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PUBLIC VERSION

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**Subject: State aid SA.46066 (2016/N) – Croatia
Resolution scheme for small credit institutions with total assets below
EUR 1.5 billion**

Sir,

1. PROCEDURE

- (1) On 21 July 2016, Croatia entered pre-notification discussions for a scheme for the resolution of financial institutions in distress ("the resolution scheme").
- (2) On 15 September 2016, Croatia notified a resolution scheme for the resolution of small credit institutions with total assets below EUR 1.5 billion, in Croatia.
- (3) By letter dated 9 September 2016, Croatia agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958¹ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

2.1. The objective of the resolution scheme

- (4) The objective of the resolution scheme is to lay down the framework for the orderly resolution of small banks, with total assets below EUR 1.5 billion, in Croatia. Banks with total assets above that threshold will not be covered by the

¹ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

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resolution scheme and any resolution action applied to them will therefore have to be notified individually for assessment and approval by the Commission.

2.2. Description of the resolution scheme

2.2.1. The banking system in Croatia

- (5) As of end 2015 there were 33 credit institutions authorised to operate and licenced to provide banking services in Croatia. The total size of the assets of the banking sector in Croatia at end 2015 was around EUR 51 billion.
- (6) The aggregate profit and loss account of Croatian banks at the end of 2015, resulted in a loss of EUR 0.6 billion.
- (7) All banks in Croatia fall under the regulation and supervision of the Croatian National Bank ("HNB"). Both the HNB and the State Agency for Deposit Insurance and Bank Resolution (the DAB) are responsible for bank resolution in Croatia. The HNB has mostly a role in planning the resolution actions and is also responsible for early interventions, identification of banks failing or likely to fail and for establishing whether the public interest requirement for resolution actions is fulfilled. The DAB is responsible for decision making and executing resolution over distressed credit institutions. In the same time the DAB is also the officially recognised Deposit Guarantee Scheme ("the DGS") in Croatia. The funds of the DAB are provided by the contributions of credit institutions in Croatia, according to the requirements of the Directive 2014/49/EU², for the deposit insurance functions and with the requirements of Directive 2014/59/EU³, for the bank resolution functions.

2.2.2. The legal basis of the resolution scheme

- (8) The resolution scheme is based on the resolution framework laid down in the Croatian Resolution Act for credit institutions and investment companies⁴ (ZOSI), which in February 2015 transposed Directive 2014/59/EU into Croatian legislation.

2.2.3. The resolution process

- (9) For the purpose of this resolution scheme (as well as for bank resolution in general), the resolution process is initiated by the HNB when a bank in distress does not meet the capital requirements within the deadline set by the HNB and after the HNB identified that resolution action in relation to that bank in distress is in the public interest according to Article 32(1)(c) of Directive 2014/59/EU.

² Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, OJ L 173, 12.6.2014

³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms of the European Parliament and of the Council, OJ L 173, 12.6.2014.

⁴ Croatian Act on Resolution of credit institutions and investment companies (Zakon o sanaciji kreditnih institucija i investicijskih društava (short: ZOSI) adopted by the Croatian Parliament and in force since 26 February 2015).

