

## V

(Становища)

ПРОЦЕДУРИ, СВЪРЗАНИ С ИЗПЪЛНЕНИЕТО НА ПОЛИТИКАТА В ОБЛАСТТА НА  
КОНКУРЕНЦИЯТА

## ЕВРОПЕЙСКА КОМИСИЯ

## ДЪРЖАВНА ПОМОЩ — СЛОВЕНИЯ

Държавна помощ SA.33229 2018/C (ex 2017/N-3) — Изменения на ангажиментите за реструктуриране на Nova Ljubljanska Banka d.d. (NLB)

Покана за представяне на мнения съгласно член 108, параграф 2 от Договора за функционирането на Европейския съюз

(текст от значение за ЕИП)

(2018/C 121/03)

С писмо от 26 януари 2018 г., възпроизведено на езика, чийто текст е автентичен, на страниците след това резюме, Комисията уведоми Словения за решението си да открие процедурата, предвидена в член 108, параграф 2 от ДФЕС относно посочената по-горе мярка.

Заинтересованите страни могат да представят мненията си относно мярката, по отношение на която Комисията открива процедурата, в срок от един месец от датата на публикуване на настоящото резюме и на приложеното към него писмо, на следния адрес:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Факс + 32 22961242

Тези мнения ще бъдат предадени на Словения. Запазването в тайна на самоличността на заинтересованата страна, която представя мнението, може да бъде поискано писмено, като се посочат причините за това искане.

## ОПИСАНИЕ НА МЕРКИТЕ

С решение от 18 декември 2013 г. Комисията обяви следните мерки за държавна помощ в полза на NLB за съвместими с вътрешния пазар:

- i) първа рекапитализация в размер на 250 милиона евро, временно одобрена с решението за оздравяване от 7 март 2011 г.;
- ii) втора рекапитализация в размер на 383 милиона евро, временно одобрена с второто решение за оздравяване и за откриване от 2 юли 2012 г.;
- iii) трета рекапитализация в размер на 1 558 милиарда евро; както и
- iv) прехвърляне на проблемни активи към банка с проблемни активи, собственост на държавата, с подразбиращ се елемент на помощ в размер на 130 милиона евро.

Комисията обяви тези мерки за съвместими с вътрешния пазар въз основа на план за реструктуриране и списък с ангажименти, представени от словенските органи. Някои от тези ангажименти бяха необходими, за да се възстанови жизнеспособността на банката. При оценката на окончателния план за реструктуриране на NLB, Комисията всъщност припомни, че той е „предизвикал съмнения дали процесът на вземане на решения [на NLB] (р.т. по-специално за отпускане на нови кредити и реструктуриране на съществуващи кредити) е в съответствие с пазарните норми и по-специално относно евентуални въпроси, свързани с корпоративното управление, касаещи напесата на държавата като основен акционер в ежедневната стопанска дейност на NLB“. Комисията подчерта, че един от проблемите, на които трябваше да отговори планът за реструктуриране, е този, че в бъдеще „държавата няма да оказва влияние върху ежедневната дейност на NLB.“

Като даде положително заключение за дългосрочната жизнеспособност на банката, Комисията взе предвид редица ангажименти, които подобриха политиките за управление на риска и кредитите на NLB и укрепиха нейното корпоративно управление. Оценката на Комисията за жизнеспособност значително се основава на ангажимента на Словения да продаде 75 %-1 акция от NLB най-късно до 31 декември 2017 г., или като алтернатива да предложи доверено лице до 30 ноември 2017 г. с мандат да продаде чуждестранните дъщерни дружества на NLB на Балканите.

В решението от 2013 г. също се стигаше до заключението, че периодът на реструктуриране на NLB ще продължи до края на 2017 г. и редица от ангажиментите за реструктуриране бяха свързани с края на периода на реструктуриране.

На 13 април 2017 г. Словения уведоми за изменените ангажименти: поне 50 % от акциите в NLB да са продадени преди края на 2017 г., а остатъкът (тоест всички акции с изключение на блокиращото малцинство от 25 % + 1 акция) — до края на 2018 г. Ангажиментът за продажбата (в случай, че Словения не продаде навреме 50 % от акциите на банката) продължи да бъде част от ангажиментите. С решение от 11 май 2017 г. Комисията заключи, че тези изменени задължения все още осигуряват съвместимостта на помощта за NLB с вътрешния пазар.

На 8 юни 2017 г. словенските органи взеха едностранно решение да прекратят продажбата на акции на NLB.

Сега Комисията отбелязва, че крайният срок за продажбата на 50 % от NLB — 31 декември 2017 г., е изтекъл. Освен това Словения не е предложила доверено лице по продажбите, за да продаде балканските чуждестранни дъщерни дружества на NLB до 30 ноември 2017 г.

На 21 декември 2017 г. словенските органи съобщиха официално изменените ангажименти към решението за реструктуриране от 2013 г.:

- Словения уведоми за своето намерение да започне продажбата на своето дялово участие в NLB до 25 % + 1 акция през 2018 г. и да я завърши през 2019 г.
- За да може Комисията да получи уверение, че корпоративното управление на NLB междуременно ще остане без влияние на държавата върху ежедневната работа, словенските органи предлагат да определят доверителен собственик „на сяпо“.
- Словения предлага също така всички задължения, определени в решението от 2013 г. (изменено с решението за изменение от 2017 г.) да престанат да се прилагат от 31 декември 2017 г. (с изключение на посочените по-горе ангажименти за продажба).

## ОЦЕНКА НА МЕРКИТЕ

В решението си от 18 декември 2013 г. Комисията вече стигна до заключението, че мерките, описани в подточките i) — iv) по-горе, представляват държавна помощ. Тази преценка остава непроменена. В посоченото решение Комисията също така стигна до заключението, че мерките за държавна помощ в полза на NLB, са съвместими с вътрешния пазар, тъй като те са необходими за преодоляването на сериозни затруднения в икономиката на Словения по смисъла на член 107, параграф 3, буква б) от ДФЕС. Комисията заключи, че планът за реструктуриране и свързаните с него задължения за реструктуриране ще дадат възможност на NLB да възвърне своята жизнеспособност, като същевременно обръщат достатъчно внимание на споделянето на тежестта и въпросите на конкуренцията. Комисията потвърди този анализ на съвместимостта в решението за изменение от 11 май 2017 г. въз основа на изменените ангажименти.

Сега Комисията отбелязва, че поне един важен ангажимент за реструктуриране не е бил спазен. Всъщност, крайният срок за продажбата на 50 % от NLB — 31 декември 2017 г., изтече. Освен това Словения не е предложила доверено лице по продажбите, за да продаде балканските чуждестранни дъщерни дружества на NLB до 30 ноември 2017 г.

