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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State Aid SA.47081 (2016/N) – Italy – Liquidity support to MPS bank

Sir,

1. PROCEDURE

(1) On 20 December 2016, the Italian authorities submitted to the Commission an informal request for granting liquidity aid to Banca Monte dei Paschi di Siena S.p.a. (the "Bank").

(2) On 28 December 2016, the Italian authorities submitted an individual notification to the Commission for granting liquidity aid to the Bank. That notification was in line with the commitment undertaken by Italy in the Commission decision of 26 June 2016 on the Italian bank guarantee scheme[1] (hereafter "the original guarantee decision") in particular with the obligation to submit an individual notification for granting liquidity support to a bank with a capital shortfall. The Italian authorities included in the notification the Bank's request for liquidity support, a letter from the Minister of Economy and Finance, a letter from the

[1] Commission Decision of 26 June 2016 in case SA.45753 on the Italian bank guarantee scheme, not yet published

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Single Supervisory Mechanism ("SSM"), a capital raising plan, a document with details on the calculations of the guarantee fees and a list of commitments undertaken by Italy.

(3) By letter dated 28 December 2016, Italy agreed exceptionally 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 1/1958[2] and to have the present decision adopted and notified in English.

2. FACTS

2.1. Description of the beneficiary

(4) The Bank is the third largest Italian bank with a total balance sheet of EUR 160 billion, 25 641 employees and 2 043 branches[3].

(5) On 17 December 2012, the Commission temporarily approved[4] a State recapitalisation of the Bank of EUR 3.9 billion in the form of newly issued hybrid capital instruments. On 28 February 2013, the Italian Ministry of Economy and Finance granted the aid and subscribed to those instruments. On 27 November 2013, the Commission approved definitively the measure by means of a restructuring decision[5]. That restructuring decision was based on a number of restructuring commitments and a restructuring period ending on 31 December 2017.

(6) By June 2015, the bank had fully repaid the recapitalisation aid of 2013.

(7) On 29 July 2016, the European Banking Authority disclosed that in the context of the 2016 EU-wide stress test exercise, the Bank had no capital shortfall in the baseline scenario, whilst in the adverse case, there was a capital shortfall[6].

(8) On 23 December 2016, the Bank formally filed a liquidity aid request[7] asking for State guarantees on liabilities worth EUR 15 billion. The Bank explained that it has EUR [5-10][8] billion of institutional and commercial liabilities which would mature in […][9] 2017; next to that, the Bank also has an outstanding collateralised instrument with an "optional termination date", which could lead to an additional outflow of EUR [0-5][10] billion. The Bank – in its liquidity aid request – also explained that it still has outstanding State guarantees covering a EUR [0-5][11] billion institutional bond with a maturity date of […][12].

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[2] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
[3] All figures as of September 2016
[4] Commission Decision of 17 December in case SA.35137, OJ C 50, 21.02.2013, p.4
[5] Commission Decision of 27 November 2013 in case SA.36175, OJ C 117, 16.04.2014, p.6
[6] More detailed information on the stress test can be found on: https://www.eba.europa.eu/risk-analysis-and-data/eu-wide-stress-testing/2016/results
[7] Addressed to the Bank of Italy and the European Central Bank with the Ministry of Economy in Finance in copy
[8] Covered by the obligation of professional secrecy
[9] Covered by the obligation of professional secrecy
[10] Covered by the obligation of professional secrecy
[11] Covered by the obligation of professional secrecy
[12] Covered by the obligation of professional secrecy

(9) On 23 December 2016, the Chair and the Vice-Chair of the Supervisory Board of the SSM sent a letter (the "SSM letter") to the Italian authorities which said that at 30 September 2016 - on a consolidated level - the Bank had a Common Equity Tier 1 ratio of 11.49% and that the Bank was solvent at the day of sending the letter from the point of view of compliance with the minimum capital requirements (as per Article 92 of Regulation (EU) No 575/2013[13]). The letter also said that at the same time, the Bank's consolidated capital fulfilled the requirements under Pillar 2[14] and the Combined Buffer Requirements[15]. As regards the stress test, the letter confirmed that the Bank had no capital shortfall in the baseline scenario of the stress test, while the estimated amount of the capital shortfall (by the end of 2018) in the adverse scenario amounted to EUR 8.8 billion.