- (10) The HNB will then inform the DAB that it proposes to take resolution action in relation to that institution. The proposal will be supported with detailed justification on the fulfilment of resolution conditions and an explanation as to why ordinary insolvency proceedings are not appropriate.
- (11) Under Croatian law, within three working days from receiving the proposal, the DAB is obliged to take a decision on initiating the resolution procedure (or rejecting the proposal with detailed explanations and justification for such a rejection).
- (12) The decision to initiate the resolution process includes the replacement of all management bodies and senior management of the institution under resolution.
- (13) From the moment the DAB decides to take resolution action the roles and responsibilities for all decisions of the supervisory board and the general assembly of the institution under resolution are transferred and delegated to the DAB.
- (14) All resolution actions and resolutions tools taken by the DAB will be based on the valuation of assets and liabilities performed by an independent appraiser in accordance with Article 36 of Directive 2014/59/EU.
- (15) All resolution actions and costs related to resolution will be financed in the following order from:
 - i. Shareholders' capital;
 - ii. Capital instruments;
 - iii. Bail-in-able liabilities;
 - iv. Financing arrangements provided by the DAB as resolution authority and the Deposit Guarantee Fund (the DGF)⁵.
- (16) The use of the financing arrangements provided by the DAB acting as a resolution authority and the Deposit Guarantee Fund ("the DGF") can only be triggered by the DAB after shareholders' capital has been fully written down and after other capital instruments (including subordinated debt) have also been fully converted and written down for covering losses.
- (17) The resolution of credit institutions with assets below EUR 1.5 billion will be carried out using the following resolution tools, provided by Directive 2014/59/EU:
 - i. Bail-in tool;
 - ii. Asset separation tool;
 - iii. Sale of business tool.

⁵ The amount of contribution from the DGF is limited to the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

2.3. Description of the measure

2.3.1. The bail-in tool and recapitalisation of the institution under resolution by the DAB

- (18) The bail-in tool will be applied in accordance with Article 43 of Directive 2014/59/EU as transposed into national law.
- (19) For the institution under resolution, the write down of shareholders' capital and conversion of other capital instruments will be applied before any other resolution action is taken.
- (20) After the write down of shareholders' capital followed by the conversion and write down of the rest of capital instruments, the bail-in tool may be applied to all liabilities non-eligible for deposit insurance. Specifically, the bail-in tool will be applied to cover losses and to recapitalise the institution under resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation.

2.3.2. The asset separation tool

- (21) The asset separation tool will be applied in accordance with Article 42 of Directive 2014/59/EU. The DAB will establish an Asset Management Company (AMC) - a vehicle with the purpose of receiving assets, rights and liabilities from the institution under resolution.
- (22) The AMC will serve the purpose of managing the assets transferred to it with a view to maximising their value through sale or liquidation.
- (23) The AMC will receive non-performing loans ("NPL") from the institution under resolution at their market value.

2.3.3. The sale of business tool

- (24) The sale of business tool will be applied in accordance with Article 38 of Directive 2014/59/EU.
- (25) The application of that tool will start at the latest within 30 days after finalisation of application of all previous resolution tools and the registration of the changes in the ownership structure in the national register of companies.
- (26) In order to ensure an open, transparent, non-discriminatory and competitive selling process, the DAB will organise a public tender and make a public invitation for all interested buyers to express their interest in purchasing the institution under resolution.
- (27) The highest price will be the primary criterion for the selection of the acquirer. Proof of loss absorbing capacity and of a business reorganisation plan for restoring long-term viability of the resolved institution will also be taken into consideration for the final decision.

- (28) The banking licence of a residual entity will be withdrawn once the sale is completed and once the institution under resolution is merged or integrated into the business of the purchaser. The purchaser will not be allowed to independently use the licence, name, brand name and logo initially held by the institution under resolution. The institution under resolution will, through sale and integration with purchaser, cease to exist as an independent credit institution.
- (29) The sale of business and the transfer of shares will take place within four months from initiating the sales process. Without prejudice to the timelines of the agreement on commercial terms between the DAB and the purchaser, the sale of business and transfer of shares will only produce legal effect upon receiving approval from the competent authority (the HNB). All voting and other rights attached to the shares can and will be transferred to the acquirer together with the transfer of shares.

