EUROPEAN COMMISSION

Brussels, 18.12.2013
C(2013) 9632 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, 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.

COMMISSION DECISION

of 18.12.2013

ON STATE AID
SA.33229 (2012/C) (ex 2011/N) – Restructuring of NLB – Slovenia

which Slovenia is planning to implement

for Nova Ljubljanska banka d.d.

(Only the English version is authentic)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on Member States and other interested parties to submit their comments pursuant to those provisions[1],

Whereas:

1 PROCEDURE

(1) On 14 January 2011, the Slovenian authorities notified a EUR 250 million State recapitalisation of Nova Ljubljanska banka d.d. (hereinafter "NLB d.d.").

(2) By decision of 7 March 2011[2] (hereinafter "first rescue decision"), the European Commission authorised a first recapitalisation aid in favour of NLB d.d. for a period of six months and upon the submission of a restructuring plan.

(3) The Slovenian authorities notified a restructuring plan on 22 July 2011. They submitted further updates to it on 6 September 2011 and on 26 March 2012.

(4) On 16 May 2012 the Slovenian authorities informed the Commission of their intention to provide a second recapitalisation to NLB d.d.. The measure was notified on 6 June 2012.

(5) By decision of 2 July 2012 (hereinafter "the second rescue and opening decision"), the Commission approved the second recapitalisation of NLB d.d. and at the same time opened an in-depth investigation raising doubts regarding the ability of NLB d.d. to return to viability and the provision of sufficient burden-sharing and measures limiting distortions of competition based on the restructuring plan which had been

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1 Commission Decision in Case SA.34937 (2012/C) (ex 2012/N) Second recapitalisation of NLB and SA.33229 (2012/C) (ex 2011/N) Restructuring of NLB - Slovenia, OJ C 361, 22.11.2012, p. 18.

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

submitted to it.

(6) On 22 November 2012 the second rescue and opening decision was published in the *Official Journal of the European Union* and interested parties were requested to submit their comments.[3] The Commission did not receive any comments.

(7) Following the second rescue and opening decision, on 7 January 2013 the Slovenian authorities notified a revised restructuring plan, an amended version of which was submitted on 25 March 2013. The Slovenian authorities subsequently presented a further amended version of the plan in December 2013. The version of the plan provided to the Commission in December 2013 is referred to in the present decision as the "Restructuring Plan".

(8) Following Commission requests, the Slovenian authorities submitted additional information during the period between 2 July 2012 and 9 December 2013.

(9) On 10 April 2013, the Commission concluded under the Macroeconomic Imbalances Procedure ("MIP") that Slovenia was facing excessive economic imbalances. In the context of the MIP, Slovenia had to carry out an bottom-up and top-down stress test and asset quality review of the Slovenian banking sector (hereinafter "AQR/ST") which was conducted by independent consultants. The Restructuring Plan incorporates the results of the AQR/ST.

(10) For reasons of urgency, the Republic of Slovenia accepts that exceptionally the present decision be adopted in the English language.

2 DESCRIPTION OF THE BENEFICIARY AND SOURCE OF ITS PROBLEMS

(11) NLB d.d. together with its affiliates (hereinafter "NLB" or "the bank") is the largest Slovenian banking and financial group. As of 30 September 2012, it comprised NLB d.d. and 47 banks, companies, branches, and representative offices abroad. NLB is a major banking player in Slovenia and in South Eastern Europe. As of 30 September 2012, NLB represented approximately 30% of the Slovenian banking sector in terms of total assets and was ranked among the top three banks in the Former Yugoslav Republic of Macedonia, Montenegro, Kosovo and Republika Srpska and ranked sixth in Bosnia and Herzegovina. Banking is NLB's most important business, though NLB provides also other financial services, such as insurance, asset management, leasing, factoring, and forfeiting.

(12) NLB is rated Caa2, negative by Moody's and BB-, negative by Fitch. Both ratings were downgraded in 2013. The downgrade was due primarily 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) In Slovenia, NLB offers a full range of personal and corporate banking services with an emphasis on the retail banking market. It is also active in the areas of private, corporate and investment banking.

[3] Commission Decision in Case SA.34937 (2012/C) (ex 2012/N) Second recapitalisation of NLB and SA.33229 (2012/C) (ex 2011/N) Restructuring of NLB - Slovenia, OJ C 361, 22.11.2012, p. 18.

(14) As of 30 June 2013 NLB had the following capital structure: the Republic of Slovenia held 77,51 % of the shares of NLB, Kapitalska družba, d.d. 6,23 %, Slovenska Odškodninska Družba 5,58 % and Poteza borzno posredniška družba, d.d. (in bankruptcy proceedings) 2,24 %.

(15) As of 31 December 2012, NLB had total assets of EUR 14,3 billion and total deposits of approximately EUR 9,1 billion, which consisted of household deposits (EUR 6,5 billion), corporate deposits (EUR 2 billion) and State deposits (EUR 0,6 billion). Furthermore, it had EUR 112 million of debt securities in issue. As of the same date, NLB's total loan book to the non-banking sector was approximately EUR 9,5 billion. The loan-to-deposit ratio was 104 % (compared to 105 % in 2011 and 127 % in 2010).

(16) The main source of the problems of NLB is the increase of non-performing loans, which rose from EUR 0,6 billion in 2008 (3,8% of the total volume of loans) to EUR 3,7 billion in December 2012 (28,2% of the total volume of loans). That poor performance occurred in the context of considerable pressure on NLB's capital adequacy due to the deterioration of its asset portfolio quality, higher capital ratios required by the regulator and expected by investors, and reduced availability of capital and of debt financing, and in particular of wholesale funding.

