RIIGIABI – SLOVEENIA

Riigiabi nr SA.34937 (2012/C) (ex 2012/N) NLB teine rekapitaliseerimine ja SA.33229 (2012/C) (ex 2011/N) NLB restruktureerimine

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 361/03)

Käesoleva kokkuvõtte järel autentses keeles 2. juulil 2012 esitatud kirjas teavitas Euroopa Komisjon Sloveeniat oma otsusest algatada Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ettenähtud menetlus seoses eespool nimetatud abimeetmega.

Komisjon otsustas kiita ajutiselt kuueks kuuks heaks NLB teise kapitali suurendamise, nagu on kirjeldatud käesolevale kokkuvõttele järgnevas kirjas.

Huvitatud isikud võivad saata oma märkused meetme kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

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Märkused edastatakse Sloveeniale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, esitades taotluse põhjused.

KOKKUVÕTTE TEKST

1. MENETLUS

14. jaanuaril 2011 teatasid Sloveenia ametiasutused NLB 250 miljoni euro suurusest rekapitaliseerimisest, mille komisjon kiitis päästmisabina heaks 7. märtsil 2011. Pärast heakskiitmist esitas Sloveenia 2011. aasta juunis restruktureerimiskava, mida ajakohastati mitu korda, viimati 2012. aasta märtsis. 6. juunil 2012 teatas Sloveenia NLB teisest, 382,9 miljoni euro suurusest rekapitaliseerimisest.

2. ABIMEETMETE KIRJELDUS

NLB on Sloveenia suurim pank, mille bilanss oli 2011. aastal 16 miljardit eurot, mis moodustab kolmandiku Sloveenia pangandussektori koguvaradest. Peamised aktsionärid on Sloveenia Vabariik (kelle valduses on 50 % NLB omakapitalist) ja KBC (25 %).

2011. aasta märtsis hankis NLB 250 miljoni euro väärtuses omakapitali aktsiate avaliku pakkumise kaudu; erainvestorite huvi puuduse tõttu märkis aktsiad riik. KBC osales eesmärgiga säilitada pangas 25 % blokeeriv vähemusosalus. Kooskõlas oma kohustusega esitas Sloveenia 2012. aasta juunis komisjonile restruktureerimiskava.

Kuna NLB kapitalipositsioon jätkas nõrgenemist, nõudis Sloveenia Pank 2011. aasta mais, et NLB suurendaks 2012. aasta juuniks oma kapitali suhtarve, eesmärgiga tagada muu hulgas Euroopa Pangandusjärelevalve stressitesti nõuetele vastavus. Selleks teatas Sloveenia 6. juunil 2012 NLB teisest rekapitaliseerimisest Euroopa Pangandusjärelevalve nõuetele vastavate, teatavatel tingimustel omakapitaliks konverteeritavate võlakirjade ja lihtaktsiate vormis kogusummas 382,9 miljonit eurot.

3. MEETMETE HINDAMINE

Komisjon ei vaidlusta Sloveenia ametiasutuste seisukohta, et riigilt NLB-le antud abi on riigiabi Euroopa Liidu toimimise lepingu artikli 107 lõike 1 tähenduses.

Meetmete kokkusobivust siseturuga hinnatakse ELi toimimise lepingu artikli 107 lõike 3 punkti b alusel. Seoses panga teise rekapitaliseerimisega leiab komisjon, et see on siseturuga ajutiselt kokkusobiv kui päästmisabi finantsstabiilsuse tagamiseks. Seega on see ajutiselt heaks kiidetud kuueks kuuks või, kui Sloveenia esitab kuue kuu jooksul alates käesoleva otsuse kuupäevast põhjaliku ümberstruktureerimiskava, kuni komisjon on võtnud kõnealuse kava kohta vastu lõpliku otsuse.

Komisjon algatab samal ajal seoses kavandatavate restruktureerimismeetmetega põhjaliku uurimismenetluse. Pärast restruktureerimiskava esialgset hindamist on komisjonil eelkõige tekkinud kahtlusi, kas pank on võimeline taastama pikaajalise elujõulisuse. Sama menetluse raames küsib komisjon, kas panga oma panus ja konkurentsi moonutamise piiramiseks võetavad meetmed on asjakohased ja piisavad.

Vastavalt nõukogu määruse (EÜ) nr 659/1999 artiklile 14 võib ebaseaduslikult antud abi selle saajalt tagasi nõuda.

KIRJA TEKST

„The Commission wishes to inform Slovenia that, having examined the information supplied by your authorities on the measure referred to above, it has decided to approve the second recapitalisation of Nova Ljubljanska Banka Group ("NLB" or "the Bank") temporarily for six months as compatible rescue aid. At the same time, it will also initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union with regard to the restructuring plan submitted by the Slovenian authorities on 22 July 2011 since the Commission has doubts as to the compatibility of that restructuring plan and the associated aid measures with the internal market in the light of the *Commission's Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current financial crisis under the State aid rules* [1] (the Restructuring Communication).

1. **PROCEDURE**

(1) On 7 March 2011, the European Commission authorized in case SA.32261 emergency aid to NLB in the form of a recapitalisation of EUR 250 million on the basis of Article 107(3)(b) TFEU for a period of six months and upon the submission of a restructuring plan. [2]

(2) On 17 June 2011, the Slovenian authorities pre-notified a restructuring plan.

(3) The Slovenian authorities notified officially the restructuring plan on 22 July 2011 and in response to information requests by the Commission, they sent further updates on 6 September 2011 and on 26 March 2012.