Комисията отбелязва, че взето решение за реструктуриране може да бъде изменено, когато изменението се основава на нови задължения, които могат да се считат за равностойни на тези, които първоначално са предвидени. При това положение съществуващите мерки за помощ ще продължат да бъдат съвместими с вътрешния пазар въз основа на член 107, параграф 3, буква б) от ДФЕС, ако общият баланс на първоначалното решение остане незасегнат. С цел да се запази първоначалният баланс, изменените ангажименти не следва да оказват отрицателно въздействие върху жизнеспособността на получателя на помощта, като общият набор от поети ангажименти трябва да останат равностойни по отношение на споделянето на тежестта и компенсаторните мерки, като се отчитат изискванията на Съобщението относно реструктурирането.

В разглеждания случай обаче Комисията има сериозни съмнения, че изменените ангажименти, съобщени от Словения, са равностойни на ангажиментите, одобрени в решението на Комисията от 18 декември 2013 г. и решението за изменение от 11 май 2017 г.

На първо място, Комисията припомня, че частта за жизнеспособността на решението на Комисията от 18 декември 2013 г. се е основавала изключително на промяна в структурата на собствеността на NLB. През 2013 г. словенските органи действително са поели ангажимент за отстраняване на влияние на държавата върху ежедневната дейност на NLB. Въпреки това, с оглед на изменените ангажименти, съобщени от Словения, Комисията има сериозни съмнения дали при липсата на такава промяна на собствеността, дългосрочната жизнеспособност на NLB може да бъде гарантирана.

Освен това, въпреки значителната роля на слабото корпоративно управление в миналото, Комисията отбелязва, че дори в периода на реструктуриране, словенските органи не са доказали убедително, че тези проблеми са разгледани ефективно. В тази насока Комисията се позовава на голямото текучество в надзорния съвет на банката през последните години.

На второ място, що се отнася до предложението на Словения за назначаване на доверителен собственик „на сяло“, Комисията има съмнения дали доверителен собственик „на сяло“ би могъл да допринесе за преодоляване на проблемите с жизнеспособността на NLB в същата степен като постоянна промяна на собствеността. В този контекст Комисията отбелязва, че една промяна на собствеността ще направлява дейността на банката на всички равнища за поведение, насочено към максимално увеличаване на стойността.

Накрая, Комисията също така насочва вниманието към редица важни практически проблеми, свързани с назначаването на доверителен собственик „на сяло“. Подборът и назначаването на такъв доверителен собственик е очевидно процес, отнемаш много време. Също така е спорно дали доверителен собственик „на сяло“, който може да бъде освободен от дължност от словенските органи, ако не изпълнява своите задължения в интерес на Словения като акционер, може наистина изцяло да изпълни своята роля на независимо лице. Такава функция изисква също така редица регулаторни одобрения, което предполага, че Словения дори не е в състояние да осигури твърд ангажимент, че ще бъде назначен доверителен собственик „на сяло“. Във всеки случай, доверителният собственик „на сяло“ не е бил назначен на 1 януари 2018 г. (т.е. незабавно след изтичане на крайния срок за продажба на акции — 31 декември 2017 г.), което неизбежно предполага, че ще съществува период, по време на който нито акциите на дружеството ще бъдат продадени, нито пък то ще бъде контролирано от доверителен собственик „на сяло“.

Въз основа на гореизложеното Комисията има сериозни съмнения, че предложението за доверителен собственик „на сяло“ е равностойно на ангажимента за продажба. Като се има предвид значението на ангажимента за продажба, също така изглежда много трудно да се намери мярката, която е действително равностойна.

Комисията също така стигна до предварителното заключение, че забавянето с продажбата на акциите *de facto* удължава периода на реструктуриране, който трябваше да приключи на 31 декември 2017 г. Като обща забележка, Комисията напомня, че периодът на реструктуриране при всички случаи следва да е възможно най-кратък.

Тъй като редица ангажменти са логически свързани с периода на реструктуриране, за Комисията на пръв поглед изглежда, че удължаването на крайния срок за продажба следва да върви ръка за ръка с удължаване на други ангажменти относно реструктурирането. Действително, NLB ще развива дейност на пазара за по-дълъг период, без да гарантира в пълна степен своята жизнеспособност в дългосрочен план. Всичко това би могло да бъде източник на нарушения на конкуренцията, нанасящи неоправдани вреди на конкурентите, които не получават помощ, или конкурентите, които получават помощ и при това стриктно прилагат своите ангажменти и план за реструктуриране. Поради това, с цел да се запази балансът на съществуващите ангажменти, Комисията смята, че словенските органи следва да представят допълнителни мерки за компенсиране на забавянето на процеса на реструктуриране. На този етап Комисията се съмнява, че Словения е предоставила достатъчно обезщетение за това общо забавяне на процеса на реструктуриране. Комисията се съмнява дали Словения може да подобри допълнително жизнеспособността на NLB чрез значително намаляване на сроковете за продажба, като въвежда по-нататъшни промени в условията на процеса на продажба и/или чрез преобразуване на функцията на доверителния собственик „на сяло“ в доверено лице по продажбите с пълни правомощия. Комисията си задава също въпроса дали Словения не следва да обмисли допълнителни структурни мерки за NLB като продажби на определени дъщерни предприятия, ограничения върху новите дейности и/или други мерки за поведение.

## ТЕКСТ НА ПИСМОТО

The Commission wishes to inform Slovenia that, having examined the information supplied by your authorities on the measures referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (‘TFEU’).