(17) Before the onset of the financial crisis in 2008, NLB's growth strategy was fuelled by favourable economic conditions. Between 2002 and 2009 NLB's loan book (net loans) increased by 15 % p.a. and deposits by 8 %. Lending to the corporate sector in particular was responsible for the high growth.

(18) In addition to that organic growth, NLB grew through the acquisition of several banking subsidiaries in South Eastern Europe as well as by organic growth and the establishment of new entities in the leasing, factoring/forfeiting, life insurance/pension funds and asset management segments.

(19) Table 1 shows the evolution of NLB's assets in Slovenia and South Eastern Europe between 31 December 2006 and 30 September 2012.

Table 1: Total assets market shares of NLB

	2006	2007	2008	2009	2010	2011	9M 2012
NLB Group total assets (in EUR million)	14 409	18 308	18 918	19 606	17 888	16 445	14 915
Slovenia	36,7%	36,5%	35,6%	34,8%	32,6%	31,7%	30,2%
Bosnia and Herzegovina - Federation	5,7%	5,7%	5,7%	5,1%	6,1%	5,9%	5,5%
Bosnia and Herzegovina - Republika Srpska	20,4%	23,0%	22,0%	21,0%	21,0%	20,0%	20,0%
Montenegro	16,1%	13,5%	13,3%	17,0%	18,0%	19,1%	17,1%
Kosovo	-	14,9%	13,4%	14,3%	14,9%	15,1%	16,3%
Macedonia	16,8%	19,2%	19,6%	19,9%	20,4%	19,2%	17,4%
Serbia	3,0%	2,8%	2,3%	2,1%	2,0%	1,8%	1,6%

(20) NLB was profitable in the period 2003-2008. However, it has generated losses after tax since 2009. Losses amounted to EUR 87 million in 2009, EUR 202 million in 2010, EUR 239 million in 2011 and EUR 273,5 million in 2012. In the first semester of 2013, NLB recorded losses after tax of EUR 91,2 million. The loan portfolio of NLB started to deteriorate in 2009. Non-performing loans increased from 3,8 % in 2008 to 28,2 % in December 2012.

(21) As of 30 June 2013 the regulatory capital of NLB amounted to EUR 1 074,3 million. Its Core Tier 1 ratio under the EU Capital Requirements Regulation[4] (hereinafter "CRR") was 8,5 %.

(22) On 4 December 2013, the results of the AQR/ST revealed that NLB had a capital shortfall of EUR 1,8 billion[5] under the adverse scenario.

3 THE AID MEASURES

(23) So far NLB has received the following State aid measures:

(i) the first recapitalisation of EUR 250 million, temporarily approved in the first rescue decision of 7 March 2011;

(ii) the second recapitalisation of EUR 382,9 million, temporarily approved in the second rescue and opening decision of 2 July 2012.

(24) In addition to those two recapitalisations Slovenia intends to implement two further measures in favour of NLB:

(iii) a third recapitalisation of EUR 1,558 billion and

(iv) a transfer to the BAMC of a pool of impaired assets composed of non-performing loans (for a nominal amount of EUR 2,3 billion) and a list of equities (having a market value of EUR 94 million).

3.1 First recapitalisation of NLB

(25) In 2009 and 2010, NLB registered losses after several years of profits mainly due to a deteriorating economic climate. Weak economic growth and rising unemployment reduced demand for loans and caused significant rises in loan impairments. NLB's Core Tier 1 ratio under the CRR decreased from 6,9 % in 2009 to 6 % in 2010. In July 2010 the Bank of Slovenia asked NLB to strengthen its capital position. As a result NLB decided to raise more capital.

(26) NLB was set to raise EUR 250 million of equity capital, equivalent to 1,6 % of its risk weighted assets (hereinafter "RWA"), through a public offering of its shares. The capital increase took place in two tranches. In the first stage shares were offered for subscription to existing shareholders (the total amount subscribed was EUR 89,2 million and the State fully exercised its pre-emption rights). In the second stage the remaining shares were offered to the public. However, due to a lack of interest by the public, the shares were ultimately fully subscribed by Slovenia.

[4] 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, 27.06.2013, p. 1.

[5] This capital shortfall includes the capital effect of the transfer of assets to the State's Bank Asset Management Company (hereinafter "BAMC").

(27) That first recapitalisation was approved by the Commission on 7 March 2011 as temporary rescue aid in the first rescue decision. The Commission indicated that it would assess the aspect of burden-sharing in further detail during its assessment of the restructuring plan which Slovenia had committed to supply[6].

3.2 Second recapitalisation of NLB

(28) In May 2011, the Bank of Slovenia demanded a further strengthening of NLB's capital position.

(29) In the absence of a private investor solution, Slovenia provided EUR 382,9 million to NLB in the form of contingent convertible instruments (hereinafter "CoCos") qualifying as Core Tier 1 capital instruments under the applicable regulations. NLB converted the CoCos into its own ordinary shares in March 2013 in accordance with the term of the agreement governing the CoCos.

(30) That second recapitalisation was approved by the Commission by the second rescue and opening decision[7].

3.3 Third recapitalisation of NLB

(31) Following the results of the AQR/ST and given the content of the Restructuring Plan, including the divestment of assets and the transfer of some impaired assets to the BAMC, NLB has a capital shortfall of EUR 1,8 billion. After having taken into account the effect of the planned bail-in of subordinated debt (which will reduce the capital need of NLB by EUR 250 million), the State will provide NLB with additional capital of EUR 1,558 billion in the form of government bonds and cash to enable the bank to return to viability.