(4) The Commission submitted questions to Slovenia on 24 January, 7 February, 18 February and 21 February 2012, to which Slovenia replied on 28 January, 15 February, 18 February, 21 February, 22 February, 24 February and 28 February 2012.

(5) On 16 May 2012, the Slovenian authorities informed the Commission of their intention to provide for a second recapitalisation to NLB.

(6) Following a number of preliminary contacts, the Slovenian authorities notified to the Commission a second recapitalisation measure on 6 June 2012. Following further requests of the Commission the Slovenian authorities submitted additional information on 13, 14, 18, 19, 20, 21, 28, 29 June and 02 July 2012.

(7) Slovenia has accepted that the decision will exceptionally be adopted in English.

2. **DESCRIPTION OF THE MEASURE**

2.1 **The beneficiary**

(8) NLB Group is the parent company of Slovenia's largest bank. Apart from Slovenia, NLB Group is present across south-eastern Europe, where it has retail operations in Serbia, Bosnia and Herzegovina, Montenegro, Kosovo and the former Yugoslav Republic of Macedonia.

(9) In Slovenia, it offers a full range of personal and corporate banking services with an emphasis on the Slovenian retail banking market. It is also active in the areas of private, corporate and investment banking.

(10) As of 31 December 2011, NLB's 11,061,125 ordinary shares in issue were distributed among 1,997 shareholders. The largest shareholders were the Republic of Slovenia ("Slovenia") (45.62 %), KBC (25.00 %), Poteza Borzno Posredniška Družba, d.d. (4.47 %), Slovenska Odškodninska Družba (4.07 %) and Kapitalska Družba, d. d. (4.03 %). The shares are not listed.

(11) For the year ended 31 December 2011, NLB Group had total assets of EUR 16.5 billion (RWA EUR 13.5 billion) and total deposits of approximately EUR 10.2 billion, which consisted of household deposits (EUR 6.7 billion), corporate deposits (EUR 2.4 billion) and State deposits (EUR 1.1 billion). Furthermore, it had EUR 1.2 billion of debt securities in issue. As of the same date, NLB's total loan book was approximately EUR 10.7 billion. The loan-to-deposit ratio was 105 % (down from 127 % in 2010).

(12) NLB's current credit ratings are Ba2 by Moody's and BBB by Fitch. Both ratings were downgraded in 2011 [3]. The downgrade is primarily due to the concentration and further deterioration of the credit portfolio and the modest financial and capital position of the bank in the current market environment.

(13) NLB's Group balance sheet more than doubled between 2003 and 2009. It was profitable in the period 2003-2008, with average annual profits before tax of EUR 109 million and an average return on equity before tax of 12.4 %. However, it generated losses in 2009, 2010 and 2011 of EUR 87 million, EUR 202 million and EUR 239 million respectively. The loan portfolio of NLB started to deteriorate in 2009. Non-performing loans (NPLs) increased from 3.8 % in 2008 to 21.2 % at the end of 2010.

2.2 **The first recapitalisation**

(14) In 2009 and 2010, NLB Group registered losses after several years of profits. The deteriorating economic

(1) OJ C195, 19.8.2009, p. 9.
(2) Commission Decision of 7 March 2011 in case N 32261/2011, OJ C 189, 29.6.2011.
(3) NLB Company Website www.nlb.si/ratings (last accessed 20 June 2012)

climate has affected NLB's operations. Weak economic growth and rising unemployment have reduced demand for loans and caused significant rises in loan impairments.

(15) Those losses have brought a greater focus onto NLB Group's already weak capital position. NLB Group had a relatively low Tier 1 capital level of 6.9 % in 2009, which was reduced to 6.0 % in 2010 due to continuing losses. At that time (and also with respect to the increased capital requirements under Basel III) the level of capital was considered insufficient and led to concerns about the viability of the bank. As a result, NLB decided to raise more capital. The Slovenian government was prepared to supply that capital if the market didn't.

(16) In the absence of a capital increase, the Slovenian authorities foresaw higher funding costs and a serious reduction in the willingness of existing and potential investors or lenders to provide funding to NLB.

(17) […] (*)

(18) […] NLB adopted a new long-term strategy in November 2010 which redefined the Group's strategic markets and activities. Equity participations which did not fit into the strategy would be divested. While those divestments would improve the bank's capital ratios, on a longer time-horizon the capital injection would have an instant positive effect on the bank's financial situation.

(19) NLB was set to raise EUR 250 million of equity capital, equivalent to 1.6% of its RWA, through a public offering of its shares. Subscription to new shares was planned to be done through a public offering as required by Slovenian legislation. As a result of the capital increase in 2011 the Tier 1 ratio was improved to 7.2 % and the Core tier 1 ratio to 6.3 %.

(20) The capital increase took place in two tranches. In the first offering to existing shareholders, the total amount subscribed was EUR 89.2 million. The State fully exercised its pre-emption rights, while KBC, the second-biggest shareholder of NLB, only subscribed to the capital necessary to maintain a blocking minority. In the second stage the remaining share capital was offered to the public. However, it was ultimately fully subscribed by Slovenia, due to a lack of interest. As a result Slovenia's direct participation in NLB increased to 45.62 % from 33.10 %. Considering that Slovenia also holds an indirect stake of at least 8.1 % in NLB [1], the operation further strengthened its majority position.

