EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: SA. 37315 (2013/N) – Slovenia
Rescue aid in favour of Factor Banka d. d.

Sir,

1 PROCEDURE

(1) On 5 September 2013, Slovenia notified to the Commission its intention to provide Factor Banka d.d. ("the Bank") with a State guarantee on newly issued debt with the objective of stabilising the liability side of the Bank's balance sheet.

(2) Slovenia exceptionally accepts that the decision be adopted in the English language.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(3) The Bank is a universal bank incorporated and domiciled in the Republic of Slovenia. It is the 15th biggest bank in Slovenia and holds total assets of around EUR 911 million (approximately 2.1% of the assets of the national banking system). The Bank's shares are not listed on any domestic or international stock exchange, but the Bank's bonds have been admitted for trading on the Ljubljana Stock exchange and Luxembourg stock exchange. The Bank operates in Slovenia (71% of total assets) and abroad (Croatia, Serbia, Bulgaria, Ukraine, Kosovo, Montenegro - 29% of total assets).

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(4) The main shareholders of the Bank are ACH d.d. (40.8%), CG Invest d.d. (10%) and NKBM (9.9%).

(5) The Bank's main figures are:

Factor Banka d.d.	31 July 2013
Total assets (EUR million)	911
Loans (gross) to customers (EUR million)	869
Retail deposits (EUR million)	120
Total wholesale funds (EUR million)	578
Employees (Full-time equivalents ("FTE"))	82

2.2 The events triggering the measure

(6) In the last few months the Bank’s liquidity profile has deteriorated. Since mid-August 2013 the Bank has been facing significant deposit withdrawals. During August 2013 the Bank lost 4% of its deposit base. The adequacy of its liquidity reserves is substantially impaired and on 27 August 2013 the Bank's liquidity ratio fell below the required level. The Bank has been facing liquidity pressure since the beginning of the year and is subject to a daily monitoring of its liquidity position.

(7) The Bank of Slovenia, as the national banking regulator, has required the Bank to increase its capital buffers. On 31 August 2013 the deadline for the recapitalisation expired, without appropriate action being taken by the Bank's management or shareholders. While the Bank still meets the capital requirements (Pillar I capital ratio amounted to 9.1% and Core Tier 1 ratio to 7.1% as at 31 July 2013), in light of likely further losses on its loan portfolio and the lack of support from the Bank's shareholders, the Bank of Slovenia concluded that the Bank does not have a sustainable and viable business model.

2.3 The Measure

(8) As a consequence of the deterioration of the Bank’s situation and with the objective of stabilising the liability side of the Bank’s balance sheet while proceeding to its orderly winding down Slovenia agreed to grant the Bank a liquidity facility. In that context, the Republic of Slovenia will grant a State guarantee on newly issued debt (hereinafter "the Measure") in line with the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (hereinafter "the 2013 Banking Communication").[1] The maximum amount of the guarantees to be provided is EUR 540 million which represents 59% of the total assets of the Bank. The estimated duration of the liquidity facility is one year with a maximum duration of three years.

[1] OJ C216, 30.7.2013, p. 1.

3 POSITION OF THE SLOVENIAN AUTHORITIES

(9) The Slovenian authorities accept that the Measure constitutes State aid and request the Commission to verify if it is compatible with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ("the TFEU"), as it is necessary in order to remedy a serious disturbance in the Slovenian economy.

(10) By its letter of 6 September 2013 the Bank of Slovenia stated that the situation of the Bank threatened financial stability and that an urgent intervention was therefore necessary to avoid a serious disturbance in the economy of Slovenia.

(11) In addition, the Slovenian authorities submit that the Measure is (i) appropriate and well-targeted; (ii) necessary and limited to the minimum amount necessary; and (iii) proportionate as designed to minimize negative spill-over effects on competitors.

(12) Slovenia commits that the Bank will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without prior authorisation of the Commission. Furthermore Slovenia commits that the Bank will respect an acquisition ban. Slovenia will ensure that the liquidity facility will not compromise the full burden-sharing of the shareholders and subordinated debt holders of the Bank.

(13) The Slovenian authorities submitted further commitments which comply with the 2013 Banking Communication. In particular in order to align the Measure with the requirements of Section 4 ("Guarantees and liquidity support outside the provision of central bank liquidity") of the 2013 Banking Communication the Slovenian authorities submitted the following commitments:

(i) The guarantees will only be granted for newly issued debt instruments with maturities of no more than three years.

(ii) The minimum remuneration level of the State guarantees will be in line with the formula set out in the 2011 Prolongation Communication.

(iii) A liquidation plan will be submitted to the Commission within two months of the date of the decision.

(iv) The Bank will refrain from advertising referring to State support and from employing any aggressive commercial strategies which would not take place without the support of the Member State.

4 ASSESSMENT

4.1 Existence of State Aid

Aid to the Bank

(14) The Commission first has to assess whether the Measure 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 favoring certain undertakings, in so far as it affects trade between Member States. The Commission in that context observes that the Slovenian authorities do not dispute that the Measure constitutes State aid.

(15) The Commission observes that the Measure is granted by Republic of Slovenia and is directly financed through State resources.

(16) The Measure confers an advantage on the beneficiary of the aid, the Bank. In particular, the measures allows the Bank stabilize the liability side of its balance sheet. In the circumstances in which the Bank finds itself, no private operator acting on the basis of market logic would give liquidity support to the Bank. Moreover, the pricing formula applicable to the guarantees fall below the levels which the Bank could expect to pay even if it was able to identify a potential private guarantor. Since the Measure is available only to the Bank, the Measure confers a selective advantage on it.