## 1. PROCEDURE

- (1) On 14 January 2011, the Slovenian authorities notified a EUR 250 million State recapitalisation of Nova Ljubljanska Banka d.d. (‘NLB’ or ‘the Bank’). By decision of 7 March 2011 <sup>(1)</sup> (‘first rescue decision’), the Commission authorised a first recapitalisation aid in favour of NLB for a period of six months and upon the submission of a restructuring plan. By decision of 2 July 2012 <sup>(2)</sup> (‘the second rescue and opening decision’), the Commission approved the second recapitalisation of NLB and at the same time opened an in-depth investigation raising doubts regarding the ability of the Bank to return to viability and the provision of sufficient burden-sharing and measures limiting distortions of competition based on the restructuring plan which had been submitted to it.
- (2) By decision of 18 December 2013 (‘the 2013 Decision’) <sup>(3)</sup>, the Commission approved State aid to NLB on the basis of a restructuring plan and a list of commitments from the Slovenian authorities. Slovenia committed for instance to sell 75 %-1 share of NLB by 31 December 2017 at the latest (‘the sale commitment’) or alternatively to divest NLB’s foreign subsidiaries in the Balkans (‘the divestment commitment’).
- (3) On 13 April 2017, Slovenia notified amended commitments, inter alia, to make the sale of the shares of NLB more gradual. On 11 May 2017, the Commission concluded that those amended commitments still ensured the compatibility of the aid granted to NLB with the internal market (‘the 2017 Amendment Decision’) <sup>(4)</sup>.
- (4) On 8 June 2017 <sup>(5)</sup>, the Slovenian authorities decided to put the sale of shares of NLB on hold. On 9 June 2017, the Slovenian Minister of Finance informed the Commission by phone of that decision.
- (5) On 20 September 2017, the Slovenian authorities submitted a non-paper proposing to first sort out an ongoing litigation in Croatia vis-à-vis NLB and the old Ljubljanska Banka (see recital (31) below) before proceeding with the sale of shares of NLB.
- (6) On 6 November 2017, the Slovenian authorities submitted another non-paper proposing to set up an NLB-financed fund, which competitors of NLB could use to finance SMEs with a weak capital position.
- (7) On 21 November 2017, Slovenia submitted another non-paper proposing to appoint an independent ‘blind trustee’ in the management board of NLB until 75 %-1 share of NLB would be sold. The Slovenian authorities and the Commission discussed these non-papers several times.
- (8) On 21 December 2017, the Slovenian authorities formally notified the amended commitments which are described in recitals (41) and (43).
- (9) By letter dated 21 December 2017, Slovenia agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958 <sup>(6)</sup> and to have the present decision adopted and notified in English.

## 2. FACTUAL BACKGROUND

## 2.1. Description of the beneficiary

- (10) A detailed description of NLB can be found in recitals (11) to (22) of the 2013 Decision.

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<sup>(1)</sup> Commission Decision in Case SA.32261 (2011/N) — Slovenia — Rescue recapitalisation in favour of NLB, OJ C 189, 29.6.2011, p. 2.

<sup>(2)</sup> 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.

<sup>(3)</sup> Commission Decision in case SA.33229 (2012/C) (ex 2011/N) — Slovenia — Restructuring of NLB, OJ, L 246, 21.08.2014, p. 28.

<sup>(4)</sup> Commission Decision in case SA.33229 (2017/N-2) — Slovenia — Amendment of the restructuring decision of NLB, OJ C 254, 11.07.2017, p. 2.

<sup>(5)</sup> 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/](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/)

<sup>(6)</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (11) At the end of September 2017 <sup>(7)</sup>, the Bank reported total assets and risk weighted assets ('RWA') of respectively EUR 12 billion and EUR 8.1 billion. In the first nine months of 2017, NLB realised an after-tax profit of EUR 184 million, up from EUR 92 million in the same period of 2016. This profit translated into an (annualised) return on equity ('RoE') after tax of 15.9 %.
- (12) At the end of September 2017 NLB's non-performing exposures ratio still amounts to 8.3 %, down from 10 % at the end of December 2016 and its core equity tier 1 ratio was 16.3 % <sup>(8)</sup>, <sup>(9)</sup>. After the burden sharing of subordinated debt instruments in 2012/2013, NLB has not yet issued new subordinated debt. At the end of September 2017, deposits represent more than 90 % of funding and the loan-to-deposit ratio amounted to 72 %.
- (13) NLB still owns foreign subsidiaries in the Balkans, which represent in total EUR 3.8 billion in assets and EUR 82.7 million in after-tax profit <sup>(10)</sup>.

Table 1

**Key financial figures of NLB's foreign subsidiaries in the Balkans**

	FYRoM	Bosnia subsidiary 1	Bosnia subsidiary 2	Kosovo	Montenegro	Serbia
NLB stake %	87 %	100 %	97 %	81 %	99 %	100 %
Market share	15.8 %	18.6 %	5.4 %	15 %	11.9 %	1.3 %
Profit after tax (EUR million)	38.0	20.1	5.3	11.0	4.2	4.1
Total assets (EUR million)	1 167	674	525	553	486	343

- (14) Furthermore, NLB has a stake in insurance company NLB Vita which, when publishing results for the first nine months of 2017, had total assets of EUR 452 million and a result after tax of EUR 4.8 million. By monitoring report of 30 November 2017, the Monitoring Trustee informed the Commission that NLB was still actively involved in leasing in 2017 through its leasing subsidiary <sup>(11)</sup>. The liquidation of this leasing subsidiary was approved at the end of 2017. NLB has now also approved the establishment of a new leasing company in the beginning of 2018.
- (15) The ownership structure of NLB has undergone several changes in the past years. In 2002, the Belgian bank KBC acquired 34 % of NLB <sup>(12)</sup> and KBC and the Slovenian State signed a shareholders' agreement guaranteeing KBC seats in NLB's management and supervisory boards <sup>(13)</sup>. In that shareholder agreement, KBC undertook not to increase its investment until the end of 2005. 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 <sup>(14)</sup>. As of end 2013, the Slovenian State has become again the 100 % owner of NLB, thereby turning back NLB's (partial) privatisation of 2001/2002.

<sup>(7)</sup> Financial figures mentioned in recitals (11) and (12) are based on the consolidated financial statements of the Bank as available on: <https://www.nlb.si/nlb-portal/eng/investor-relations/financial-reports/prezentacija-nlb-3q2017.pdf>

<sup>(8)</sup> As a result of the ECB's [...] applicable SREP decision ('Supervisory Review and Evaluation Process') of the ECB, NLB has to comply with a total capital ratio of 12.75 % (which consists of Pillar 1 and Pillar 2 requirements and also the capital conservation buffer of 1.25 %).

<sup>(9)</sup> [...] a commitment of the 2013 Decision ('the capital repayment mechanism'), which obliges NLB to repay for the fiscal year 2017 the lower of (i) 100 % of the excess capital above the applicable minimum capital requirement on the consolidated level under European and Slovenian law (including Pillars 1 and 2) plus a buffer of 100 basis points or (ii) the net income of the relevant year.

<sup>(10)</sup> Source data: see link footnote 7.

<sup>(11)</sup> The leasing subsidiary of NLB in Slovenia was included in the list of non-core subsidiaries to be divested, as mentioned in commitment 4 of the 2013 Decision.

<sup>(12)</sup> That 2001/2002 privatisation process of NLB was also described in the regular reports (1999, 2000, 2001, 2002) from the Commission on Slovenia's progress towards accession. On page 37-38 of its 2002 report, the Commission noted that: 'In May 2001, after long delays, the government adopted a privatisation programme to sell NLB and NKBM. ... The privatisation was launched in September 2001 and although there has been interest from various renowned foreign strategic investors, the government interrupted the privatisation process of NKBM and the sale was halted as political resistance increased and conditions were judged to be unsatisfactory. The government still intends to sell NKBM, but it is not yet clear when and under what conditions. The privatisation of NLB went ahead but under altered conditions introduced by the government during the privatisation process, causing one of the foreign bidders to withdraw.'