3.4 Transfer of impaired assets to the BAMC

(32) The Slovenia Stability of Banks Act, which came into force in December 2012, provides a framework for issuing guarantees to fund the transfer of legacy assets from banks to the BAMC, or to a special purpose vehicle. It also permits recapitalisations to address the losses of such banks resulting from the transfer of assets at their long-term economic value.

(33) In May 2013 Slovenia designed a National Reform Programme aiming at implementing the EU Country Specific Recommendations addressed to Slovenia. That National Reform Programme includes the transfer of impaired assets from the three biggest Slovenian banks, including NLB, to the BAMC. Assets to be transferred to the BAMC include: bankrupt companies, claims to be restructured, claims with real estate collateral, financial holdings and other non-performing loans.

[6] See detailed description in recitals (16) to (22) of the first rescue decision.
[7] See full details in recitals (23) to (31) of the second rescue and opening decision.

(34) On 17 May 2013 Slovenia provided the Commission with a preliminary list of assets to be transferred from NLB to the BAMC amounting to EUR 1,9 billion. That list has been further updated since then and the size of the portfolio of assets to be transferred is EUR 2,2 billion (nominal amount) for loans and EUR 94 million (market value) for equities.

4 THE RESTRUCTURING PLAN AND COMMITMENTS

(35) The Slovenian authorities submitted a Restructuring Plan covering the restructuring period from 2013 until 31 December 2017.

(36) The main pillars of the Restructuring Plan are enhanced corporate governance and risk management, a refocusing on the bank's core markets, a decrease of non-performing loans and a cost reduction programme. The Restructuring Plan includes financial projections for NLB until 31 December 2017 under a base scenario and it also factors in the adverse scenario developed under the AQR/ST.

(37) Slovenia provided a number of commitments set out in the Annex. In order to ensure that the commitments will be implemented, a Monitoring Trustee will be appointed. The activities of the monitoring trustee will apply throughout the restructuring period.

4.1 Return to viability in the long run

(38) The two major issues with regard to restoring the viability of NLB are: (i) the implementation of up-to-date corporate governance structures and arrangements to ensure that NLB's decisions are business-oriented; and (ii) the overhaul of its credit policies and risk management processes, especially in the management of credit risk.

(39) Corporate governance changes listed in the Annex will be implemented within three months after the date of adoption of this Decision, in accordance with the EU Capital Requirements Directive[8] and Slovenian domestic legislation. The resulting changes to the bylaws and internal rules of NLB seek to ensure that the management board of NLB will have the sole powers and responsibilities for managing the day-to-day business of NLB independently and in the sole interest of the bank. As a result, the arm's length principle will apply to the relationship between the bank and its shareholders, in particular the Republic of Slovenia. In that respect Slovenia commits not to intervene in the appointment of supervisory board members and executives other than through the exercise of its shareholder rights under ordinary Slovenian corporate law. NLB will allocate two-thirds of the seats and voting rights on the supervisory board and its committees to independent experts. NLB will put arrangements in place to ensure an independent and objective internal audit function. NLB will follow a prudent and sound business policy geared towards sustainability while implementing the planned measures. NLB will further review its incentive and

[8] 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. 338.

remuneration policies in order to ensure that they do not encourage unreasonable risk-taking, are geared towards long-term and sustainable goals, and are transparent and compliant with the European Banking Authority Guidelines on remuneration Policies and Practices of 10 December 2010. NLB will cap, until 31 December 2017, the total remuneration to any board member and employee performing special work in line with the relevant rules set forth in the 2013 Banking Communication[9]. The variable annual remuneration of the management board and of employees performing special work employed in the front office functions will be limited to five monthly salaries. The variable amount of employees performing special work employed in other functions will be limited to three monthly salaries. Further, the payment of at least 50 % of the variable remuneration will be deferred over a period of three years. As a result until 31 December 2017 such remuneration will not exceed 15 times the national average salary in Slovenia or 10 times the average salary of NLB, whichever is higher.

(40) NLB will overhaul its internal pricing and risk management processes by implementing a number of rules and measures listed in detail in the Annex. In particular, pricing for new loans will be considered adequate if the new loan contributes to achieving a positive return on equity (hereinafter "RoE") of at least […][*] % in 2014, […] % in 2015, […] % in 2016 and […] % in 2017 on each client relationship, under the terms further specified in the Annex.

(41) NLB’s assets will be split between a core unit (around EUR 10,6 billion) and a non-core unit (around EUR 2 billion). A pool of impaired assets composed of non-performing loans (for a nominal amount of EUR 2,3 billion) and a list of equities (having a market value of EUR 94 million) will be transferred to the BAMC in the context of an impaired assets measure. NLB will reduce its group balance sheet total from approximately EUR 17,9 billion in 2010 to EUR [10-20] billion by 31 December 2017.

(42) In addition to the State aid received in March 2011 and July 2012, an additional capital injection of 1,558 billion by the State is envisaged in the Restructuring Plan. That third recapitalisation will immediately increase the Core Tier 1 ratio under the CRR of NLB to 15 %, and will also address the expected losses. It will therefore ensure that NLB will respect its regulatory capital requirements throughout the restructuring period.

(43) NLB’s future business strategy focuses on its core markets of retail, SME and selected corporate business activities. NLB plans a significant reduction of its participation portfolio consistent with its strategy of focussing on its core business in core regions. In that respect, the restructuring plan provides for a significant reduction of NLB's non-core business which encompasses the sale of all leasing and factoring/forfeiting activities and real estate management business and for the discontinuation, for the time being of the non-core business of providing new credit to corporate clients abroad.