(10) On the liquidity position of the Bank, the SSM letter notes that between […][16] and […][17], the liquidity position of the Bank rapidly deteriorated as evidenced by the significant drop of the counterbalancing capacity (from EUR [10-20][18] billion to EUR [5-10][19] billion) and of the 1-month net liquidity position (from EUR [10-20][20] billion, i.e. [5-10][21] % of total assets, to EUR [5-10][22] billion, i.e. [0-5][23] % of total assets)). […][24]

2.2. Description of the aid measure

(11) The Bank requests EUR 15 billion liquidity support in the form of:

i) a State guarantee on newly issued liabilities with maturities from three months to three years. The Bank will issue the State guaranteed bond or bonds in one or more tranches until 30 June 2017. The fee for the State guarantee is set at 118 basis points for bonds with a maturity of 12 months or more, and 90 basis points for bonds with a maturity lower than 12 months.

ii) a State guarantee to back up ELA[25] liquidity facilities provided by central banks;

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13 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013,p.1)

14 Pillar 2 refers to the possibility for supervisors to impose a wide range of measures - including additional capital requirements – on individual institutions or groups of institutions in order to address higher-than-normal risk. They do so on the basis of a supervisory review and evaluation process, during which they assess how institutions are complying with EU banking law, the risks they face and the risks they pose to the financial system. (for a more detailed description see: http://europa.eu/rapid/press-release_MEMO-11-527_en.htm)

15 The combined buffer requirement' as defined in Article 128 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.1)

16 Covered by the obligation of professional secrecy

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25 Emergency Liquidity Assistance

3. POSITION OF ITALY

(12) In a letter dated 28 December 2016, Italy argues that the aid is required to remedy a serious disturbance in the Italian economy. Italy explains that a possible liquidity crisis of the Bank could generate contagion effects on the Italian banking system, especially on the weaker banks. This in turn may seriously undermine the trust among financial institutions and also between the latter and the banks' customers, thereby jeopardizing the stability of the domestic financial system and of the economy as a whole.

(13) Italy refers to the SSM letter (see recital (9)) and underlines that the aid is confined to a solvent institution. Italy also confirms that the aid will not be granted until a positive State aid decision is taken.

(14) Italy underlines that the aid is of a precautionary and temporary nature. Based on the Bank's application, Italy notes that the support is requested in order to prevent future liquidity tensions. Furthermore, the support will have a maturity of at most 3 years.

(15) Italy notes that the aid is proportionate to remedy a serious disturbance in the Italian economy. Italy notes that the required support is deemed to be consistent with the liquidity needs of the Bank and could be considered a limited amount if compared to the contagion effects that a possible liquidity crisis could trigger system-wide.

(16) Italy submitted the following commitments relating to the measure:

i. To grant the guarantees only for new issuance of the Bank's senior debt (subordinated debt is excluded);
ii. To provide guarantees only on debt instruments with maturities from three months to three years;
iii. To determine the minimum level of State guarantee remuneration in line with the formula set out in the Commission's 2011 Prolongation Communication[26];
iv. To submit a restructuring or a wind-down plan of the Bank within two months of the granting of the guarantees (unless the aid is reimbursed within the same two months);
v. To impose a ban on advertising referring to the State support granted to the Bank for the purpose of acquiring new clients and business and to prevent the Bank from employing any aggressive commercial strategies which would not take place without the State support;
vi. To suspend any dividend and coupon payments on outstanding instruments by the Bank, unless those payments stem from a legal obligation, as long as the Bank is still benefitting from the State guarantee;
vii. To suspend the exercise of any call options or other capital management deals (e.g. buy backs) without prior authorisation of the Commission, as long as the Bank is still benefitting from the State guarantee;
viii. To impose an acquisition ban for the Bank, as long as the Bank is still benefitting from the State guarantee.

[26] 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, OJ C 356, 6.12.2011, p. 7

4. ASSESSMENT

4.1. Existence of State aid

(17) 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.

(18) The Commission observes that the Italian authorities did not dispute that the measure constitutes State aid.

(19) The Commission observes that the Italian authorities provide the Bank with State guarantees, which are imputable to the State and whereby the Italian authorities clearly commit State resources. Moreover, the Bank receives those State guarantees under conditions which would not be available to the Bank in the market, which implies that the Bank receives an advantage. This advantage is selective in nature as it is only granted to the Bank. The measure will strengthen the liquidity position of the Bank as compared to non-aided actors in the market and thus distorts competition. Since financial institutions from other Member States operate in Italy, the measure is also likely to affect trade between Member States.