<sup>(13)</sup> <https://www.nlb.si/kbc-nv-belgium-now-a-key-shareholder-in-nova-lj>

<sup>(14)</sup> The transaction to exit NLB was signed in 2012. Completion of the agreement was finalised after the approval of the Slovenian competition authority obtained in March 2013. See the following press release: [https://www.kbc.com/fr/system/files/doc/about-us/2012\\_Sale\\_NLB\\_en.pdf](https://www.kbc.com/fr/system/files/doc/about-us/2012_Sale_NLB_en.pdf)



## 2.2. State aid measures in favour of NLB

- (16) By means of the 2013 Decision and based on the commitments offered by Slovenia, the Commission declared the following State aid measures in favour of NLB compatible with the internal market:
- (i) a first recapitalisation of EUR 250 million, temporarily approved in the first rescue decision;
  - (ii) a second recapitalisation of EUR 383 million, temporarily approved in the second rescue and opening decision;
  - (iii) a third recapitalisation of EUR 1 558 million; and
  - (iv) a transfer of impaired assets to a State-owned bad bank with an implied aid element of EUR 130 million <sup>(15)</sup>.
- (17) In total, NLB received State aid of EUR 2 321 million equivalent to 20 % of its RWA as of December 2012.

## 2.3. The commitments in the 2013 Decision

- (18) When assessing the final restructuring plan, the Commission recalled in recital (76) of the 2013 Decision that in the formal investigation procedure it had 'raised doubts whether the decision-making process in NLB was in line with market norms and in particular about possible corporate governance issues related to the intervention of the State as main shareholder <sup>(16)</sup> into the day-to-day business of NLB'. In recital (126) and (127) of that Decision, the Commission repeated that one of the issues that the restructuring plan had to address was that 'the State would not influence NLB's day-to-day business.'
- (19) In order to be able to establish the long-term viability of the Bank, the Commission took into account a number of commitments which improved NLB's risk management and credit policies. Commitment (10.1) for instance ensures that NLB would price its loans based on a pricing policy establishing a minimum RoE for all its loans ('the RoE commitment'). This commitment limited the possibility for the Bank to lend at rates which a prudent market investor would not accept (for instance as a result of external influences). An analogous commitment (i.e. commitment (10.3)) ensured that NLB would behave in a market conform manner when restructuring loans.
- (20) Other commitments in the 2013 Decision which relate to corporate governance include the following:
- '(9.5) all members of the supervisory board shall pass the "fit and proper test", i.e. they shall be reliable and avail of the necessary professional skills to properly assess and monitor NLB's business. Slovenia will not intervene in the appointment of supervisory board members and executives over and above its own nominees and its shareholder rights under ordinary Slovenian corporate law;
  - (9.6) two thirds of the seats and voting rights on the supervisory board and its committees shall be allocated to independent experts, i.e. persons who are neither currently employed nor have been employed 24 months prior to their appointment by the Slovenian government and who do not currently hold nor have held 24 months prior to their appointment a leadership or managing function within a Slovenian political party; [...]
  - (9.8) NLB will follow a prudent, sound business policy geared towards sustainability while implementing the planned measures. NLB will further review its internal incentive schemes and remuneration policy and take steps to ensure that they do not encourage unreasonable risk-taking, that they are geared towards long-term and sustainable goals, and are transparent. The remuneration of board members and leading employees of the Bank shall particularly take into account the relevant person's contribution to the Bank's economic position and the necessity of market-oriented salary levels so as to be able to employ particularly suitable individuals who can achieve a sustainable business development. NLB's remuneration policies and practices will be compliant with the European Banking Authority's "Guidelines on Remuneration Policies and Practices" published on 10 December 2010. The variable annual remuneration will be limited as follows:
    - (a) management board: five monthly salaries;

<sup>(15)</sup> The difference between the transfer price (EUR 617 million) and the market value (EUR 486 million) of the impaired assets.

<sup>(16)</sup> Also other international institutions have established a clear link between the Bank's problems in 2012/2013 and corporate governance issues and the related desirability of a privatisation. The IMF 2017 Article IV report reads for instance as follows: "The privatization of the two remaining large state banks is of key importance to ensure that they continue to operate on commercial principles, expand into new activities, and reduce costs. This is especially important given the history of connected lending practices that prevailed in Slovenian state-owned banks prior to the 2012/13 crisis. After the sale of NKBM in 2016, the authorities are preparing to privatize the largest bank (NLB) via an Initial Public Offering ("IPO") in 2017. Staff supported the sale but expressed concern about the restriction that no private investor can have more than the state's 25 percent stake. Dropping the restriction would allow strategic investors to take a controlling stake and further improve the bank's performance." (International Monetary Fund's country report no. 17/125, May 2017, 2017 Article IV consultation — press release; staff report, available on: <https://www.imf.org/~media/Files/.../CR/2017/cr17125.ashx>)

(b) employees performing special work <sup>(17)</sup> employed in the front office function: five monthly salaries;

(c) employees performing special work employed in other functions: three monthly salaries.

The payment of at least 50 % of the variable remuneration will be deferred over the period of three years.

(9.9) Notwithstanding the commitment of paragraph 9.8 above, in any case, for the whole restructuring period, the total remuneration to any board member and employee performing special work will be restricted to an appropriate level. The total remuneration of any such individual will not exceed 15 times the national average salary in Slovenia or 10 times the average salary of NLB. The restrictions referred to above will continue to apply until the end of the restructuring period.

(9.10) Slovenia will ensure that each state-owned bank shall remain a separate economic unit with independent powers of decision within the meaning of the EC Merger Regulation and the Jurisdictional Notice.<sup>1</sup>

(21) Finally, the Commission in its viability assessment also crucially relied on the fact that Slovenia committed to partially sell the shares of NLB <sup>(18)</sup>, in line with existing case practice and case law <sup>(19)</sup>, <sup>(20)</sup>.