2.3.4. *The aid measure*

- (30) According to the resolution process notified for the purpose of this resolution scheme by Croatia, the DAB will provide State support for the recapitalisation of the institution under resolution, in case the capital requirements necessary for the authorisation of banks are not restored by the bail in. The injection of State funds will take the form of issuance of new shares subscribed by the DAB. Such an injection will only take place after the bail-in of shareholders, subordinated debtholders and other liabilities is implemented in accordance with the provisions of the national law transposing Directive 2014/59/EU and after ensuring full bail-in of shareholders and subordinated creditors in line with point 44 of the 2013 Banking Communication⁶.
- (31) The DAB, acting as a resolution authority, will provide State funds in accordance with the requirements on the scope of the bail in provided in Article 44 of Directive 2014/59/EU after ensuring the conditions for resolution in Article 32 of Directive 2014/59/EU have been fulfilled.
- (32) The DAB, acting as the DGF, will provide State funds in accordance with Article 109 of Directive 2014/59/EU, i.e. the amount of losses that covered depositors would have suffered in insolvency. The trigger for the intervention of the DGF is the decision of the resolution authority to take an orderly resolution action, instead of putting the institution entering resolution into normal liquidation procedures.
- (33) The purpose of the aid measure provided by the DAB is to allow the exit of the bank from the market through a sales process in accordance with the process discussed in section 2.3.3.

⁶ 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, ("Banking Communication"), OJ C 216, 30.7.2013, p. 1.

3. POSITION OF CROATIA

- (34) Croatia requests the approval for granting State aid in a resolution scheme for small credit institutions with total assets below EUR 1.5 billion, referring to point 84 of the 2013 Banking Communication.
- (35) Croatia accepts that the aid measure provided by the DAB can constitute State aid within the meaning of Article 107(1) TFEU, but is of the view that the resolution scheme is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary in order to remedy a potential serious disturbance in the Croatian economy.
- (36) Croatia submitted a letter by the HNB, supporting the need for the introduction of such a resolution scheme due to the strong regional presence of small banking institutions which are vital for the provision of loan and deposit services for retail and small and medium-sized companies. Therefore, the application on such banks of standard bankruptcy provisions would produce material adverse impacts that resolution procedures could avoid.
- (37) Croatia submitted the following commitments to the resolution scheme:
- i. Croatia commits that in this resolution scheme an institution under resolution will, through sale and integration with a purchaser, cease to exist as independent credit institution.
 - ii. Croatia commits that the sale process of the bank entering resolution shall be open, transparent, non-discriminatory, competitive and on market terms, with the aim of maximising the sale price and at the same time excluding State aid to the buyer.
 - iii. Croatia also commits that if the bank or parts of the bank which are not going to be transferred to an AMC are not sold within the four-month period from the start of the sale process, the bank or those remaining assets will become subject to ordinary insolvency proceedings and any remaining banking license shall be revoked no later than two years after the start of the resolution process.
 - iv. Croatia commits that as long as the credit institution under resolution continues to operate, it shall not actively compete on the market, enter new markets or pursue any new activities. Its operations shall in principle be limited to continuing and completing activities pending for existing customers, hence it shall not attract new customers. Any new activity with existing customers shall be limited to changing the terms of existing contracts and restructuring existing loans, provided that such changes improve the relevant asset's net present value.
 - v. Croatia commits that the application of the bail in tools foreseen in Directive 2014/59/EU is an integral part of the scheme. The bail in tool will be applied first on shareholder's capital and capital instruments. Where shareholders' capital and capital instruments are not sufficient to restore the bank's capital position, the bail in tool will also be applied over all deposits non-eligible for deposit insurance in small credit institutions under resolution. When applying the bail in tool over shareholders' capital, over capital instruments and over deposits non-eligible for deposit insurance, Croatia states that the resolution authority will not apply any exclusion in accordance with Article 44 (3) of Directive 2014/59/EU. If the

resolution authority decided to exclude some liabilities from bail in, it will inform the Commission in advance on the application of Article 44 (12) of the directive 2014/59/EU. In such a case, Croatia would also have to notify such a measure for State aid review by the Commission prior to its implementation, since the present decision is based on the premise that no such exclusions will be applied.

