in 14.1 and 14.2, except the commitment 14.1.4 and 14.2.6, will cease to apply from 31 December 2018 onward. The same applies if Slovenia reduces its shareholding in NLB d.d. to the Blocking Minority by 31 December 2018.

the remaining share exceeding the Blocking Minority by 31 December 2019.

If Slovenia does not enter into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB d.d. in accordance with this point 14(b) by 31 December 2019, Slovenia shall grant to the Divestiture Trustee (appointed in accordance with paragraph 19 of the 2013 commitments) an exclusive mandate to reduce the Slovenia's shareholding in NLB d.d. to the Blocking Minority for the [...].

Slovenia will reduce its shareholding in NLB d.d. in accordance with the above points in a transparent, open and competitive process based on the provisions of the Ordinance on state-owned assets management strategy to (an) investor(s) that (is) are independent from and unconnected to the Republic of Slovenia.

When performing its duties under 14(a) or 14(b) the Divestiture Trustee shall act in accordance with the preceding paragraph and with due skill, care and diligence.

In case that Slovenia does not reduce its shareholding in NLB d.d. to the Blocking Minority until the end of 2018, NLB d.d. will divest its insurance subsidiary NLB Vita by [...].

Should Slovenia have sold at least 50 % plus one share of its shareholding in NLB d.d. by 31 December 2018, at the latest, the commitments 14.1 will apply and be complied with until 31 December 2019. The commitments 14.2, except the commitment 14.2.1 and 14.2.6, will apply and be complied with until Slovenia reduces its shareholding in NLB d.d. to the Blocking Minority. The commitment 14.2.1 will apply and be complied with until the major part (at least 50 % + 1 share) of the state's shareholding is divested and from [...] until Slovenia reduces its shareholding in NLB d.d. to the Blocking Minority.

- (14.1) Slovenia commits the following:

- (14.1.1) allocate all of the seats and voting rights on the supervisory board and its committees to independent experts, i.e. persons who:

are neither currently employed nor have been employed 24 months prior to their appointment by the Slovenian Sovereign Holding, state authority, public agency, public fund, public-law institution or public-law economic institution, whose founder is the Republic of Slovenia,

are neither currently employed nor have been employed 24 months prior to their appointment by any other public entity, which is indirect user of the budget or by any entity, in which the Republic of Slovenia, the Slovenian Sovereign Holding or Kapitalska družba pokojninskega in invalidskega zavarovanja d.d. has a dominant influence over its operations as defined in the Companies Act (Official Gazette of the Republic of Slovenia No 65/09 — official consolidated text and subsequent amendments),

do not currently hold nor have held 24 months prior to their appointment a leadership or managing function within a Slovenian political party.

- (14.1.2) ensure that each state-owned bank shall remain a separate economic unit with independent powers of decision according to paragraph 9.10 of the 2013 commitments,
- (14.1.3) ensure that Slovenian State-owned companies will by no means be treated more favorably than non-state-owned companies (non-discrimination) according to paragraph 11 of the 2013 commitments,
- (14.1.4) ensure that NLB will not acquire any stake in any undertaking according to paragraph 12.4 of the 2013 commitments.
- (14.2) Slovenia also commits to the following 2013 commitments (in their original form, with the following amendments in terms of content):
- (14.2.1) **[Risk management and credit policies]** NLB will overhaul its risk management process and in particular NLB d.d. and its core banking affiliates will:
- (14.2.1.1) price every new loan (considering as new loan any new business not related to an existing transactions) by using an appropriate internal pricing tool (such as the currently used 'Kreditni Kalkulator' and its future version) or (in the case of mass market retail and SME exposures) using appropriate internal pricing guidelines. Pricing for new loans will be considered adequate if the new loan contributes to achieve a positive Return on Equity before tax (**RoE**) of [...] on either the individual loan or on each client relationship. The calculation of the ROE of a client relationship can include interest income, fees as well as other combined products of the same client.

For the purpose of this calculation, the volume weighted average of all loans with a single client (since the date of this decision), other fee business or banking transactions contributing to the profitability of the relationship with the same client can 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. New loans will have a credit documentation demonstrating a pre-deal calculated RoE for the either the individual loan or other live exposure on single client including fee business or banking transactions. In the case of mass market retail and SME transactions, this pre-deal calculated RoE may be replaced by a verification that the transaction is in line with internal pricing guidelines and a centralized demonstration that pricing guidelines assure a return on equity of [...].

Any deviation from the pricing resulting in a lower price level will be documented. This documentation will include robust commercial reasoning for the deviation and will be presented to the Monitoring Trustee. The total amount of deviations will not exceed the amounts defined in paragraph 14.2.1.6.

Credit deals not falling under this pricing policy regime: Transactions with related parties (i.e. Group members and employees), restructuring cases (of D, E and C clients with a delay in payments of more than 90 days) and all money market transactions.