(22) Concretely, Slovenia provided the Commission with the commitment that it would reduce its shareholding in NLB to 25 % plus one share ('Blocking Minority') by 31 December 2017. If Slovenia had 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 2017, Slovenia and NLB should grant to the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell NLB's participations in the following banking subsidiaries, for a minimum price not lower than [...]: NLB banka, Belgrade (Republic of Serbia), NLB Montenegrobanka, Podgorica (Republic of Montenegro), NLB Prishtina, Prishtina (Republic of Kosovo), NLB Razvojna banka, Banja Luka (Republic of Bosnia and Herzegovina), NLB Tutunska banka, Skopje (Former Yugoslav Republic of Macedonia), NLB Banka, Tuzla (Republic of Bosnia and Herzegovina). The sale process would be conducted by the Divestiture Trustee appointed in accordance with paragraph 19 of the commitment catalogue.

(23) The abovementioned paragraph 19 provided that Slovenia at the latest on 30 November 2017 <sup>(21)</sup> had to propose to the Commission for approval a list of one or more potential divestiture trustees who would then be empowered to divest the Balkan subsidiaries thereby triggering an ownership change for those subsidiaries.

(24) A number of the commitments related to divestments or sales of activities have meanwhile been implemented <sup>(22)</sup>. However, other commitments are still monitored closely by the Commission with the help of a monitoring trustee:

— reduction of the balance sheet (commitment 1)

— reduction of costs (commitment 2)

— reduction of credit business in certain sectors (commitment 7)

— business with foreign clients (commitment 8)

— no positive discrimination of State owned companies (commitment 11)

— behavioural measures such as an aggressive behaviour ban (commitment (12.1); a capital repayment mechanism/dividend ban (commitment (12.2) and an acquisition ban (commitment 12.4))

— conditions for recapitalising subsidiaries (if needed) (commitment 16)

(25) The 2013 Decision explains that NLB's restructuring period will last until end 2017 and links a number of measures to the end of the restructuring period.

<sup>(17)</sup> As defined in the commitment catalogue

<sup>(18)</sup> Commitment 14 of the 2013 Decision

<sup>(19)</sup> See for instance the following Commission Decisions: (a) Decision of 12 May 2009 in case C 43/2008 — Germany — Restructuring of West LB AG, OJ L 345, 23.12.2009, p. 1; (b) Decision of 20 December 2012 in case SA. 35490 — Spain — Restructuring of Liber bank, OJ C 96, 4.4.2013, p. 7; (c) Decision of 12 December 2012 in case SA.34536 — Spain — Restructuring and recapitalisation of Banco CEISS, OJ C 96, 4.4.2013, p. 1; (d) Decision of 20 December 2012 in case SA.35488 — Spain — Restructuring of Banco Mare Nostrum, OJ C 96, 4.4.2013, p. 6.

<sup>(20)</sup> In case T-457/09 *Westfälisch-Lippischer Sparkassen- und Giroverband v Commission*, ECLI:EU:T:2014:683, para. 391, the General Court confirmed that a viability-related sale of shares commitment did not infringe Article 345 TFEU on ownership neutrality: '[t]herefore, it must be held that Article 295 EC [meanwhile Article 345 TFEU] does not prevent the Commission from making the authorisation of State aid to an undertaking to be restructured subject to that undertaking's sale, where this is intended to ensure its long-term viability'.

<sup>(21)</sup> As stated in commitment 19 of the 2013 Decision: Slovenia must propose to the European Commission for approval, no later than one month before the deadlines a list of one or more persons whom it proposes to appoint as Divestiture Trustee. The deadline to propose a Divestiture Trustee was thus November 30 2017.

<sup>(22)</sup> Commitment 3 (sale of participations), commitment 4 (divestment of non-core subsidiaries), commitment 5 (sale of joint venture participations), commitment 6 (sale of participations in banks).



#### 2.4. The commitments in the 2017 Amendment Decision

- (26) On 13 April 2017, Slovenia formally notified a request to change some of the commitments underlying the 2013 Decision. In view of the deal size of the transaction and the short remaining time to sell 75 % - 1 share of the Bank, Slovenia notified a more gradual sale schedule: at least 50 % of the shares in NLB would be sold before the end of 2017 and the remainder (i.e. all shares but a blocking minority of 25 % + 1 share) by the end of 2018 ('the amended sale commitment'). The divestment commitment (in case Slovenia would fail to timely sell 50 % the Bank) continued to be a part of the commitments. The balance sheet commitment was clarified and Slovenia also notified additional commitments so as to preserve the balance of the 2013 Decision. Slovenia proposed for instance to extend NLB's acquisition ban until end 2019.
- (27) Concretely, Slovenia committed to the following:
- '(14) [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 <sup>(23)</sup>) banking subsidiaries for a minimum price not lower than [...].
  - (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 then prevailing market price...'
- (28) When assessing whether the proposed modifications to the restructuring plan called into question the conclusion reached in the 2013 Decision as to NLB's viability, the Commission noted in recital (33) of the 2017 Amendment Decision that Slovenia would remain committed to divest 50 % of NLB before end 2017 and the second tranche of 25 % - 1 share in 2018. The more gradual sale of shares was accompanied by additional commitments. The Commission concluded the proposed amendments to the commitments would not negatively affect the viability of the Bank. In its assessment, the Commission also relied to an important extent on the prolongation of the acquisition ban, which was discussed both under the burden sharing and distortion of competition compatibility sections. Based on those commitments, the Commission concluded that the compatibility of the State aid with the internal market could be confirmed.

#### 2.5. The interrupted sale process <sup>(24)</sup>

- (29) On 13 July 2015, Slovenia's National Assembly endorsed a strategy to manage State investments, also with details on NLB's divestment process. This strategy provided for instance that the Slovenian authorities would keep a Blocking Minority in NLB and that none of the private investors of NLB would own a bigger share in the Bank than Slovenia.
- (30) In the beginning of 2016, the Slovenian Sovereign Holding ('SSH') who holds the State's financial participations, started the selection process of a financial advisor to sell the shares of NLB and signed on 1 April 2016 an engagement letter with Deutsche Bank. In the beginning of May 2016, Deutsche Bank advised in a feasibility study to sell the shares of NLB by means of an initial public offering ('IPO'). In later months, the SSH and its financial advisor proceeded with the selection of legal advisors, the due diligence of NLB and the drafting of the IPO prospectus and the presentations. In September 2016 however, the SSH decided to postpone the sales process until the first half of 2017. In the first half of 2017, the Commission approved a more gradual sale process and Slovenia and NLB organised road shows with institutional investors.
- (31) On 29 May 2017 the Slovenian authorities rejected a motion by the SSH to protect NLB from the negative impact of litigation in Croatia. The litigation relates to pending Croatian court cases <sup>(25)</sup> related to foreign currency deposits [...] following the break-up of Yugoslavia.
- (32) On 8 June 2017, the Slovenian authorities decided to halt the sale process of NLB.

<sup>(23)</sup> The full list of subsidiaries is listed in recital (22).