- vi. Croatia commits to limit the amount of aid to the minimum necessary to keep the institution under resolution afloat during the sale process in view of the objective pursued while complying with the burden-sharing requirements of the 2013 Banking Communication.
- vii. Croatia commits that if a sale is successfully achieved within the four month time horizon, the DAB would perform an analysis of the long-term viability of the combined entity resulting from the sale transaction. Inter alia, the analysis should show that:
 - i. the resulting entity complies with all regulatory capital requirements, and is expected to continue to do so at least in the following three years, based on conservative assumptions;
 - ii. the resulting entity is able to cover all its costs and provide an appropriate return on equity;
 - iii. the purchaser has the financial resources, proven expertise and incentive
 - 1. to address any weaknesses of the acquired business;
 - 2. to maintain and develop the acquired business as a viable institution;
 - 3. to ensure that that the merged entity does not suffer from the same vulnerabilities as the Bank prior to its resolution.
- viii. Croatia commits that when transferring assets to an AMC, the market value of the assets to be transferred shall be determined at the most granular level of the portfolios, i.e. at loan level. The transfer of any asset from the institution under resolution to the AMC will take place at their current market value at the moment of the transfer.
- ix. Croatia commits that it will report to the Commission on the operation of the resolution scheme and the utilised aid amounts no later than 45 days after the end of the relevant half-year starting from the date of the adoption of this decision. Those reports will also provide the information for each credit institution for which the resolution scheme may have been used.

4. ASSESSMENT

4.1. Existence of State aid

- (38) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods

shall, in so far as it affects trade between Member States, be incompatible with the internal market.

- (39) The Court of Justice has repeatedly confirmed that all financial means by which the public authorities actually support undertakings fall under State aid control, irrespective of whether those means are permanent assets of the public sector. Compulsory contributions that are mandatory by and managed and apportioned in accordance with the law or other public rules imply the presence of State resources, even if not administered by the public authorities. The mere fact that resources are financed by private contributions is not sufficient to rule out the public character of those resources. The relevant factor is not the direct origin of the resources but the degree of intervention of the public authority within the definition of the measure and its method of financing.
- (40) Moreover, as the Court of Justice pointed out in *Ladbroke*⁷, *Stardust Marine*⁸ and *Doux Élevage*⁹, resources that remain under public control and are therefore available to the public authorities constitute State resources.
- (41) The Court of Justice has also clarified in *Stardust Marine* that imputability to the State of an aid measure taken by a *prima facie* independent body which does not itself form part of the State (for instance, a public undertaking) can be inferred from a set of indicators arising from the circumstances of the case, such as the fact that, apart from factors of an organic nature which link it to the State, the body in question cannot take the contested decision without taking into account the requirements or directives of the public authorities before taking the decision allegedly involving State aid. Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State¹⁰. Similarly, the fact that private persons participate in the running of an entity is not sufficient to exclude imputability to the State of the interventions at issue.
- (42) In Croatia the DGS and the resolution authority are grouped together under the same institution, the State Agency for Deposit Insurance and Bank Resolution (the DAB). According to the law of its establishment¹¹, The State Agency for Deposit Insurance and Bank Resolution is an Agency founded by the State and whose commitments are fully guaranteed by the State, according to Article 2 of the law of its establishment. The DAB is governed by a Management Board¹² whose members are appointed by the Croatian Government and are either members of the

⁷ Case C-83/98 P *France v Ladbroke Racing and Commission* EU:C:2000:248, paragraph 50: "even if the sums [...] are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources".

⁸ Case C-482/99 *France v Commission* ("*Stardust Marine*") EU:C:2002:294.

⁹ Case C-677/11 *Doux Élevage SNC and other* EU:C:2013:348.

¹⁰ The General Court has also considered the "supervision by the public authorities" as "one of three indicia show[ing] that the Commission was correct to find that the measures at issue [...] were directly imputable to the [...] State", in Case T-387/11 *Nitrogénművek Vegyipari Zrt. v Commission* EU:T:2013:98, paras 65 and 66.

¹¹ State Agency for Deposit Insurance and Bank Rehabilitation Act, Official Gazette No. 44/94, 79/98, 19/99, 35/00, 60/04, 12/12, 15/13.