(17) The Commission finds that the Measure distorts competition as it allows the Bank to obtain liquidity necessary to avoid insolvency.

(18) The Commission finds that the Measure is also likely to affect trade between Member States as the Bank competes both on the Slovenian market, where some of the Bank's competitors are subsidiaries and branches of foreign banks, and in another Member State.

Conclusion on the aid to the Bank

(19) On the basis of the forgoing, the Commission considers that the Measure fulfils all the conditions laid down in Article 107(1) TFEU and that the Measure qualifies as State aid to the Bank.

4.2 Compatibility of the aid

(20) As regards compatibility with the internal market of the Measure provided to the Bank, the Commission must first determine whether the aid can be assessed under Article 107(3)(b) TFEU, i.e. whether the aid remedies a serious disturbance in the economy of Slovenia. Subsequently, the Commission, applying that legal basis, has to assess whether the notified aid measure is compatible with the internal market.

4.2.1 Legal basis for the compatibility assessment

(21) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State." The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications[2] as well as in the 2013 Banking Communication.

[2] Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (*"2008 Banking Communication"*), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition

(22) The Commission observes that market conditions have remained difficult globally since the end of 2008. The Commission notes that Slovenia, in particular, is being severely hit by the financial, economic and sovereign crisis. The economic downturn combined with the fall in property prices and the exposure of the Slovenian banks to problematic sectors, have led to a significant increase of the level of non-performing loans.

(23) Without the proposed Measure, the Bank would not have had enough liquidity to proceed with an orderly winding down with potential severe adverse impacts on other banks and the wider financial system in Slovenia. The assessment of the Slovenian authorities is that the Bank's financial distress would destabilise the Slovenian financial markets and trigger a general crisis of confidence at the present delicate juncture.

(24) By letter of 6 September 2013 the Bank of Slovenia states that the situation of the Bank threatened financial stability and that the State intervention was therefore necessary to avoid a serious disturbance in the economy.

(25) In view of the above the Commission considers that the Measure has to be examined under Article 107(3)(b) TFEU.

4.2.2 Compatibility assessment

(26) The Commission will assess whether the Measure complies with the general criteria of *appropriateness, necessity* and *proportionality* for compatibility under Article 107(3)(b) TFEU.

a. Appropriateness of the Measure

(27) The Measure should be appropriate to remedy a serious disturbance in the Slovenian economy. The Measure aims at improving the Bank's liquidity position, taking into account possible further deposit withdrawals in the near future.

(28) The Slovenian authorities commit in line with requirements (a) and (b) of point 59 of the 2013 Banking Communication that guarantees will only be granted on newly issued debt instruments with maturities of no more than three years.

(29) The Measure is appropriate because it effectively meets its objective of ensuring that the Bank can meet its liquidity and immediate funding needs. The Measure also effectively achieves the objective of preventing the disorderly winding down of the Bank, which will reassure the markets and improve confidence in the Slovenian financial system. The Measure thus is appropriate to remedy a serious disturbance in the economy.

(*"Recapitalisation Communication"*), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector (*"Impaired Assets Communication"*), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (*"Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication"*), OJ C 329, 7.12.2010, p. 7 and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*), OJ C 356, 6.12.2011, p. 7.

b. Necessity – limitation of the aid to the minimum

(30) The aid measure must, in its amount and form, be necessary to achieve its objective. That requirement implies that the liquidity facility must be of the minimum amount necessary to reach its respective objectives. In that context, the Commission observes that the amount of the Measure will ensure that the Bank can compensate for the projected liquidity outflows and will be able to fund its existing activities.

(31) As regards the remuneration of the Measure, the Slovenian authorities informed the Commission that it will be aligned with requirement (c) of point 59 of the 2013 Banking Communication, i.e. with the formula set in the 2011 Prolongation Communication.

c. Proportionality – measures limiting negative spill-over effects

(32) The Measure is in line with requirements (d) to (f) of point 59 of the 2013 Banking Communication. The Slovenian authorities provided the following commitments:

(i) A liquidation plan will be submitted to the Commission within two months of the date of this Decision.

(ii) The Bank will refrain from advertising referring to State support and from employing any aggressive commercial strategies which would not take place without the support of the Member State.

(33) In addition Slovenia commits that the Bank will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without prior authorisation by the Commission. Slovenia also commits to an acquisition ban.

(34) Therefore, taking into consideration the liquidity needs (up to EUR 540 million) of the Bank combined with the need to maintain financial stability in Slovenia, the Commission considers that the Measure minimises the distortions of competition caused by the aid during the rescue period.

CONCLUSION

- The Measure notified by the Republic of Slovenia for the benefit of the Bank in form of guarantees on newly issued liabilities of up to EUR 540 million constitutes State aid pursuant to Article 107(1) TFEU.
- The Measure is temporarily compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU in light of the 2013 Banking Communication.
- The Measure is accordingly approved for two months or, if Slovenia submits a liquidation plan within two months from the date of this decision, until the Commission will adopt a final decision on the liquidation plan.
- The Commission notes that Slovenia exceptionally accepts that the adoption of the Decision be in the English language.

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http://ec.europa.eu/competition/elojade/isef/index.cfm

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President