<sup>(24)</sup> Based to a large extent on the Monitoring Trustee report dated 13 July 2017.

<sup>(25)</sup> A large number of court cases are still pending. On 23 November 2017, the court of second instance (County Court) in Zagreb adjudged one of Zagrebačka banka's lawsuits against Ljubljanska banka NLB to the detriment of Ljubljanska banka and NLB. See: [http://www.mf.gov.si/en/media\\_room/news/3349/](http://www.mf.gov.si/en/media_room/news/3349/)

- (33) As regards the general market climate and the IPO climate in 2017, the Eurostoxx Banks index rose by 15 % between 12 December 2016 and 12 December 2017 <sup>(26)</sup>. There were also a large number of privatisation transactions that were concluded successfully, including IPOs or secondary offerings <sup>(27)</sup> of financial institutions.

#### 2.6. The April 2016 monitoring trustee *ad hoc* report on corporate governance

- (34) In April 2016, the monitoring trustee prepared — at the request of the Commission — an *ad hoc* report on NLB's corporate governance commitments. This report followed a period of high turnover among the members of NLB's supervisory board.
- (35) The report explained that 'In January 2015, the Bank of Slovenia requested an additional assessment in terms of the collective suitability of the supervisory board. The assessment of the collective suitability showed that the supervisory board has inadequately expressed competences in the following areas: strategy and development, corporate banking, retail banking, risk management and human resources management. It also stated that the supervisory board lacks the variability in terms of gender, seniority, banking experience and experience from abroad, and that the number of members of the supervisory board in comparable companies is nine.'
- (36) In order to increase the number of members of the supervisory board and to fill also a number of vacancies, the SSH appointed on 9 February 2016 five new supervisory board members. The *ad hoc* report comments as follows on those five members:

'in fact [...] out of five new supervisory board members [...] considered as conditionally suitable by the external body of the SSH, but the Management Board of the SSH decided that the concerns are of minor importance, that the [...] extensive knowledge of banking law and could valuably contribute to the work of the supervisory board.'

'Some of the new members of the supervisory board have previous banking experience gained at NLB. In one case, the new member of the supervisory board was engaged as CEO in one of the subsidiaries of NLB until 31 December 2015'

'After the election at the general meeting of shareholders, the SSH sent the "fit and proper" test to the Bank of Slovenia. Following the request of the Bank of Slovenia in the letter dated 27 January 2016, NLB also prepared the "fit and proper tests" for four newly elected members of the supervisory board, i.e. Janko Gedrih, Anton Ribnikar, Anton Macuh and Primož Karpe. On 15 April 2016, three of the new members of the supervisory board, i.e. Janko Gedrih, Anton Ribnikar and Anton Macuh, gave irrevocable resignation with immediate effect. Primož Karpe [...].'

- (37) Table 2 summarises the changes in the supervisory board since 2015. Over that period, 10 members of the supervisory board have resigned or have been recalled and the average tenure of the current members of the supervisory board amounts to only 15 months.

Table 2

#### Members of NLB's supervisory board in 2015-2017

Members of supervisory board in 2015-2017	Appointment date	Resignation / recall date	Period in place	Current member?
Gorazd Podbevšek	11/06/2013	10/02/2016	2 years 8 months	No
Tit A. Erker	11/06/2013	03/08/2016	3 years 2 months	No
Uroš Ivanc	11/06/2013		3 years 10 months	No (4 year term expired)
Miha Košak	11/06/2013	10/02/2016	2 years 8 months	No
Sergeja Slapničar	11/06/2013	20/03/2017	9 months	No
Peter Groznik	04/11/2014	27/08/2015	9 months	Yes (resigned in 2015, but rejoined in September 2017)
Andreas Klinggen	07/04/2015		2 years 9 months	Yes
Janko Gedrih	10/02/2016	15/04/2016	2 months	No

<sup>(26)</sup> See: <https://www.stoxx.com/index-details?symbol=SX7E>

<sup>(27)</sup> Transactions in 2017 include, inter alia, the fully subscribed IPOs of Unicaja and Allied Irish Bank and secondary offerings of ABN Amro and a.s.r. in the Netherlands.

Members of supervisory board in 2015-2017	Appointment date	Resignation / recall date	Period in place	Current member?
Anton Ribinkar	10/02/2016	15/04/2016	2 months	No
Anton Macuh	10/02/2016	15/04/2016	2 months	No
Primož Karpe	15/04/2016		1 year 9 months	Yes
Dr Lazslo Urban	11/02/2016		1 year 11 months	Yes
David Kastelic	04/08/2016	08/09/2017	1 year 1 month	No
David E. Simon	04/08/2016		1 year 5 months	Yes
Alexander Bayr	04/08/2016		1 year 5 months	Yes
Matjaž Titan	04/08/2016	21/04/2017	9 months	No
Vida Šeme Hočevar	08/09/2017		4 months	Yes
Simona Kozjek	08/09/2017		4 months	Yes
Peter Groznik	08/09/2017		4 months	Yes

### 3. POSITION OF SLOVENIA

- (38) Slovenia recalls that the 2013 Decision provided that the sale commitment was meant to ‘significantly reduce the external influence in the Bank’s management and business activities’<sup>(28)</sup>.
- (39) Slovenia highlights that — with the exception of the amended sale commitment — Slovenia and NLB have so far implemented all the other State aid commitments.
- (40) Slovenia also considers that NLB is now fully viable and it points in this regard to NLB’s RoE of 15.9 % and its core equity tier 1 ratio of 16.3 %<sup>(29)</sup>. Slovenia considers that the corporate governance of NLB has been changed significantly and that now there is no State influence on the day-to-day business of NLB.
- (41) Slovenia explains that it wants to amend the sale commitment a second time in the following manner:
- Slovenia wants to launch the divestment of its shareholding in NLB to 25 % + 1 share in 2018 and to complete it in 2019.
  - in order to give the Commission comfort that the corporate governance of NLB will in the meantime remain with no State influence on the day-to-day business, the Slovenian authorities propose to nominate a ‘blind trustee’<sup>(30)</sup>.
  - Slovenia also proposes that all commitments as defined in the 2013 Decision (as amended by the 2017 Amendment Decision) cease to apply from 31 December 2017, with the exception of the sale commitment as described in this recital.
- (42) Slovenia explains that it proposes a longer deadline for the sale commitment because it is also in the process of divesting 100 % of its shareholding in Abanka, the number three bank in the country [...].