¹² State Agency for Deposit Insurance and Bank Rehabilitation Act, Official Gazette No. 44/94, 79/98, 19/99, 35/00, 60/04, 12/12, 15/13, Article 12.

Government or of the Parliament of Croatia. The Minister of Finance is the Chairman of the Management Board, while the Presidents of the Croatian Parliament Finance and Central Budget Committee and of the Croatian Parliament Committee on the Economy are Members of the Management Board. The Management Board reports to the Government for its work. The Agency's executive director, who is responsible for its day-to day operations, governs and legally represents it, is also appointed and revoked by the Croatian Government. In its role as the DGF, the agency protects deposits in banks and in the savings banks up to the amount of the covered deposits. In its role of resolution authority it has the power to "conduct the bank resolution process" deciding on the resolution strategy and on the use of resolution funds. According with the law of its establishment, it is the Management Board that takes the decision "whether to approve loans to a bank that went through the resolution process".

- (43) Regarding the State support provided by the DAB as resolution fund, the Commission considers that, in line with established case-law¹³, the intervention by the resolution fund – even if financed through private contributions as it is presently the case in Croatia – involves State resources, in light of the following considerations.
- (44) The management and use of resolution fund resources is decided in accordance with ZOSI and the law establishing the DAB with the aim of providing financial assistance to the application of resolution measures adopted by the resolution authority for institutions that have passed the public interest test (see recital (9)). The use of resolution fund resources will be triggered by the resolution measure adopted by the resolution authority, i.e. by decision of the DAB's Management Board (see recital (42)). The Commission therefore considers that the measure is financed through State resources and is imputable to the State.
- (45) Regarding the intervention by the DAB as the DGF, the Commission considers that the intervention from the DGF also involves State resources.
- (46) As mentioned already in recital (41) the case-law of the Union courts considers measures imputable to the State and financed through State resources where a set of indicators show that, under application of national legislation, the State exercises control and influence to ensure that the use of resources of a private body fulfils a public policy objective with which that body is entrusted.
- (47) In this respect, as pointed out in recital (42), the State exercises control over the use of resources of the DAB in all its roles, according to the mandate it has given to the DAB by its establishment law. Not only does the State decide the overall strategy of the DAB by directly appointing the members of the Management Board, but it also controls its day to day operations as the Agency's executive director is appointed and revoked by the government. As the State guarantees the commitments of the DAB, it also bears the final risk of its actions. The DAB Management Board report to the Government for its work, submits yearly reports to the Government and the Croatian National Bank and is audited by the State Audit Office.

¹³ See Case C-345/02 *Pearle and others* EU:C:2004:448, paragraphs 37 and 38. That approach was applied in Commission decision in the State aid case NN 61/2009 – "Rescue and restructuring of Caja Castilla-La Mancha", Spain, 29.06.2010, C(2010)4453 corr., recitals 96-118.

- (48) The Commission is of the opinion that, the elements set out in recitals (42), (46) and (47) show that the DGF remains under constant public control, when it performs its functions, over objectives fixed and defined by the public authorities (resolution authority), going beyond a mere formal control of the validity and lawfulness of its behaviour.
- (49) The Commission considers that these elements are indicators showing that the DGF interventions according to this Scheme involve State resources and is imputable to the State.
- (50) Both the contribution by the resolution fund and by the DGF to a bank under resolution are triggered by the discretionary decision of the DAB as the resolution authority to resolve an institution and thus preserve (parts of) its economic activity which otherwise would have been put into ordinary insolvency procedure that would have terminated the economic activity. The sale of business is a sale "en bloc", as key productive banking assets will be transferred (branches, deposits and loans) to the purchaser. This is in contrast to the pay-out of covered deposits by the DGF in cases of liquidation of banks, which are mandatory under Directive 2014/49/EU.
- (51) The contributions by the resolution fund and by the DGF therefore support the economic activity of the institution under resolution thus granting a selective advantage to it.
- (52) Regarding the other resolution tools notified by Croatia, the Commission notes that according to information provided by Croatia, the AMC is established and fully owned by the DAB and thereby fulfils the same conditions as measures implemented by the resolution authority directly. Therefore asset transfers to the AMC could potentially involve additional advantages and hence State aid.
- (53) However, Croatia has committed (see recital (37) viii) that any transfer of NPLs portfolios to the AMC will always occur at market prices. These are defined in the Commission's Impaired Assets Communication¹⁴ meaning that such transfer would not provide an advantage to the institution under resolution. Therefore, the Commission concludes that the transfer of portfolios to the AMC at market values (for more details on the valuation principles see Footnote 14) does not constitute State aid within the meaning of Article 107(1) TFEU.
- (54) The Commission considers that the resolution scheme concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the resolution scheme, participating banks may obtain capital support under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, which is a highly competitive market, any advantage from State resources to a bank affects intra-Union trade and threatens to distort competition. The measures available to the banks participating in the resolution scheme therefore constitute State aid within the meaning of Article 107(1) TFEU.