[9] 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.

[*] Confidential information.

(44) NLB will reduce its credit business in Slovenia in the following sectors ([…] % reduction of RWA on average between 31 December 2013 and 31 December 2017): i) corporate clients in construction industrial sector (RWA from EUR […] million at 31 December 2013 to EUR […] million at 31 December 2017); ii) corporate clients in transport industrial sector (RWA from EUR […] million at 31 December 2013 to EUR […] million at 31 December 2017; iii) financial holdings (RWA from EUR […] million at 31 December 2013 to EUR […] million at 31 December 2017).

(45) As a result of the implementation of the Restructuring Plan, and in particular the transfer of impaired assets to the BAMC, NLB's total assets will decrease from EUR 14,5 billion at 31 December 2012 to EUR [10-20] billion at 31 December 2017 and RWA from EUR 11,1 billion at 31 December 2012 to EUR [5-10] billion at 31 December 2017.

(46) NLB's current portfolio is fully funded until its contractual maturity. For the future, NLB plans to refocus strongly on retail deposits, which are its historical funding base, but also plans to have a diversified wholesale funding base. Loan-to deposit ratios will improve from 105 % in 2012 to [70-80] % at 31 December 2017.

(47) NLB is also planning a far-reaching cost-control and cost-reduction programme. NLB's operating costs amounted to EUR 368 million in 2012 at group level. NLB will reduce its operating costs at group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to EUR [300-350] million by 31 December 2014, EUR [300-350] million by 31 December 2015, EUR [250-300] million by 31 December 2016 and to EUR [200-250] million by 31 December 2017.

(48) At 31 December 2017 NLB projects to achieve a RoE after tax of [5-10] %. The Restructuring Plan provides financial projections over the period 2013-2017 pointing to a Core Tier 1 ratio under CRR of [10-20] % at 31 December 2017. NLB's profits after taxes will amount to EUR [100-150] million in 2017.

(49) Finally, Slovenia will reduce its shareholding in NLB […] (the "[…]" by […]. If Slovenia has not entered into binding sale and purchase agreements for the sale of its shareholding in NLB apart from […], Slovenia and NLB will grant to the Divestiture Trustee an exclusive mandate to sell […], […], […], […],[…] and […].

4.2 Burden-sharing

(50) The Restructuring Plan provides for a coupon, dividend and profit distribution ban throughout the duration of the Restructuring Plan until 31 December 2017.

(51) Slovenia commits that NLB will refrain during the restructuring period from making any payments on capital instruments, unless those payments stem from a legal obligation. Slovenia also commits that NLB will not call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the State may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. That commitment not to pay coupons during the restructuring period does not apply to newly issued instruments (meaning instruments issued after the Commission's

adoption of the present decision), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of the present decision.

(52) NLB's existing shareholders were already severely diluted due to the first and second recapitalisations in March 2011 and July 2012. NLB's remaining subordinated securities amount to EUR 250 million. Slovenia commits that before any State aid (i.e. the third recapitalisation and the transfer of impaired assets to the BAMC) is granted NLB will write-down in full its shareholders' equity and outstanding subordinated debts. As a result the State will become the sole shareholder of NLB, compared to the 33,1 % of shares it held before the first State recapitalisation in March 2011.

(53) Slovenia commits to sell NLB’s participations in the companies listed in paragraph (3) of the Annex, representing a total asset value of EUR [100-150] million as of 31 December 2012, and in non-core subsidiaries listed in paragraph (4) of the Annex, representing a total asset value of EUR [950-1000] million as of 31 December 2012. NLB will also sell all of its joint venture participations listed in paragraph (5) of the Annex. In addition, NLB will close […] by […].

(54) Any possible recapitalisation by NLB of its subsidiaries via equity injections will be subscribed at (i) 25 % discount to the share price – after adjustment for the "dilution effect" quantified using generally accepted market techniques[10] – immediately prior to the announcement of the capital injection or (ii) the lowest price at which other shareholders of those subsidiaries contribute to the recapitalisation. For non-listed entities, the market value of the shares will be established using an appropriate and generally accepted market-based valuation methodology. If any such capital injection takes the form of hybrids instruments, those instruments will contain an alternative coupon satisfaction mechanism and a provision determining the conversion rate of the hybrid instrument into equity capital at 25 % discount to the TERP (established in an analogical fashion to the case of equity injection).

4.3 Distortion of Competition measures

(55) In order to limit distortion of competition, NLB plans to reduce its business activities in Slovenia. NLB will reduce its balance sheet total from approximately EUR 17,9 billion in 2010 to EUR [10-20] billion by 31 December 2017.

(56) NLB’s commitments include the sale of banking participations in strategic markets. NLB will sell its […] by […]. That sale will reduce NLB's influence […]. NLB will also fully divest its shareholding in […], by […].

(57) NLB will reduce its credit activities in the construction, transport and financial holdings sectors in Slovenia by reducing RWA by […] % on average in those sectors from 31 December 2013 to 31 December 2017. NLB will discontinue the business strategy of providing new credit activities to corporate clients abroad.

[10] For example by using the theoretical ex-rights price (hereinafter "TERP").

(58) NLB will discontinue all leasing, factoring, and forfeiting business through the divestment of subsidiaries in Slovenia and abroad.

(59) NLB will comply with a coupon ban, a dividend ban, an acquisition ban and a ban on advertising and aggressive commercial practices according to the terms specified in the relevant paragraphs of the Annex.