<sup>(28)</sup> Recital (131) of the 2013 Decision

<sup>(29)</sup> Based on latest financial figures as available on: <https://www.nlb.si/nlb/nlb-portal/eng/investor-relations/financial-reports/prezentacija-nlb-3q2017.pdf>

<sup>(30)</sup> The ‘blind trustee’ refers to an independent trustee which would exercise, in the name of and on behalf of Slovenia as a shareholder of NLB, all usual regular competencies of a shareholder. The terms of the appointment of the trustee are outlined in recital (43)

- (43) As regards the blind trustee, Slovenia explains that it will be assigned to an independent expert on the following terms:
- a) The blind trustee would be nominated by Slovenia on the basis of a public international tender. The nomination procedure would be concluded no later than [March 1-June 30] 2018 [...], to be decided upon and be approved by the existing supervisory board. The mandate of the blind trustee would be regulated in a contract between Slovenia, the SSH and the blind trustee.
  - b) The concrete terms of engagement of such blind trustee need to be elaborated together with the Commission and the ECB to guarantee strongest safeguards against State's interference in the day-to-day operations of NLB.
  - c) Before the appointment of such blind trustee, Slovenia will obtain a formal approval or non-objection from the Commission as well as the ECB (as required by applicable respective competency regulations) as regards the following:
    - i. the content of the public international tender,
    - ii. the content of the contract to be concluded between Slovenia, the SSH and the blind trustee (the blind trustee's terms of engagement),
    - iii. the selected blind trustee.
  - d) The blind trustee would exercise, in the name of and on behalf of Slovenia as a shareholder of NLB, all usual regular competencies of a shareholder with the following exceptions (to be detailed in the blind trustee's terms of engagement):
    - while taking care that all legal, accounting and other regulatory requirements are complied with in full, the blind trustee shall orient itself by the existing NLB Group Strategy 2016-2020 and dividend payment included in it;
    - the blind trustee will not be competent to decide on the amendments to the statutes of NLB without prior approval from the SSH;
    - the blind trustee will not be competent to effect the disposal of any part of the State's shareholding in NLB;
    - the blind trustee should follow existing accounting policies as set in the existing NLB Group Strategy 2016-2020.
  - e) The blind trustee should exercise its rights independently but with due skill, care and diligence, in the best interest of Slovenia as a shareholder of NLB.
  - f) Slovenia will set business performance indicators to be achieved by the blind trustee in the contract between Slovenia, the SSH and the blind trustee. Slovenia can dismiss the blind trustee if the blind trustee does not exercise the rights in the best interest of Slovenia as a shareholder of NLB. In this case the nomination procedure of a new blind trustee should be performed.
- (44) Slovenia considers that the proposed amendments, and specifically the appointment of a blind trustee, provide the strongest possible assurances that the risk of the State's influence in the day-to-day business of NLB is neutralised and that business decisions will be taken solely by the management of the Bank.
- (45) Slovenia considers that the proposed package of commitments would not affect the assessment of burden-sharing as made in the 2013 Decision and the 2017 Amendment Decision and would equivalently limit the distortions of competition. Slovenia states that additional commitments imposed on NLB would not contribute to the aim of the initial commitment to implement a business-oriented corporate governance structure, but would rather impede the overall aim to restore NLB's viability in the long-term.

#### 4. ASSESSMENT

##### 4.1. Existence of aid

- (46) 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.
- (47) In the 2013 Decision, the Commission already concluded that the measures described in recital (16) represent State aid <sup>(31)</sup>. That assessment remains unchanged.

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<sup>(31)</sup> See section 8.1 of the 2013 Decision.

#### 4.2. Compatibility of the aid

- (48) In the 2013 Decision, the Commission concluded that the State aid measures in favour of NLB were compatible with the internal market since they were necessary to remedy a serious disturbance in the Slovenian economy in the meaning of Article 107(3)(b) TFEU. The Commission concluded that the restructuring plan and the associated restructuring commitments would allow NLB to return to long-term viability, while also sufficiently addressing burden sharing and competition issues. The Commission confirmed this compatibility analysis in the 2017 Amendment Decision on the basis of amended commitments.
- (49) The Commission observes that at least one important restructuring commitment has not been complied with. Indeed, the deadline to sell 50 % of NLB's shares by 31 December 2017 has elapsed [...]. Moreover, Slovenia has not proposed a divestiture trustee to sell NLB's foreign Balkan subsidiaries by 30 November 2017.
- (50) The Commission therefore concludes that Slovenia has implemented the aid measures described in recital (16) in an unlawful manner.
- (51) As regards compliance with other commitments of the 2013 Decision and the 2017 Amendment Decision <sup>(32)</sup>, the monitoring trustee will provide the Commission with a report — by 31 May 2018 at the latest — with information allowing the Commission to verify compliance with those commitments at the end of 2017.
- (52) As regards Slovenia's non-compliance with the amended sale commitment (or the divestment commitment), the Commission observes that Slovenia has not provided the Commission with a proper justification for the non-compliance. During the administrative procedure described in recitals (4) to (8) above, the Slovenian authorities repeatedly referred to ongoing litigation with Croatia.
- (53) The Commission also observes that for the entire year 2017, the IPO market and the market for corporate activity was open as is also illustrated by the information in recital (33). Therefore, the Commission concludes that there is no reason why the sale process could not have been implemented.
- (54) The Commission also notes that Slovenia notified on 21 December 2017 an amended commitment catalogue, which risks delaying the sale of the shares of NLB until 31 December 2019. Slovenia proposes to appoint a blind trustee for the period during which NLB's shares are not sold to compensate for this delay.
- (55) The Commission observes that a restructuring decision can be amended where the amendment does not entail any additional aid and the amendment is based on new commitments which can be considered 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 altered 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 <sup>(33)</sup>.
- (56) In the case at hand, however, the Commission has serious doubts that the amended commitments notified by Slovenia are equivalent to the commitments authorised in the 2013 Decision and the 2017 Amendment Decision.
- (57) Firstly, the Commission recalls that the viability section of the 2013 Decision was crucially based on a change in NLB's ownership structure. In 2013, the Slovenian authorities had indeed committed to eliminate the State's influence on NLB's day-to-day operations. However, in view of the amended commitments notified by Slovenia, the Commission has serious doubts whether, in the absence of such an ownership change, the long-term viability of NLB can be assured.
- (58) The Commission observes that also other elements point at viability problems in the long term <sup>(34)</sup>. NLB has for instance not yet restarted to issue new subordinated debt capital. NLB also still has a high level of non-performing loans. Finally, in spite of the prominent record of poor corporate governance in the past, the Commission observes that even in the restructuring period, the Slovenian authorities have not convincingly shown that such problems have been effectively addressed. The Commission refers in this regard to the high turnover in the Bank's supervisory board and to the issues surrounding the nomination of Mr. Janko Gedrih, Mr. Anton Ribnikar and Mr. Anton Macuh as referred to in recital (36) <sup>(35)</sup>.