(21) The issue price of those shares was EUR 116. Since NLB is not currently quoted, the issue price of the new shares was set by reference to the book value of NLB shares on 30 September 2010. The projected book value of an NLB share at year-end 2010 was EUR […] so that the new shares were issued at […] times book value.

(22) That rescue measure was approved by Commission decision of 7 March 2011 on the basis of Article 107(3)(b) TFEU although the Commission indicated that it would assess the aspect of burden-sharing related to the share price in further detail during its assessment of the restructuring plan.

2.3 **The second recapitalisation notified on 6 June 2012**

(23) […]. Due to the elections, the State as a main shareholder of NLB did not decide on the future of the Bank until a new Government was formed. When it became clear that the share capital increase would not be completed by the end of 2011, […].

(24) Initially Slovenia estimated that a capital injection amounting to EUR 250 million would be sufficient to meet the capital requirements. Following a further deterioration of NLB's portfolio, which in turn triggered the need for higher provisions, it became apparent in September 2011 that the Bank would need EUR […] million as opposed to EUR 250 million of additional capital.

(25) In February 2012, the new government decided to actively pursue the second recapitalisation with private investors only and without participation from the State.

(26) Subsequently, however, a private solution did not seem feasible by the end of June, and Slovenia has decided to step in and to provide as a bridge solution EUR 320 million of the required recapitalisation of EUR […] million in the form of Contingent Convertible Instruments (CoCos) that are compatible with the requirement of the European Banking Authority (EBA). The Slovenian authorities, will cover also a part of the recapitalisation amounting to EUR 62.9 million with common equity. An additional amount of more than EUR […] million will be achieved through […].

(27) The remuneration of the CoCos has been set at 10 % per annum.

(28) Should NLB not be able to pay the remuneration on the CoCos, the annual payment due will be made in kind via issuance of new ordinary shares, with a discount of 25 % from the market price (adjusted for the "dilution effect"). In this case the market price needs to be estimated since NLB is not a public listed company. […], appointed by Slovenia, has estimated the market value of the shares of NLB to be within the range of EUR […]. Based on the mid-price of the shares resulting from that valuation

(*) Confidential information.

[1] Slovenska Odskodninska Druzba (Slovene Remuneration Fund) is wholly-owned by Slovenia and holds 4.07 % in NLB; (Slovenska) Kapitalska Druzba (Slovene Capital Fund) is wholly-owned by Slovenia and holds 4.03 % in NLB.

(EUR […]) and taking into account the dilution effect combined with the 25 % discount, the conversion price has been set at EUR […] per share.

(29) In addition, the CoCos will be subject to mandatory conversion into ordinary shares, at the same conversion price, in the event that NLB fails to buy them back by 30 June […].

(30) The capital injection of EUR 62.9 million in the form of common shares will be conducted in two instalments. A first one will be conducted in July 2012 at a share price of 41 EUR for an amount of EUR 61 million, and a second instalment will be conducted in a second stage at a price of EUR […] per share for an amount of EUR 1.9 million. As a result the average the price of newly issued shares to Slovenia will be […] EUR, corresponding to a 25 % discount to the share price (adjusted for the "dilution effect"). (1)

(31) The realisation of the liability management exercise, which consists of the restructuring of five subordinated loans amounting to EUR […] million in total, is subject to approval by the Bank of Slovenia. In order to obtain that approval, NLB has to demonstrate that its own funds will remain adequate after the buy-back of the existing instruments by replacing them with instruments of the same or better quality; hence the liability management exercise is expected to be completed towards the end of June 2012, after the loan agreement to issue the new hybrid instrument has been signed.

2.4 **The notified restructuring plan**

2.4.1. *Restructuring Measures*

(32) The restructuring plan submitted by the Slovenian authorities contains a base and stress scenario for the period from 2012 to 2016 (2). The plan foresees the implementation of a new strategy from NLB aiming at restoring profitability and capital to levels required by the regulators within the planned five-year period, without recourse to State aid. NLB's strategy is based on the premise that NLB Group is an independent banking and financial services group, building its own model. As such, NLB plans to remain a provider of universal banking and financial services, with its main focus on retail banking and on corporate and investment banking.

(33) The Bank defines Slovenia as its main strategic market, while other strategic markets include selected countries of south-eastern Europe such as Bosnia and Herzegovina, Montenegro, Kosovo and Macedonia.

(34) NLB plans to divest […] and reduce its exposure to markets where […]. More specifically, the divestment programme of NLB consists of the disposal of […] entities (3) with total assets of EUR […] million at the end of 2010, representing [5-10] % of NLB's total assets. By the end of 2011, three of the planned divestments were concluded, resulting in a reduction of NLB's RWA of EUR […] million.

(35) The Bank identifies an excessive accumulation of credit risks (4) as the main reason behind NLB's weak performance in the past years. Credit risk is the most important risk for NLB, representing the biggest share of its capital requirements (approximately [85-95] %); thus, as stated in the restructuring plan, NLB seeks to reduce its risk appetite. NLB plans to […].

(36) In terms of its funding structure, NLB plans to reduce its dependence on wholesale funding. It is projected that the total amount of refinancing will be reduced by […] % until 2016. To achieve that aim, NLB plans to put emphasis on attracting deposits from customers, together with reducing the volume of RWA in strategic activities. NLB also counts on receiving funds from multilateral financial institutions […] in the future, as well as on continuing to rely on funding from ECB (5). Additionally NLB's future activities would be geared towards diversification of debt financing instruments. Finally, NLB plans to cover some of its refinancing needs with the issue of senior secured and covered bonds.