¹⁴ Communication from the Commission on the treatment of impaired assets in the Community banking sector ((2009/C 72/01), ANNEX IV, Valuation and pricing principles and processes, section I. Valuation methodology and procedure

4.2. Compatibility of the resolution scheme

4.2.1. Legal basis

- (55) The measures proposed by Croatia should be appropriate to remedy a serious disturbance in the Croatian economy. As presented by the Croatian authorities, the strong regional presence of the small banking institutions is vital for the provision of loan and deposit services for retail and small and medium sized companies. The introduction of the resolution scheme for such institutions' orderly wind-down in case of difficulties, provided the public interest test is considered met by the competent authority, is an appropriate response to the potential disruptions that the Croatian economy may experience otherwise.
- (56) Indeed, the letter from the HNB of 15 September 2016 points out that a disruption of financial services during standard bankruptcy proceedings would have a material adverse impact and therefore finds the introduction of such a scheme to be in the public interest. The Commission has no grounds to dispute this assessment.
- (57) The Commission will therefore assess the proposed State aid measure under the 2013 Banking Communication, section 6.

4.2.2. Compatibility assessment

- (58) Point 84 of the 2013 Banking Communication provides that the Commission will continue to consider approval of liquidation aid schemes for credit institutions of limited size. The measures envisaged for Croatia cover precisely this type of institutions, limiting the application of the notified resolution scheme to banks with a total balance sheet below EUR 1.5 billion.
- (59) Points (71) to (78) of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of an orderly liquidation. Point (70) states that the Commission will assess the compatibility of liquidation aid measures aimed at resolving credit institutions on the same lines *mutatis mutandis* as set out in Sections 2, 3 and 4 of the Restructuring Communication¹⁵. Finally, points (79) to (82) specify rules to be complied with in case a credit institution is sold during the orderly liquidation procedure.
- (60) Therefore, the Commission considers that, in order for the notified aid measure to be compatible under Article 107(3)(b) TFEU, it must comply with the following criteria:
- (a) *Limitation of liquidation costs*: aid amounts should enable the credit institution to be wound up in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary credit institution continues to operate;

¹⁵ 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.

- (c) *Own contribution (burden-sharing)*: appropriate own contribution to liquidation costs should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity;
- (d) *Restoring long-term viability*: the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.

Limitation of liquidation costs

- (61) The resolution scheme for small credit institutions with total assets below EUR 1.5 billion aims at facilitating the acquisition of the distressed bank by a viable financial institution, selected through a competitive sale process. The resolution scheme aims at obtaining the highest possible price for the sold bank, thus reducing the final cost of resolution.
- (62) The application of burden-sharing, in line with the requirements of the 2013 Banking Communication and Directive 2014/59/EU also limits the intervention from State resources, as the losses of the institutions entering resolution will be covered from private sources first.