<sup>(32)</sup> The Commission recalls that 2017 Amendment Decision already contained a number of commitments (inter alia, the acquisition ban) which were applicable beyond 2017.

<sup>(33)</sup> 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.

<sup>(34)</sup> The Commission considers the bank's capital ratio and funding structure (as described in recitals (11) and (12)) are positive elements in the current financials, but do not address the long-term viability issues that the sale commitment would address.

<sup>(35)</sup> See section 2.6 of the present Decision.



- (59) Secondly, as regards Slovenia's proposal to appoint a blind trustee, the Commission has serious doubts as to whether the blind trustee could address NLB's viability problems to the same extent as a permanent ownership change. In this context, the Commission notes that an ownership change would steer the Bank — at all its levels — to value maximising behaviour and would not pursue other short-term or long-term political objectives. An ownership change (with respect to the owner of a bank at the time that it was in difficulty and received State aid for its restructuring, irrespective of whether that owner was the State or a private person) is also crucial in terms of viability because it is doubtful that such owner can credibly turn around the bank towards viability. Such ownership change is also important for reasons of moral hazard.
- (60) The Commission also recalls that corporate governance arrangements in the case of NLB [...] have proven rather ineffective. Recital (15) explains that KBC, when being a large shareholder of NLB, was represented at the Bank's management and supervisory board. This however was in itself not sufficient to prevent State interference. The Commission also observes even in the restructuring period structural corporate governance weaknesses <sup>(36)</sup>.
- (61) Finally, the Commission also points at a number of important practical problems related to the appointment of the blind trustee. Selecting and appointing such a trustee is a time consuming process. It is also questionable whether a blind trustee who can be dismissed by the Slovenian Authorities (see recital 43 (f)) if he does not exercise his duties in the best interest of Slovenia as a shareholder can indeed fully live up to the required independence. It also requires a number of regulatory approvals, which implies that Slovenia cannot ensure with full certainty that a blind trustee will eventually be appointed. The Commission also observes that Slovenia only wants to appoint such a blind trustee after the publication of the 2017 accounts, while there does not seem to be an objective rationale for waiting so long. A blind trustee would probably need some time to familiarise himself or herself with the Bank and its practices. Finally, the blind trustee will not be appointed on 1 January 2018 (i.e. immediately after the expiry of the deadline for the sale of shares on 31 December 2017), which inevitably implies that there will be a gap during which neither will the shares of the company have been sold nor will the company be controlled by a blind trustee.
- (62) Based on the above, the Commission has serious doubts that the blind trustee proposal is equivalent to the sale commitment. Given the importance of the sale commitment, it also seems very difficult to find a measure which is genuinely equivalent.
- (63) The Commission also has come to the preliminary conclusion that the delay of the sale of shares *de facto* prolongs the restructuring period. As a number of commitments were logically linked to the restructuring period (see recital (25)), the Commission at first sight believes that a prolongation of the deadline for the sale of shares should go hand in hand with a prolongation of other restructuring commitments. Indeed, 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, unduly harming non-aided competitors or aided competitors who diligently implement their restructuring plan and commitments. Therefore, in order to preserve the balance of the existing commitments, the Commission believes that the Slovenian authorities should present additional measures to compensate for the delayed restructuring process. At this stage, the Commission doubts that Slovenia has offered sufficient compensation for this general delay of the restructuring process. The Commission doubts whether Slovenia could not further improve NLB's viability by substantially reducing the last proposed divestment deadlines, by further changing the modalities of the sales process as described in recitals (29) and (30) and/or by converting the blind trustee in a fully empowered divestiture trustee. The Commission also doubts whether Slovenia should not consider further structural measures for NLB such as divestments of certain subsidiaries and/or behavioural measures. There are also doubts whether new initiatives such as the liquidation of the leasing company and subsequent establishment of a new leasing company <sup>(37)</sup> infringe the spirit of the commitment to divest the Bank's non-core subsidiaries.
- (64) As regards the timeline of the sale of shares, the Commission recalls that point 15 of the Restructuring Communication explicitly provides that the restructuring period should be as short as possible. However, the Slovenian authorities did not provide in their notification any valid justification for the further delay of the sale of shares. As regards the argument that Slovenia cannot run the sale of shares of NLB in parallel with the privatisation of Abanka, the deadline for sale of which is mid-2019 and thus posterior to the deadline initially committed to by Slovenia <sup>(38)</sup> for the sale of shares of NLB, the Commission observes that the two privatisations follow a different process (an IPO vs. a trade sale) and therefore also target different investors which are generally operating internationally. Moreover, the Commission also observes that other Member States also committed to large corporate restructurings simultaneously for a number of banks <sup>(39)</sup>.

<sup>(36)</sup> See recital (58).

<sup>(37)</sup> See recital (14).

<sup>(38)</sup> See commitment 38 of Commission Decision in Case SA.38522 (2014/N) — Restructuring aid for Banka Celje/Abanka, OJ C 393, 17.02.2015, p. 11.

<sup>(39)</sup> Referring to commitments (including significant divestments) by Spain for the restructuring plans of Spanish banks in 2012/2013 and by Greece for the restructuring plans of the four large Greek banks in 2014/2015.



- (65) The Commission observes that the current Slovenian proposal only contains a sale of shares commitment (with a longer deadline) and no longer contains the alternative divestment commitment. The Commission observes that this is different and significantly weaker from the existing commitment and did not find any justification for this difference.
- (66) Finally, the Commission also notes that a number of the commitments underlying the 2017 Amendment Decision are applicable beyond 2017. The Commission takes in particular note of the acquisition ban prolongation until 2019. The amended commitments (see recital (41)) suggest that the Slovenian authorities do not intend to live up to those commitments anymore. The Commission invites the Slovenian authorities to clarify this matter.
- (67) The Commission invites Slovenia and interested parties to comment on the preliminary findings of recitals 0 to (66).

#### 5. CONCLUSION

- (68) The Commission concludes that, by breaching the commitments described in recital (49), Slovenia granted unlawful aid. Furthermore, in regard to the proposed amendments described in recitals (41) and (43), the Commission raises serious doubts as to the compatibility of the aid with the internal market based on the information available at this time.

#### 6. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Slovenia to submit its comments and to provide all such information as may help to assess the compatibility of the measures, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the recipient of the aid immediately.

The Commission would draw your attention to Article 16 of 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), which provides that where negative decisions are taken in cases of unlawful aid, this aid may be recovered from the recipient.

The Commission warns Slovenia that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

Slovenia exceptionally accepts that the present decision be adopted and notified in the English language, for reasons of urgency.

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