(37) In addition, as part of the restructuring, NLB launched at the end of 2010 a cost-cutting programme. The target set is to reduce costs in NLB by 15 %. Cost reduction initiatives include reducing the number of branches, reducing IT costs, divestment of excess premises and rationalising the procurement process. That programme also foresees the reduction of the number of employees in NLB by […] % [(… employees)].

(38) The required second capital increase is also taken into account in the projections of the restructuring plan for an amount of EUR […] million. However in the projections of the restructuring plan, it was planned to be realised only with private investors and without any participation from the State. According to the restructuring plan, as a fall-back scenario, NLB considered […].

2.4.2. *Financial Projections*

Base Scenario

(39) In the base scenario, it is assumed that NLB will return to profitability in 2013. The main drivers of profitability,

(1) However, Slovenia will undertake to find a private investor until the last possible moment. In such case the State would not conduct any of the two instalments.

(2) According to the plan, the Bank used forecasts sourced from the IMF and from the governments of the selected countries, defined as strategic markets, on the following macro-economic indicators: GDP growth, average inflation, unemployment rate, current account and budget balance.

(3) That list includes […].

(4) They included, inter alia, the financing of leveraged and management buy-outs, property developments in the real estate boom, highly cyclical exposures such as construction and the retention of equity participations in a large number of small subsidiaries without following a clear business model.

(5) In December 2011 and February 2012, NLB has acquired ECB funds from the LTRO in the total amount of EUR 1.25 billion.

according to NLB, will be an expected improvement in the quality of the portfolio which will ease the pressure on provisioning and improved operational efficiency of NLB as a result of the restructuring.

(40) *NLB's total income is expe*cted to decrease until 2014, after which moderate growth is forecast. The planned divestment programme and the reduction in RWA are expected to have a negative impact on NLB's interest income. The assumptions used in income projections are:

— Execution of the divestment programme and RWA reduction as planned, which will have a negative impact on NLB's net interest income in terms of volume;

— Gradual increase of interest margin to […] % (representing an increase of […] % compared to the level of 2011);

— Increase in fees and commissions (annual growth of […] % on average in the strategic segment);

— one-off effects from divestments of non-strategic companies;

— cost reduction in years 2011 and 2012, and […] of costs for the following years.

(41) In the base scenario, NLB forecasts a further deterioration of the quality of its portfolio in 2012 and an improvement afterwards. In the restructuring plan it is assumed that the share of non-performing loans ("NPLs") would […] in 2012 ([…] %) and slowly […] afterwards to […] % in 2016. According to NLB's estimates, EUR […] in loans will have to be written off by 2016. Coverage of NPLs is provisioned to increase from […] % in 2012 to above […] % in 2016.

(42) In line with its goal to reduce its dependence on the wholesale markets, the Bank targets its total amount of refinancing to be reduced by […] % until 2016 (compared to 2010 level). The need for refinancing will be reduced through lower assets as a result of the divestment programme as well as of the reduction of the loan book and by changing the funding mix in favour of deposits.

(43) Average annual growth in household deposits is forecasted at […] % while the level of state deposits is estimated to be […] to their pre-crisis level of EUR […] million by 2014. Finally, corporate deposits are expected to […] slightly and are expected to constitute […] % of total deposits in 2016 (compared to […] % in 2011)].

(44) Loans to the non-banking sector are expected to […] until 2012, due to the divestment of the non-strategic segment (EUR […] million in two years) and from a […] in volume of operations in the strategic segment (EUR […] million in two years). A […] volume of operations is planned only in corporate lending while retail loans are assumed to […] in line with market growth. Modest organic […] of the loan book in the strategic portfolio is foreseen after 2012 ([…] % annually).

(45) After divestment of the non-strategic segment, parts of the portfolio (roughly EUR […] million) will remain in NLB's books; according to NLB, those assets (mainly NPLs) cannot be sold and require longer to collect. To cover or write off those NPLs, NLB estimates that new impairments of approximately EUR […] million in the years 2013 to 2015 may have to be made.

Stress Scenario

(46) According to the restructuring plan, the development of the stress scenario was based on the results of the EBA exercise of 2011, which revealed that NLB is vulnerable to credit risks shocks. On the basis of that finding, the following assumptions have been applied for the financial projections in the stress scenario:

— Credit shock is applied only to 2012.

— Further worsening of the economic situation in Slovenia adversely affects the portfolio quality.

— Portfolio quality worsens in the industry sectors which have the highest percentage of NPLs – construction and real estate.

— Due to the persistence of the crisis the quality of portfolio is worsened also in services, transportation, wholesale and retail trade, manufacturing and households.

— The coverage ratio (NPLs against provisions) is kept at the same level as under the base scenario.

(47) Based on those assumptions, the NPLs […] by EUR […] million to EUR […] billion in 2013, or to […] % of total portfolio (a […] percentage point increase compared to the base scenario). The application of the credit shock creates a need for additional impairments in 2013 of EUR […] million (EUR […] million in total) compared to the base case scenario (EUR […] million).

(48) Despite higher impairments, it is forecast that even under the stress scenario NLB will return to profitability in […].