- (14.2.1.2) adapt the credit rating process such that a financial statement analysis and a credit scoring indicating at the very least leverage and performance parameters such as return on capital, EBIT Interest Coverage, Debt/EBITDA, Debt/(Debt+Equity) etc. will be taken into account before engaging on a new credit exposure with any business client. Every customer to which NLB d.d. has an exposure exceeding EUR 1 million should be re-rated annually;
- (14.2.1.3) document all restructuring decisions i.e. all new credit deals with non-performing corporate clients with an exposure over EUR 10 000 and include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement, demonstrating that the solution which maximizes the net present value for the bank is chosen. Unless a RoE of [...] can be obtained, restructuring decisions will be such that the bank is able to terminate the engagement at least every 12 months. Where NLB d.d. does not have the exclusive right to accept, propose or approve restructuring agreements or to take restructuring decisions it shall exercise its rights according to the above principles. A list of all recent restructuring decisions will be regularly provided to the Monitoring Trustee (at least every 6 months). The documentation of any restructuring decision will be presented to the Monitoring Trustee upon request;
- (14.2.1.4) ensure that all credit officers approving credits to SME and corporate clients have attended an internal training familiarizing them with the credit rating process and established pricing methodologies;
- (14.2.1.5) ensure to have a fully internal ratings based system of client rating process, approved by the Bank of Slovenia;

- (14.2.1.6) should the Monitoring Trustee reveal a failure on behalf of NLB to comply with any of the Commitments under this paragraph NLB d.d. shall provide the Monitoring Trustee with a remedial plan indicating which actions it has taken and intends to take in order to avoid a breach in the following quarter. The plan will be submitted in time for the Monitoring Trustee to report on it in its next semi-annual report to the Commission. Should the remedial plan not deliver the expected results and objectives, NLB d.d. will limit for a term of 12 months – starting the quarter following the reporting of such breach of Commitments – the new lending volume per reporting period to 66 % of the new lending volume of the reporting period in which the Commitment was breached. This does not apply to an individual breach of a Commitment under paragraphs 14.2.1.1, 14.2.1.2 and 14.2.1.3 provided that a further investigation by the Monitoring Trustee reveals that such breach can be considered an isolated error or omission and that there is no evidence hinting that a total volume per client of more than [...] of deals is affected by such breach.
- (14.2.2) the [**Reduction of Costs**] commitment from paragraph 2 of the 2013 commitments, with the amendment that operating costs at Group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) may amount to a maximum of EUR [...] on an annual basis,
- (14.2.3) the [**Divestment of non-core subsidiaries**] commitment from paragraph (4) of the 2013 commitments, with the amendment that NLB d.d. will not re-enter business and activities which it had to divest,
- (14.2.4) the [**Bans of advertising and aggressive commercial strategies**] commitment from paragraph 12.1 of the 2013 commitments,
- (14.2.5) the [**Capital repayment Mechanism and dividend ban**] commitment from paragraph 12.2 of the 2013 commitments, with the amendment that based on the audited year end accounts NLB d.d. will pay to its shareholders for each fiscal year in form of dividend disbursement at least the amount of the net income) for such fiscal year (and may, for the avoidance of doubt, each time pay out to its shareholders in form of dividend disbursement all distributable profit including but not limited to retained profit for the previous fiscal years), subject to the limitations of applicable European and Slovenian regulations and provided that the applicable minimum capital requirement on the consolidated level (increased by any applicable combined buffer requirement and capital guidance) remains exceeded by a capital buffer of at least 100 basis points,
- (14.2.6) the [**Monitoring Trustee**] commitment from paragraph 18 of the 2013 commitments,
- (14.2.7) the [**Divestiture Trustee**] commitment from paragraph 19 of the 2013 commitments.
- (14.3) Slovenia also commits the following additional compensatory measures with the aim to provide compensatory measures equivalent to the original sale commitment:
- (14.3.1) NLB d.d. will further strengthen its liabilities' structure by issuing a Tier 2 instrument by [...], except in the case of severe market disruptions, to investors who are totally independent from Slovenia.
- Exemption requiring Commission's prior approval: Notwithstanding this commitment, NLB is not obliged, if obtaining the Commission's approval, to issue Tier 2 instrument in the case of severe market disruptions.
- (14.3.2) NLB d.d. will close [10-20] outlets in Slovenia by [...].
- Notwithstanding the provisions on the validity of certain commitments as defined herein, the commitments under 14.3 will apply and be complied with as set out in 14.3.1 and 14.3.2 as applicable, both in case of scenario 14(a) and in case of scenario 14(b).
- (14.4) All the commitments defined in:
- Commission decision SA.33229 (2012/C) of 18 December 2013, except the commitment from paragraph 18 and paragraph 19, and
- Commission decision SA.33229 (2017/N-2) of 11 May 2017 — Amendment of the restructuring decision of NLB,
- ceased to apply on 31 December 2017.
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