(20) In conclusion, the measure meets all cumulative State aid criteria and therefore constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility assessment

(21) Recital 26 of the original guarantee decision provides that: "*Points 23 and 60(a) of the 2013 Banking Communication*[27] *explain that guarantee schemes will continue to be available in order to provide liquidity to banks but that such schemes should be limited to banks without a capital shortfall*". According to recital (15) and the commitment listed in point (viii) of the original guarantee decision, Italy has committed to restrict the support scheme only to banks without a capital shortfall as certified by the competent supervisory authority. The footnote to commitment (viii) of that decision reads as follows: "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

(22) The SSM letter as referred to in recital (8) states that the Bank has an outstanding capital shortfall of EUR 8.8 billion under the adverse scenario of the 2016 EBA/ECB stress test exercise. Therefore an individual notification to the Commission is necessary in accordance with commitment (viii) undertaken by Italy in the framework of the original guarantee decision, i.e. "*where a credit institution with a capital shortfall is in urgent need of liquidity, to submit an individual notification to the Commission.*"

[27] 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, OJ C 216, 30.7.2013, p. 1.

(23) According to that commitment, the Italian authorities have notified the provision of liquidity support to the Bank. Therefore, the Commission needs to assess its compatibility in the present decision.

(24) Point 58 of the 2013 Banking Communication provides that in such circumstances, "*the Commission will apply the procedure set out in points 32 to 34 mutatis mutandis, including the requirement for a restructuring or wind-down plan, unless the aid is reimbursed within two months*". The need for additional scrutiny by the Commission in case of liquidity aid being granted to a bank with a capital shortfall stems in particular from the fact that additional safeguards are warranted to limit distortions of competition.

4.2.1 Legal basis

(25) Under the measure, Italy intends to provide aid in the form of a State guarantee on certain liabilities.

(26) Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011 and in light of the persisting circumstances and risks, the Commission considers it appropriate, as confirmed by the 2013 Banking Communication, to examine the measure under Article 107(3)(b) TFEU.

(27) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended *"to remedy a serious disturbance in the economy of a Member State"*. The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[28] and the Restructuring Communication[29]. The Commission confirmed that view by adopting the 2013 Banking Communication[30]. Also now, the Commission considers that the conditions for State aid to be approved pursuant to Article 107(3)(b) TFEU are still present.

(28) The Commission takes note of the liquidity analysis of the SSM as outlined in recital (10) and of Italy's concerns of contagion. As regards the Bank's liquidity position the Commission remarks that in the context of the monitoring of the Bank's restructuring plan it was informed of the deterioration over time of the liquidity position of the Bank. This deterioration accelerated in the course of the month of December 2016. Therefore, the Commission agrees that the measure is necessary for strengthening the liquidity position of the Bank. Indeed, the Commission finds that the measure aims at ensuring financial stability and, thus, remedying a serious disturbance in the Italian economy.

(29) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

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[28] Commission Communication - Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

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

[30] See points 4-6 of the 2013 Banking Communication.

(30) In order for aid to be compatible with the internal market, it must comply with the general principles for compatibility under Article 107(3) TFEU, viewed in the light of the general objectives of the TFEU. Therefore, according to the Commission's decisional practice[31] any aid or scheme must comply with the following conditions:

(i) appropriateness,

(ii) necessity and;

(iii) proportionality.

(31) The 2013 Banking Communication and the Restructuring Communication formulate assessment criteria for those general principles in light of the specific policy context.

4.2.2 Compatibility assessment of the measure

Appropriateness

(32) The measure is appropriate to remedy a serious disturbance in the Italian economy. The objective of the measure is to strengthen the liquidity position of the Bank. The Commission observes that despite its solvent capital position, the Bank is facing significant deposit outflows since July 2016, when the 2016 EU-wide stress test results were disclosed. As set out in recital (10), these outflows have accelerated in the course of December 2016. The Commission also observes that the negative share price performance of the Bank[32] has eroded confidence in the Bank's creditworthiness, which also had a negative impact on its liquidity position. Hence, the provision of liquidity support to the Bank is an appropriate measure to restore market confidence in the Bank.

(33) The Commission notes that Italy has committed to grant guarantees only to the Bank's new senior debt issuances and to new ELA liquidity facilities provided by central banks, in line with point 59(a) of the 2013 Banking Communication.

Necessity

(34) With regard to the scope of the measure, the Commission notes that Italy has limited the size of the measure to EUR 15 billion and that the maximum maturity of the State guaranteed bond(s) is three years. The Commission has no reason to dispute the assessment of the Italian authorities (see recital (15)) that this amount is well grounded, given the rapid deterioration of the liquidity position of the Bank and also taking into account the Bank's liability maturity schedule as set out in recital (8).