(49) The basic financial projections of NLB according to the base scenario and the stress scenario are summarised in Table 1:

Table 1

Financial Projections

In million EUR	Base Scenario					
	2011	2012	2013	2014	2015	2016
Total Balance sheet	16,444	[…]	[…]	[…]	[…]	[…]
Net loans and receivables	10,749	[…]	[…]	[…]	[…]	[…]
Net profit/loss before tax	(266.9)	[…]	[…]	[…]	[…]	[…]
Net Interest margin	2.5 %	[…]	[…]	[…]	[…]	[…]
Return on equity (ROE)	– 26.3 %	[…]	[…]	[…]	[…]	[…]
Cost/income ratio	59.8 %	[…]	[…]	[…]	[…]	[…]
Loans growth rate	(10 %)	[…]	[…]	[…]	[…]	[…]
Customer deposits growth rate	(2 %)	[…]	[…]	[…]	[…]	[…]
Loan-to-deposit ratio (LTD)	105.4 %	[…]	[…]	[…]	[…]	[…]
CAR [1]	11,10 %	[…]	[…]	[…]	[…]	[…]
Risk Adjusted Items (RWA)	13 509,5	[…]	[…]	[…]	[…]	[…]

[1] CAR stands for Capital Adequacy ratio

In million EUR	Stress Scenario					
	2011	2012	2013	2014	2015	2016
Total Balance sheet	16,444	[…]	[…]	[…]	[…]	[…]
Net loans and receivables	10,749	[…]	[…]	[…]	[…]	[…]
Net profit/loss before tax	(266.9)	[…]	[…]	[…]	[…]	[…]
Return on equity (ROE)	– 26.3 %	[…]	[…]	[…]	[…]	[…]
Cost/income ratio	59.8 %	[…]	[…]	[…]	[…]	[…]

In million EUR	Stress Scenario					
	2011	2012	2013	2014	2015	2016
Loans growth rate	(10 %)	[…]	[…]	[…]	[…]	[…]
Customer deposits growth rate	(2 %)	[…]	[…]	[…]	[…]	[…]
Loan-to-deposit ratio (LTD)	105.4 %	[…]	[…]	[…]	[…]	[…]
CAR	11,10 %	[…]	[…]	[…]	[…]	[…]
Risk Adjusted Items (RWA)	13 509,5	[…]	[…]	[…]	[…]	[…]

2.4.3. *Burden-sharing*

(50) According to the restructuring plan, the following additional measures are mentioned to demonstrate NLB's own contribution. In particularly it lists:

— a divestment of additional assets: it lists five […] participations earmarked for disposal: […], as well as seven […] companies. Those additional divestments are estimated to amount to an equivalent capital deduction effect of just over EUR […] million [1];

— NLB will also adjust its dividend policy in such a way to rebuild capital ratios from retained earnings, determined by the level of the Tier 1 capital ratio;

— finally, NLB plans a partial public listing after the restructuring phase.

2.4.4. *Measures to limit distortions of competition*

(51) As measures to mitigate competition distortions, the restructuring plan envisages that:

— NLB will not engage in aggressive commercial strategies

— NLB will reduce its retail network in Slovenia by closing […] of the […] retail branches

— NLB will not acquire any new entity which is not already part of the group

— NLB will reduce the volume of risk weighted assets of strategic operations by […] %.

3. **POSITION OF THE SLOVENIAN AUTHORITIES**

Second recapitalisation measure

(52) The Slovenian authorities are of the view that the participation of the State in the second recapitalisation in favour of NLB constitutes State aid within the meaning of Article 107(1) TFEU.

(53) Slovenia undertakes to maintain the commitments made in the context of the first recapitalisation of NLB, as reflected in the Commission decision of 7 March 2011 [2].

(54) With regard to acquisitions, the Slovenian authorities have further undertaken that, unless the Commission otherwise agrees [3], NLB will not acquire [4] any stake in any undertaking for a period of at least three years starting from the date of the final Commission decision.

(1) That amount is composed of a direct capital deduction effect of EUR […] and RWA contributions of EUR […] (counted as a capital relief effect of EUR […])

(2) In the context of the Commission decision of 7 March 2011 on the first recapitalisation of NLB, Slovenia has given the following commitments:
— Slovenia has committed that NLB will not engage itself in aggressive commercial strategies or expansion of its business activities.
— Slovenia has committed that NLB will not pay dividends, nor coupons on capital instruments, until a final restructuring plan in respect of NLB has been approved.

(3) After obtaining the Commission's approval, the bank may, acquire businesses (i) if that is in exceptional circumstances necessary to restore financial stability or (ii) if the purchase price paid by NLB for any acquisition is less than 0.01 % of the balance sheet size of NLB at the date of the Commission decision and that the cumulative purchase prices paid by NLB for all such acquisitions over the whole restructuring period is less than 0.025 % of the balance sheet at the date of the Commission decision.

(4) Activities not falling under the acquisition ban are acquisitions that take place in the ordinary course of the banking business (as a part of normal debt management or equity trading), provided that those transactions fit with the restructuring plan.

(55) The Slovenian authorities have also undertaken that before any entity of NLB exercises a call option on a hybrid or equity-like capital instrument it will submit its proposals to do so to the Commission for approval. Furthermore, any proposed buy-back of those instruments will be also submitted to the Commission for approval.

(56) Slovenia has committed that until the Commission takes a final decision on restructuring, NLB and any other entity of NLB will only pay to third parties which are external to the group, by the end of the financial year for the previous financial year, coupons and profit distributions on the core capital instruments, silent participations, participation rights and participation certificates with a share in the loss and any other profit-related own capital financial instruments (e.g. hybrid capital instruments, participation certificates) (excluding shares) existing in NLB on 1 July 2012 (in order to encourage new investments in the Bank) if and in so far as NLB or the subsidiary companies in question are legally obliged to do so and can do so without releasing reserves.