(60) A capital repayment mechanism is put in place according to which NLB will pay dividend disbursements to its shareholder in 2015, 2016 and 2017[11]. For the fiscal years 2015 and 2016, NLB will pay the lower of (i) 50 % of the excess capital above the applicable regulatory capital requirement under European and Slovenian law (including pillar 1 and 2) plus a capital buffer of 100 basis points or (ii) the net income for the relevant year. For the fiscal year 2017, NLB will pay the lower of (i) 100 % of the excess capital above the applicable regulatory capital requirement under European and Slovenian law (including pillars 1 and 2) plus a capital buffer of 100 basis points or (ii) the net income for the relevant year. Without prejudice to the competences of the Bank of Slovenia as banking supervisor of NLB, the dividend disbursement shall be suspended if it would endanger the solvency position of the bank in the following years.

4.4 Description of the impaired assets measure

a. Objective

(61) NLB will benefit from an impaired asset measure by transferring assets to the BAMC. The aim of that measure is to remove uncertainty about the future value of its most problematic asset portfolio and ensure that NLB will concentrate on the implementation of the Restructuring Plan.

b. Set up and characteristics

(62) Slovenia established the BAMC to support the banking sector stability.

(63) The overall objective of the BAMC is the management and orderly divestment of the assets it receives, maximising their recovery. In pursuing that activity, the BAMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.

(64) The BAMC may acquire or cover risks, in particular from assets, securities, derivatives, rights and obligations from approved loans or guarantees with the associated collateral. The BAMC will pay NLB the established transfer value by State-guaranteed debt securities issued by the BAMC. The transfer value of the assets transferred to the BAMC will be equal to or below their real economic value (hereinafter “REV”) established by the Commission’s experts in line with the State aid rules.

[11] NLB's financial projections included in the restructuring plan do not take into account the effects of that capital repayment mechanism.

c. Scope of the transfer of impaired assets and loans

(65) The transfer concerns the following categories of assets:

a) companies in bankruptcy with housing real estate as collateral;

b) claims to financial holdings to be restructured;

c) other companies in bankruptcy;

d) other claims with housing real estate as collateral;

e) financial holdings;

f) construction companies;

g) transport companies;

h) other non-performing exposures.

(66) On 17 May 2013 Slovenia sent to the Commission a preliminary list of assets to be transferred from NLB to the BAMC amounting to EUR 1,9 billion. That list has been further updated since then. The size of the portfolio to be transferred is EUR 2,3 billion of nominal for loans and EUR 94 million of market value for equities.

(67) As a result of the asset transfer, the RWA of NLB will be reduced by EUR 1,4 billion and entails a total reduction of capital needs of EUR 112 million. Those figures were reported in the list of assets to be transferred to the BAMC sent to the Commission on 14 November 2013.

d. Methodology for the calculation of the transfer value

(68) The transfer value has been preliminarily established by the Bank of Slovenia in line with the methodology laid down in the legislation establishing the BAMC. The methodology is based on the assessment of the net present value of future cash flows. For large exposures an individual assessment of future cash flows has been performed, while for small exposures a simplified approach was applied with an assessment based on loans' probabilities of default and loss given default characteristics. Furthermore, for calculating the transfer value, the expected losses in the baseline scenario of the ST as used as a reference. The methodology of that valuation was endorsed by a dedicated group composed of the Slovenian authorities and, as observers, the Commission, the ECB and the European Banking Authority.

(69) For bankrupt companies and distressed loans the future cash flows were determined by the market value of collaterals and guarantees. Reports made by independent experts in the last 12 months were used to assess the value of such collateral.

(70) The net present value of future cash flows was then calculated using a risk-free interest rate.

e. The transfer value

(71) The transfer value of the assets of NLB, as established by Slovenia, amounts to EUR 617 million for loans (which is equal to 27 % of their gross book value), and EUR 94 million for equities. Slovenia committed that the transfer value of the assets transferred to the BAMC will be equal to or below their REV established by the Commission's experts in line with the State aid rules.

(72) The Slovenian authorities have provided an analysis from the Bank of Slovenia certifying the detailed results and financial effects of the asset transfer to the BAMC by NLB.

f. Market price

(73) Slovenia has not assessed the market value of the portfolio.

g. Independent expert advice for the Commission

(74) The Commission has relied on independent experts in order to assist it in the assessment of the proposed methodology and transfer price in connection with the REV of the transferred assets and the quantification of the market price of those assets, as laid down in the Impaired Assets Communication[12], which serves as the reference framework for measure.

5 GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(75) On 2 July 2012 the Commission opened the formal investigation procedure on the recapitalisation measures and the version of the restructuring plan which had been submitted by Slovenia regarding their compatibility with the internal market as restructuring aid.

(76) At that time the Commission expressed doubts as to whether the version of the restructuring plan for NLB it had received ensured return to long-term viability, adequate burden-sharing and distortion of competition measures[13]. As part of the viability issues the Commission raised doubts whether the decision-making process in NLB was in line with market norms and in particular about possible corporate governance issues related to the intervention of the State as main shareholder in the bank into the day-to-day business[14].

6 COMMENTS FROM INTERESTED PARTIES

(77) No comments from interested third parties have been received with regard to the formal investigation procedure.

7 POSITION OF SLOVENIA

(78) Slovenia agrees that the first recapitalisation, the second recapitalisation, the third

[12] Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1.

[13] See recitals (91) – (104) of decision the second rescue and opening decision of 2 July 2012.

[14] See recital (97) of the second rescue and opening decision of 2 July 2012.

recapitalisation and the transfer of impaired assets to the BAMC constitute State aid within the meaning of Article 107(1) TFEU. Further Slovenia is of the view that those measures are compatible with the internal market under Article 107(3)(b) TFEU.