(35) The Commission notes that Italy has committed to grant the guarantee only on instruments with a maturity between three months and three years, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.

[31] See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka", OJ C 314, 29.10.2013, p. 1 and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka", OJ C 314, 29.10.2013, p. 2.

[32] The Bank's share price lost approximately half of its value between the beginning of July and end of November 2016

(36) Regarding the remuneration level, the Commission notes that Italy calculated a fee of 118 basis points for bonds with a maturity of 12 months or more, and 90 basis points for bonds with a maturity lower than 12 months for the State guarantee on the basis of the CDS spreads of the sample of representative European banks in the lowest rating buckets (BBB and below). The Commission observes that, in line with point 59(c) of the 2013 Banking Communication, Italy has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication.

Proportionality

(37) As regards proportionality, the Commission notes that Italy, in line with point 58 of the 2013 Banking Communication, has committed to submit a restructuring or a wind-down plan within two months, unless the aid is reimbursed within those two months.

(38) Furthermore, the Commission notes that Italy has committed, in line with point 59(f) of the 2013 Banking Communication, to a number of behavioural safeguards such as a State aid advertising ban and a ban on any aggressive commercial strategies which would not take place without the State support. Such safeguards help ensure that the Bank do not misuse the received State support to expand its activities.

(39) In addition, the Commission notes that Italy, in line with point 32 of the 2013 Banking Communication, submitted to the Commission the capital raising plan submitted by the Bank in 2016 and endorsed by the SSM. The Commission notes that Italy has also undertaken commitments to prevent the outflow of funds from the Bank, such as the suspension of dividend payments and an acquisition ban as long as the Bank is still benefitting from the State guarantee.

(40) As regards the combination of the measure with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plan or the wind-down plan to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

Conclusions on the compatibility

(41) On the basis of the above, the Commission finds the measure to be in line with the 2013 Banking Communication and the Restructuring Communication. The measure is appropriate, necessary and proportionate to remedy a serious disturbance of Italian economy. Therefore, the Commission concludes that the notified measure can be deemed compatible with Article 107 (3)(b) TFEU.

5. COMPLIANCE WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND OF REGULATION (EU) 806/2014[33]

(42) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ('**BRRD**') and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (**'SRM-R**'), in the event that an institution benefiting from the scheme meets the condition for the application of that Directive or of that Regulation, the Commission notes that the measure does not seem to violate intrinsically linked provisions of BRRD and of SRM-R, namely Articles 32(4)(d)(i) and (ii), and 18(4)(d)(i) and (ii), respectively.

(43) The first subparagraph of Article 32(4) BRRD and of Article 18(4) SRM-R establish that an institution shall be deemed to be failing or likely to fail and placed into resolution, (if all the other pre-conditions for resolution are met), where, *inter alia*, extraordinary public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and to preserve financial stability, the extraordinary public financial support takes the form, inter alia, of a State guarantee of newly issued liabilities or on ELA liquidity facilities provided by central banks.

(44) The second subparagraph of Article 32(4) BRRD as well as Article 18(4) SRM-R provide that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature, they must be proportionate to remedy the consequences of the serious disturbance and they must not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(45) The Commission notes that the measure is granted to one bank, i.e. the Bank, which the SSM considers a solvent institution which experiences temporary liquidity stress. The SSM confirmed that the Bank's Common Equity Tier I ratio stood at 11.49%, on a consolidated basis as of 30 September 2016, i.e. well above the minimum regulatory levels. The guarantee granted is of a temporary nature, since its maturity is up to three years, and is of a precautionary nature, since it only covers newly issued liabilities and new liquidity facilities provided by central banks. The guarantee granted is also proportionate to remedy the consequences of the serious disturbance as explained in recital (32). As the measure is a liquidity measure for a solvent institution, the measure is not meant to offset incurred or likely losses.

(46) Therefore, at the present stage, the Commission concludes that the aid measure does not seem to violate neither the intrinsically linked provisions of BRRD nor of SRM-R. The measure is in compliance with the requirements of Article 32(4) of

[33] 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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190; Regulation (EU) no 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1.

BRRD and of Article 18(4) SRM-R, and it is apt to remedy the consequences of the serious disturbance in the Italian economy.

6. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the measure.

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

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
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Yours faithfully
For the Commission
Margrethe VESTAGER
Member of the Commission