(57) The Slovenian authorities have committed to submit a new restructuring plan for NLB within six months from the adoption of the present decision.

(58) The Slovenian authorities note that the purpose of the measure is to ensure compliance by NLB with the new capital requirements. Slovenia is of the view that due to the continuing unstable conditions on the financial markets and past experience in rising capital with the Bank, an initial public offering is not workable assumption. Therefore they view the capital increase in the form of EBA-compliant CoCos as a well-targeted and appropriate measure to achieve that objective.

(59) By letter of 12 June 2012, the Bank of Slovenia stated that the measure is appropriate as a means for NLB to reach its capital requirements under the EBA stress test exercise.

Restructuring Measures

(60) The Slovenian authorities have indicated that they were considering the implementation of an impaired asset measure. While they have not yet specified any details, it is expected that a split of NLB in a good and bad bank would encourage the participation of private investors in the recapitalisation.

4. ASSESSMENT

4.1 Existence of State Aid

(61) The Commission has to assess whether the measure relating to the second recapitalisation constitutes State aid within the meaning of Article 107(1) TFEU. According to that provision, 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.

(62) The Commission observes that in this case State resources are involved as the measure is financed by the State. The State has committed to fully subscribe to the EBA-compatible CoCos to be issued by the Bank in the amount of EUR 320 million. In addition the State has committed to inject up to EUR 62.9 million of common shares.

(63) The Commission considers the measure to be selective as it solely benefits NLB.

(64) The measure furthermore confers an advantage on NLB as it allows the Bank to absorb impairments suffered to date and future losses on other assets, as well as to meet its capital requirements […].

(65) The Commission finds that the measure is also able to affect trade between Member States and to distort competition as NLB is competing on, amongst others, the Slovenian retail savings markets, the Slovenian mortgage lending markets and the Slovenian commercial lending markets. In the Slovenian market, some of its competitors are subsidiaries of foreign banks.

Conclusion

(66) The Commission considers that the measure fulfils all conditions laid down in Article 107(1) TFEU and, therefore, the measure qualifies as State aid to NLB.

4.2 Compatibility of the Aid

(67) Article 107(3)(b) TFEU provides for the possibility that aid falling within the scope of Article 107(1) TFEU can be regarded as compatible with the internal market if it intends to "remedy a serious disturbance in the economy of a Member State".

(68) The Commission notes that NLB is the largest banking institution in Slovenia with significant retail operations also in Serbia, Bosnia and Herzegovina, Montenegro, Kosovo and the former Yugoslav Republic of Macedonia. The Slovenian authorities have shown that without the second recapitalisation […] of NLB, with consequent adverse impacts on the financial stability of the country. In the context of the various uncertainties surrounding the current recovery from the global financial and economic crisis, the […] of the Bank would create a serious disturbance for the Slovenian economy and therefore the measure can be assessed under Article 107(3)(b) TFEU, as already concluded in the decision of 7 March 2011 concerning the first recapitalisation.

Compatibility of the second recapitalisation

(69) The Commission will assess the compatibility of the second recapitalisation of NLB based on the Banking Communication [1] and the Recapitalisation Communication [2].

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

[2] Recapitalisation Communication, point (6).

(70) In line with point 15 of the Banking Communication, in order for an aid or aid scheme to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility [1]:

a. *Appropriateness:* The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b. *Necessity:* The aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance.

c. *Proportionality:* The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(71) The Recapitalisation Communication further elaborates on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability. In particular the Recapitalisation Communication states that recapitalisations may be an appropriate response to the problems of financial institutions facing insolvency.

(72) As regards NLB the Commission makes the following assessment of the compatibility criteria:

a. *Appropriateness*

(73) The measure for NLB results from the higher capital requirements […] by 30 June 2012, when NLB has to meet the targeted 9 % Core Tier 1 ratio required by the EBA. The Commission notes that a capital increase of EUR 320 million in the form of CoCos together with the injection of common shares at the amount of EUR 62.9 million will allow the Bank to meet its new target regulatory capital requirements […].

(74) NLB is the largest banking institution in Slovenia with significant shares of Slovenian retail banking services. As such NLB is a systemically important bank for Slovenia. Consequently, a […] of NLB would create a serious disturbance in the Slovenian economy and would limit the provision of loans to the Slovenian economy. The measure thereby ensures that financial stability in Slovenia is maintained. For those reasons, the Commission finds that the measure is appropriate.

b. *Necessity – limitation of the aid to the minimum*

(75) Based on the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that the recapitalisation must be of the minimum amount necessary to reach the objective. In that context, the Commission observes that the amount of the measure will ensure that NLB will improve its regulatory capital levels in line with EBA requirements and market expectations. In order to restore market confidence, the recapitalisation is necessary.

(76) The Commission notes that the annual remuneration of the recapitalisation by means of the CoCos has been set at a level of 10 %, in line with the guidelines of the Commission and of ECB [2]. The Commission positively notes that the level of remuneration is sufficiently high to encourage NLB to exit from the State intervention.

(77) The Commission further notes that an alternative coupon satisfaction mechanism applies to the CoCos. In addition the CoCos will be subject to mandatory conversion into ordinary shares in the event that NLB does not proceed to buy-back by 30 June 2013.