(79) Slovenia argues that the Restructuring Plan complies with all conditions set forth in the Restructuring Communication[15] supplemented by the 2013 Banking Communication.

(80) In particular, Slovenia is of the opinion that the Restructuring Plan ensures restoration of NLB's long-term viability without State resources, provides sufficient own contribution to the restructuring costs and limits competition distortion. In order to ensure prudent decision-making processes in the managing of the bank's activities Slovenia has provided commitments to strengthen its corporate governance.

(81) The list of commitments provided by Slovenia is set out in the Annex to this decision. In order to ensure that the commitments will be implemented, a Monitoring Trustee will be appointed. Further, Slovenia has committed to a timeline for defined divestments. If any committed timeline for divestiture is not met, a Divestiture Trustee will be appointed.

8 ASSESSMENT

8.1 Existence and amount of the aid

(82) The Commission has already concluded[16] that the first and the second recapitalisations of NLB constitute State aid, which was not disputed by Slovenia. Therefore in this section the Commission will assess only whether the two new measures (the third recapitalisation and the transfer of impaired assets to the BAMC) constitute State aid.

(83) Article 107(1) TFEU provides that 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 is, insofar as it affects trade between Member States, incompatible with the internal market.

(84) As the third recapitalisation of EUR 1,558 billion will be provided directly by the Republic of Slovenia, the Commission concludes that the measure stems from State resources.

(85) The third recapitalisation allows NLB to obtain capital in a situation of financial and economic crisis where due to high uncertainty surrounding the Slovenian banking sector it would be impossible to find such capital on the market. Therefore the Commission considers that the third recapitalisation would not have been provided by a market economy investor. The third recapitalisation must therefore be regarded as providing an advantage to NLB. Moreover, that advantage is selective since it only

[15] Commission’s Communication of 23 July 2009 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.

[16] See recitals (34) – (41) of the first rescue decision and recitals (61) – (66) of the second rescue and opening decision.

benefits one bank.

(86) Given that NLB is and will be active in the financial sector, which is open to intense international competition, any advantage from State resources to the bank has the potential to affect intra-Union trade and to distort competition. The third recapitalisation therefore constitutes State aid within the meaning of Article 107(1) TFEU.

(87) The aid element in the third recapitalisation amounts to EUR 1,558 billion.

(88) As regards the transfer of impaired assets to the BAMC, the Commission considers that the measure involves State resources. Slovenia created the BAMC to support banking sector stability, helping troubled banks to transfer their risky assets off their balance sheet at a price over current market value. Those transfers of assets from NLB to the BAMC will limit the loss the bank would otherwise need to take in order to clean up its balance sheet and implement its restructuring plan.

(89) In order to assess the existence of aid in the transfer of impaired assets to the BAMC, the Commission's experts have independently determined the current market value of the portfolio to be transferred as well as the REV, which at the same time will constitute the price at which the assets will be transferred. As the transfer value of the portfolio is higher than the current market value, the measure constitutes an advantage to NLB.

(90) That advantage strengthens NLB's position compared to that of its competitors in Slovenia and other Member States that are not benefitting from the same State support. The measure must therefore be regarded as liable to distort competition and affect trade between Member States, given also that NLB is and will be active in the financial sector, which is open to intense international competition.

(91) As regards the aid amount in the transfer of impaired assets to the BAMC it should be noted that footnote 2 to point 20(a) of the Impaired Assets Communication defines the aid amount in an asset relief measure as the difference between the transfer price of the assets and the market price. The transfer price is EUR 617 million, while the market price is estimated at EUR 486 million. The aid granted to NLB as a result of the transfer of impaired assets to the BAMC amounts to EUR 130 million.

(92) Consequently, the total aid to NLB as a result of the first, second and third recapitalisations and the transfer of impaired assets to the BAMC amounts to EUR 2,321 billion, representing 20 % of NLB's RWA as of December 2012.

8.2 Compatibility of the aid

8.2.1 Legal basis for the compatibility assessment

(93) 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. This has been

successively detailed and developed in the six Crisis Communications[17] as well as in the 2013 Banking Communication.

(94) The 2013 Banking Communication applies to State aid measures notified from 1 August onwards. In NLB's case, Slovenia has notified additional State aid in the form of capital injections and capital relief after 1 August 2013. As a result the provisions of the 2013 Banking Communication apply to the compatibility assessment of NLB's restructuring plan.

(95) The Commission's various approvals of the measures undertaken by the Slovenian authorities to combat the financial crisis[18] confirm the presence of a serious disturbance in the Slovenian economy. Therefore, the legal basis for the compatibility assessment of all the measures covered by the Restructuring Plan (namely the first recapitalisation, the second recapitalisation, the third recapitalisation and the transfer of impaired assets to the BAMC) is Article 107(3)(b) TFEU.

(96) As regards specifically the compatibility of the transfer of impaired assets to the BAMC, the Commission assesses that measure with regard to the Impaired Assets Communication as adapted by the 2013 Banking Communication.

(97) As regards the compatibility of the restructuring aid provided to NLB, the Commission assesses it on the basis of the Restructuring Plan with regard to the Restructuring Communication as supplemented by the 2013 Banking Communication.

8.2.2. Compatibility with the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication

(98) As regards the compatibility of the aid provided to NLB in the form of the transfer of impaired assets to the BAMC, the Commission has to assess that measure on the basis of the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication. The Impaired Assets Communication defines impaired asset relief as any measure which "free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses" and sets out criteria for the compatibility of such measures with the internal market. Those criteria

[17] 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 ("Recapitalisation Communication"), OJ C 10, 15.1.2009, p. 2; the Impaired Assets Communication; the Restructuring Communication; 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.