Limitation of distortions of competition

- (63) As regards distortions of competition, the Commission notes that Croatia has committed, in line with point 59(f) of the 2013 Banking Communication, to a ban on any aggressive commercial strategies (see recital (37) iv). Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.
- (64) Moreover, the activities of the institutions under resolution will be offered by the DAB to competitors through an open auction providing opportunity to any competitor to acquire the corresponding market share.
- (65) Additionally, following the liquidation and the transfer of assets and liabilities, the institution under resolution will cease to exist as a stand-alone competitor. The acquired activities will be fully integrated into the purchaser and those assets and liabilities excluded from the acquisition and not transferred to the AMC will be liquidated following the ordinary insolvency procedure. Likewise, in case the sale fails within the committed time period, the banking licence of the institution will eventually be withdrawn within a reasonable period. Bundles of assets and liabilities can be sold out of the bank in wind-down, so as to facilitate the withdrawal of the licence.

- (66) The Commission also notes that, in line with the 2013 Banking Communication, measures under the resolution scheme are only available to small credit institutions with total assets of less than EUR 1.5 billion, which is below the threshold provided for in the 2013 Banking Communication. Consequently, any aid measures that would be granted for institutions with more than EUR 1.5 billion must be notified individually.
- (67) Croatia will report on the operation of the resolution scheme no later than 45 days after the end of the relevant half-year starting from the date of this decision.

Own contribution (Burden-Sharing)

- (68) For resolution aid to be declared compatible, section 3.1.2 of the 2013 Banking Communication, explains that shareholders and subordinate debt holders have to contribute as much as possible to the cost of the intervention.
- (69) Croatia also committed to comply with the burden-sharing requirements of the 2013 Banking Communication. In addition Croatia states that the application of the bail-in tool according to Directive 2014/59/EU is an integral part of the resolution scheme. The Commission also takes note of the position of Croatia on exclusions from bail in.

Restoring long term viability

- (70) As the resolution scheme provides for the sale of the failing bank, certain principles of the Restructuring Communication have to be respected. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution has to lead to a restoration of the viability of the transferred bank or parts of it. The sale of a bank in distress should in particular fulfil the conditions set out in point 17 of the Restructuring Communication, i.e. the purchaser should demonstrate that the integrated entity will be viable and the requirements regarding own contribution and limitations of competition distortions are respected. In this respect, as mentioned in recital (37) vii, Croatia has committed to perform an assessment of the viability of the resulting institution to be assured that the resulting entity will be viable in the long term. The Commission notes that Croatia has committed to report on the utilisation of the resolution scheme and thus on the compliance with the commitments it has undertaken.

Conclusions on the overall compatibility of the aid measures

- (71) In line with the considerations above, the Commission considers that the notified resolution scheme meets all the conditions and requirements of the 2013 Banking Communication, notably the provisions on the conditions for authorization of liquidation aid (section 6.2) and on liquidation schemes (section 6.4).
- (72) The notified aid measures therefore are deemed to be compatible with the internal market pursuant to Article 107(3)(b) TFEU.

(73) Therefore, the resolution scheme for small credit institutions with total assets below EUR 1.5 billion can be introduced for a period of six months from the approval of the scheme. Any further prolongation will require the Commission's approval.

5. COMPLIANCE OF THE RESOLUTION OF THE BANK WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

(74) The Commission notes that the aid measures do not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution, which in this specific case relate to Article 44(5) and Article 59(3).

(75) In particular, the provisions of the resolution scheme are in line with Article 59(3) of Directive 2014/59, as the resolution scheme's criteria ensure that the capital instruments are fully written-down, since equity holders and subordinated bond holders of a failing bank which benefits from the resolution scheme are fully wiped out and suffer 100% of losses.

(76) In addition, according to Directive 2014/59, Member States must apply provisions adopted to comply with Section 5 of Chapter IV of Title IV, which includes Article 44(5). In the case of Croatia, the relevant legislation transposing the Directive has been in force since 1 February 2015.

6. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union and not to raise objections to the resolution scheme.

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