(78) The Commission positively observes that a sufficient discount has been applied to the conversion price (adjusted for dilution) for the following reasons:

(i) The market price of the Bank has been subject to an independent evaluation by […] as the shares are not traded. It resulted in a price comprised in the range […] EUR per share. In the context of that evaluation Slovenia's choice to take the mid-range point of […] EUR per share as the basis for calculating an appropriate conversion price seems therefore reasonable and in line with market practices.

(ii) Slovenia applies the 25 % discount to the theoretical ex rights market price, which is in line with point 8 of the *Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis* [3] (the "2011 Prolongation Communication").

(79) As regards the remuneration of the common shares, the Commission positively notes that the capital injection is done at 25 % discount to the theoretical ex rights price, which is also in line with the 2011 Prolongation Communication.

(80) In conclusion, the measure seems necessary in both its amount and form to achieve the objectives of limiting the disturbance in the Slovenian banking system and economy as a whole.

c. *Proportionality – measures limiting negative spill-over effects*

(81) The Slovenian authorities have undertaken to maintain the commitment made in the context of the Commission decision of 7 March 2011 [4] that NLB will not pay dividends or coupons on capital instruments until a

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(1) See paragraph 41 of Commission decision in Case NN 51/2008 *Guarantee scheme for banks in Denmark*, OJ C 273, 28.10.2008, p. 2.

(2) ECB Governing Council recommendations on the pricing of recapitalisations of 20 November 2008.

(3) OJ C 356, 6.12.2011, p. 7

(4) See par. (53)

final restructuring plan in respect of NLB has been approved. The Slovenian authorities have further committed that before exercising a call option on hybrid instruments or equity-like instruments any entity of the NLB Group will submit proposals to do so to the Commission for approval. Furthermore, any proposed buy-back of those instruments will be also submitted to the Commission for approval.

(82) Slovenia has also undertaken to maintain the commitment that NLB will not engage itself in aggressive commercial strategies or expansion of its business activities. With regard to acquisitions, the Slovenian authorities have further undertaken that, unless the Commission otherwise agrees [1], NLB will not acquire any stake in any undertaking for a period of the restructuring period of at least three years starting from the date of the final Commission decision.

(83) Taking into consideration the difficulties NLB is facing combined with the need to maintain financial stability in Slovenia, the Commission considers the measure at this time to be sufficient to be able to temporarily approve the measure as rescue aid.

Obligation to submit a restructuring plan

(84) The *Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis* [2] (the "2010 Prolongation Communication") states in point 14 that the distinction between sound and distressed banks no longer seems relevant in order to determine which banks should enter into a discussion about their restructuring with the Commission. Thus, as of 1 January 2011 a restructuring plan will be required from every beneficiary of a new recapitalisation.

(85) As indicated in point 15 of the 2010 Prolongation Communication, in assessing the restructuring needs of banks, the Commission will take into consideration the specific situation of each institution, the degree to which such a restructuring is necessary to restore viability without further State support as well as prior reliance on State aid. As a general rule, the more significant the reliance on State aid, the stronger the indication of a need to undergo in-depth restructuring in order to ensure long-term viability. In addition, the individual assessment will take account of any specific situation on the markets and will apply the restructuring framework in an appropriately flexible manner in the event of a severe shock endangering financial stability in one or more Member States.

(86) The Commission requires that the restructuring plan will (i) take into account all aid measures NLB has received and (ii) fulfil the requirements of the Restructuring Communication [3] as regards return to viability, burden-sharing and own contribution and measures limiting the distortion of competition. In any event, the restructuring plan should be submitted to the Commission within six months of the present decision.

(87) The Slovenian authorities have committed to submit a new restructuring plan of NLB within six months from the adoption of the present decision.

Conclusion

(88) The Commission thus concludes that the measure is: (i) appropriate; (ii) necessary; (iii) proportional and (iv) NLB is under the obligation to submit a restructuring plan. The Commission can therefore approve the measure for a period of six months or, if Slovenia submits an in-depth restructuring plan within six months from the date of this Decision, until the Commission has adopted a final decision on that restructuring plan.

Compatibility of the restructuring measures

(89) The Commission has stated in the Restructuring Communication how it will assess restructuring aid to banks in the current crisis: (i) the Member State should commit to implement a restructuring plan restoring the long-term viability of a bank without reliance on State support; (ii) the bank and its capital providers should contribute to the financing of the restructuring costs as much as possible with their own resources thereby limiting the total amount of State aid necessary; and (iii) the plan should contain sufficient measures to limit distortions of competition, which is most relevant in business segments where the bank's relative position remains strong [4].

(90) In the next section, the Commission assesses the compatibility with the Restructuring Communication of the submitted restructuring plan and the associated aid measures (i.e. the aid already granted in March 2011 and the second recapitalisation notified on 6 June 2012).

Restoration of long-term viability

(91) The Commission observes that the Slovenian authorities have provided a restructuring plan. However, after a preliminary assessment of the restructuring measures, the Commission must raise several doubts as regards the ability of NLB to return to long-term viability.

(92) The Commission notes that the analysis of the macroeconomic indicators (e.g. GDP growth) used in the financial projections is incomplete and lacks sensitivity. The Commission observes further that the general assumptions used in the financial projections in the scenarios lack consistency. In addition, more information would be necessary to assess the provisioning which would deliver

[1] See par. (56)

[2] OJ C 329, 7.12.2010, p. 7.

[3] Communication from the Commission "The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules", OJ C 195, 19.8.2009, p. 9.