[18] See e.g. Rescue recapitalisation in favour of NLB SA.32261 (2011/N), OJ C 189, 29.06.2011, p. 1; Second recapitalisation of NLB and Restructuring of NLB SA.34937 (2011/N) SA.33229 (2012/N), OJ C 361, 22.11.2012, p. 18; and Recapitalisation of NKBM SA.35709, OJ C 162, 7.6.2013, p. 5.

comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

Eligibility of assets

(99) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility.

(100) The Impaired Assets Communication however further sets out that a balance needs to be found between meeting the objective of immediate financial stability and the need to ensure the return to normal market functioning, which would plead in favour of flexibility when identifying classes of assets. In particular, whilst the Impaired Assets Communication cites as eligible assets those that triggered the financial crisis (it explicitly refers to US mortgage-backed securities), it also permits eligibility to be extended to "well-defined categories of assets corresponding to a systemic threat upon due justification, without quantitative restrictions".

(101) As regards the present case, the impaired assets measure is targeted at non-performing assets mostly related to construction companies, transport companies and financial holdings, or non-performing assets with housing real estate collateral. Those sectors were at the core of NLB’s difficulties with significant portfolios of non-performing loans (41 % of non-performing loans for financial holdings and 74 % for construction companies). The portfolio to be transferred accounts for more than half of impairments booked by NLB d.d. as of 31 December 2012. Those assets are therefore in line with the eligibility criteria of the Impaired Assets Communication.

Transparency and disclosure

(102) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. The Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.

(103) An initial valuation of the assets has been performed by the Bank of Slovenia. First, a stress test was also disclosed on 10 May 2013 by the Bank of Slovenia, indicating the capital impacts of the transfer of asset from the three main Slovenian banks to the BAMC. Second, the results of the AQR/ST, carried out by independent experts, were disclosed on 4 December 2013, indicating the capital shortfall of the Slovenian banks under a stress scenario. The asset classes to be transferred have been clearly identified, and the transfer will only be performed on the basis of the valuation methodology approved by the Bank of Slovenia. The Member State has thus provided sufficient transparency and disclosure on the entirety of NLB’s impaired assets to be transferred to the BAMC. In particular, the AQR/ST identifying the shortfall of capital of the bank was carried out by external experts.

Management of the assets

(104) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of ensuring a clear functional and organisational separation between the beneficiary bank and its assets, notably as to their management, staff and clientele. The Communication provides in that respect that such arrangements should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.

(105) The assets will be managed by the BAMC, which is fully independent from NLB. It can therefore be concluded that the separate asset management is in line with the requirements of the Impaired Assets Communication.

Valuation

(106) Section 5.5 of the Impaired Assets Communication notes that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of valuation is to establish the REV of the assets. That value constitutes the benchmark level in so far as a transfer of impaired assets at that value indicates the compatibility of aid – it creates a relief effect because it is in excess of the current market value but keeps the aid amount to the minimum necessary.

(107) The Bank of Slovenia assessed the portfolio and the Commission has scrutinised with external experts the valuation and the underlying general methodology in order to ensure a consistent approach at Union level.

(108) The conclusions are the following:

(i) the materials submitted by NLB provide a thorough analysis of high qualitative standard;

(ii) a rating-based approach using NLB's ratings and updated financial balance sheet data would be relevant for the portfolio transferred to the BAMC;

(iii) the estimated REV of the corporate loan book of NLB ranges at 60,2 % of the gross exposure, with an error margin of +/- 5%, on the basis of a comparative stresses method. The comparative stresses method applies a stress to the level of provisions as determined by an asset quality review. The Commission and its external experts calibrated that level of stress using case practice. The level of the REV as estimated by the experts refers to the corporate loan book of NLB, which is larger than the portfolio which has been finally identified for the transfer to BAMC. Therefore that estimate cannot be used as a proxy for the assessment of the REV of the portfolio to be transferred to the BAMC.

(109) On the basis of those elements, the Commission assessed the REV of the portfolio. For that assessment, the Commission segregated two categories of loans: loans to going concern undertakings on the one hand and loans to credit restructurings and defaulted loans on the other hand. The REV of equities was assessed separately.

(110) For loans to going concern undertakings, the Commission applied a rating-based approach as recommended by the external experts. On the basis of the current rating

of NLB and updated financial information on the exposure, the Commission determined a probability of default. Then the loss given default was assessed following a detailed analysis of collaterals, on the basis of existing credit documentation or prior credit quality review exercises.

(111) For loans to credit restructurings and defaulted exposures, the Commission focussed on the analysis of collateral in order to assess the value to be recovered in a liquidation scenario, using prudent assumptions as to the value of the collaterals and factoring in the results of the AQR/ST.

(112) For equities, the Commission reviewed the valuation reports submitted by Slovenia to assess whether the market values reported were in line with market quotes for listed companies, and whether the valuation methodology used for unlisted companies was in line with market standards.

(113) The Commission concludes that the REV of the loan portfolio is EUR 617 million for a nominal amount of EUR 2,3 billion, and that the REV of the equity portfolio is EUR 94 million. The Restructuring Plan provides for a transfer of the assets to the BAMC at REV.

(114) Regarding the market value, the Commission uses a spread coverage method to assess the current market value at the time of the transfer. On that basis the market value of the portfolio is estimated at EUR 486 million for loans and 94 million for equities.