[4] Cfr. point (32) of the Restructuring Communication.

a coverage ratio of the same level, both under the baseline and adverse scenario. In addition, the basis for the development of the stress scenario was the vulnerability of NLB to credit risk shocks; however, in the financial projections a credit risk shock is applied only to 2012. It is therefore not possible for the Commission to assess to which extent the financial projections are credible and based on reliable assumptions.

(93) As regards the estimations provided by the Bank on impairments, the Commission observes that their level is not sufficiently justified. The Commission therefore has doubts whether the estimations for impairments in the restructuring plan rely on prudent assumptions.

(94) In order to complete its assessment, the Commission requires further information to assess the restructuring plan, in particular on the quality of new business generated since 1 January 2011 (subsequent to the implementation of the restructuring initiative) by NLB, including a concrete breakdown in terms of asset quality, geography and business lines. The Commission invites the Slovenian authorities to provide evidence setting out how the figures projected in the restructuring plan are reflected in new business generation for NLB.

(95) The Commission notes that in the restructuring plan the long-term funding structure and planning of NLB is not sufficiently developed. In addition, the restructuring plan contains no concrete information about asset/liability maturity matching and potential funding gaps. The Commission notes for instance that NLB relied recently on a government-guaranteed bond with a volume of EUR 1.5 billion for its refinancing needs that was issued in July 2009 and is due in 2012. […]. The Commission therefore has doubts in relation to how the Bank will meet current and future funding requirements.

(96) As for its funding strategy, according to the information submitted with the restructuring plan, NLB estimates a […] of its total amount of refinancing by […] % by 2016 (compared to 2010 level). Furthermore, the Bank plans to reduce its dependence on the wholesale markets, […]. The restructuring plan thus forecasts a decrease of […] % in total deposits in 2012 ([…]) and then an increase averaging above […] % for the years 2013-2016. Taking into account the competition in the banking market the Commission has doubts whether those forecasts are realistic and invites the Slovenian authorities to provide evidence as regards the projected increase in deposits and the reduction of reliance on wholesale funding.

(97) The Commission further raises doubts as regards the corporate governance of the Bank. It is particularly unclear to which extent the decision-making process in the Bank is aligned with business practices that can be expected from a financial institution with an international presence. The Commission therefore invites the Slovenian authorities to further explain the decision-making process within the Bank.

(98) The Commission also notes that the Slovenian authorities are considering the implementation of an impaired assets measure […]; that intended measure has not been taken into account in the restructuring plan.

Burden-sharing

(99) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to minimum and to address distortions of competition and moral hazard. To that end, firstly, the restructuring costs should be limited while, secondly, the aid amount should be limited and a significant own contribution is necessary.

(100) The Commission has doubts whether the restructuring measures are sufficient to ensure adequate burden-sharing. On the one hand, while NLB has proposed the divestment of 12 businesses as part of its own contribution, According to the restructuring plan […] of those companies […] recorded any profit (and the profits recorded were very limited), one recorded a zero financial result, while the rest have released losses, that in some cases are substantial. The Commission notes that the divestment of non-profitable activities does not qualify as own contribution. It is rather a step necessary to ensure the return to viability. On the other hand, the Commission also notes that the restructuring plan does not provide convincing grounds as regards the impact of the public listing of NLB on the size of the own contribution and the change of the ownership structure.

Measures limiting the distortion of competition

(101) The Commission has doubts that the measures proposed to mitigate the distortive effects are sufficient or in some cases eligible, in particular in view of the leading position of NLB in Slovenia. The Commission is not convinced that the measures proposed to limit distortion of competition are proportionate to either the size of the Bank or the total amount of aid received by NLB.

(102) Furthermore according to the restructuring plan the divestment of two companies […] and […] is counted for own contribution and in the same time it is proposed as a measure limiting competition distortion. The Commission has doubts whether the single measure proposed for both own contribution and limitation of competition distortion would be sufficient in particular taking into account the size of the restructuring of the Bank.

(103) Other measures proposed in the restructuring plan to limit competition distortions may be easily explained from a pure viability perspective. The planned reduction of NLB's […] might be a necessary cost-cutting operation, while a reduction of the volume of risk weighted assets by […]% would be the minimum required scale back of strategic operations in order to improve capital ratios. As such, those measures which are necessitated by considerations relating to the long-term viability of the Bank do not appear capable of being considered measures limiting the distortion of competition.

Conclusion

(104) As a result, in light of restructuring plan, the Commission raises doubts as regards (i) the ability of the Bank to return to long-term viability, (ii) the provision of proper burden-sharing and (iii) sufficient provisions to limit the competition distortion, and it invites interested parties to submit comments on those issues.

DECISION

The Commission concludes that recapitalisation that the Republic of Slovenia intends to grant in favour of Nova Ljubljanska Banka Group amounting up to EUR 382.9 million constitutes State aid pursuant to Article 107(1) TFEU.

The Commission nevertheless finds that the recapitalisation measure in favour of NLB is temporarily compatible with the internal market as rescue aid for reasons of financial stability. It is accordingly approved for six months or, if Slovenia submits an in-depth restructuring plan within six months from the date of this Decision, until the Commission has adopted a final decision on that restructuring plan.

At the same time, the Commission has decided to initiate the procedure laid down in Article 108(2) TFEU with regard to the restructuring plan submitted initially by the Slovenian authorities on 17 June 2011 and the associated aid measures, to verify whether the conditions of the Restructuring Communication regarding viability, burden-sharing and measures limiting the distortion of competition are met.

The Commission requires Slovenia to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter. In particular the Commission invites Slovenia to comment on the points on which it raised doubts. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Slovenia that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful 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.”