(115) Therefore the amount of aid is the difference between the transfer value and the market value, which is EUR 130 million.

Burden-sharing and remuneration

(116) As regards burden-sharing, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing. Thus, the assets should be transferred at a price that matches or remains below their REV.

(117) Slovenia commits to a transfer price of the assets at their REV or below and is therefore in line with the Impaired Assets Communication.

Conclusion on the impaired assets measure

(118) In light of the above, the Commission considers that the transfer of impaired assets to the BAMC meets all the conditions and requirements of the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication.

8.2.3. Compatibility with the Restructuring Communication supplemented by the 2013 Banking Communication

(119) According to point (31) of the 2013 Banking Communication, any restructuring plan involving restructuring aid will, with the exception of the requirements on capital raising and burden-sharing, continue to be assessed on the basis of the Restructuring

Communication.

(120) According to the Restructuring Communication and the 2013 Banking Communication, first, the restructuring plan has to demonstrate that the restructuring process a beneficiary of State aid is undergoing is suitable to restore its long-term viability. Second, the aid amount must be limited to the minimum necessary and both shareholders and subordinated creditors must contribute to reducing the capital shortfall to the maximum extent. Third, measures need to be in place to limit distortion of competition created by artificially supporting the market power of the beneficiary and to ensure a competitive banking sector. Finally, monitoring and procedural issues need to be addressed.

(i) Restoration of long-term viability

(121) As set out under the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which demonstrates how the long-term viability of the beneficiary will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.

(122) The Restructuring Plan for NLB covering the period up to 31 December 2017 shows a return to viability at the end of that restructuring period. The main trigger is the expected improvement in the quality of the portfolio and the reduced need for additional impairments and provisioning. The return to viability will also be achieved by the cleaning of NLB’s balance sheet resulting from the planned transfer of non-performing assets to the BAMC. NLB will also profit from improved operational efficiency resulting from cost reduction measures and stabilisation of income. To ensure the bank’s viability after taking into account the transfer of non-performing assets to the BAMC, the Restructuring Plan is based on the assumption of a recapitalisation by the State of EUR 1,558 billion in 2013 and a full write-off of subordinated bonds and shareholders' equity in the amount of EUR 250 million.

(123) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. The Restructuring Plan first explains the causes of NLB's difficulties. NLB’s loan portfolio was badly hit during the crisis and generated high amounts of impairment losses.

(124) The growth of the loan book was funded by the wholesale market, which resulted in soaring loan-to-deposit ratios (from 74 % in 2002 to 137 % in 2009). In the meantime, the bank did not sufficiently strengthen its capital base and relied heavily on hybrids before the start of the crisis.

(125) Prior to the crisis, NLB accumulated exposures to the construction industry, property developers and financial holdings, but the quality of the associated risk management lagged behind. The accumulation of bad loans proved to be disastrous when the crisis started and the economy slowed. The national road construction programme ended in 2008 and the domestic demand for real estate declined drastically. Most Slovenian companies were highly leveraged and found themselves squeezed with an economic

downturn, a depreciation of assets and stocks and reduced access to credit. The conjunction of a severe economic downturn and a poor risk management framework resulted in rising non-performing loans. Indeed, non-performing loans reached 29 % of gross loans for NLB at 30 September 2012, with the worst record for the construction industry (74 %). As a result, losses after tax amounted to EUR 87 million in 2009, EUR 202 million in 2010, EUR 240 million in 2011 and EUR 273 million in 2012.

(126) Weak corporate governance rules and the resulting influence of the State in the day-to-day business of the bank was also one of the reasons leading to the problems of the bank.

(127) Therefore five major issues must be tackled for the return to long-term viability. First, the bank's corporate governance must be enhanced to ensure that economically justified business decisions are taken exclusively by the bank's management and that the State will not influence the day-to-day business. Second, the bank must improve its pricing policies and risk management framework so that margins are preserved and losses minimised. Third, NLB must clean its balance sheet and reduce its exposure to problematic sectors, either through a proper provisioning and deleverage of problematic assets or through a transfer of problematic loans to the BAMC. Fourth, the bank must repair its balance sheet structure through a recapitalisation and the strengthening of the deposit base or the reduction of the leverage ratio. Finally, the bank must improve its operational efficiency to secure a sufficient level of profitability.

a. Strengthening the corporate governance framework

(128) The commitments will guarantee independence of the board and management to set lending criteria. Those commitments will guarantee that the pricing of loans will be based on a pricing policy establishing minimum RoE rules for all loans, thereby limiting the possibility for the bank to lend at below market price as a result of external influences.

(129) The commitments appear to properly address and remedy the main weakness of NLB's corporate governance. They establish adequate safeguards to prevent conflicts of interest, to ensure that strategy and decisions are business-oriented and are neither biased by objectives other than value maximisation nor subject to improper external influence. Planned changes to the corporate governance will make the bank less vulnerable to external influence and at the same time will introduce more market discipline through enhanced control and transparency in management decisions.

(130) NLB will further review its incentive and remuneration policies in order to ensure that they do not encourage unreasonable risk-taking and are geared towards long-term and sustainable goals. Moreover, the total remuneration to any board member and employee performing special work will be capped, until 31 December 2017, in line with points (37) to (39) of the 2013 Banking Communication which will facilitate timely execution of the Restructuring Plan.

(131) Additionally Slovenia commits to divest its shareholding in NLB to […] % by […] to an investor that is independent and unconnected to the Republic of Slovenia. That divestment will significantly reduce the external influence in the bank's management and business activities.

b. Strengthening the pricing policies and risk management framework

(132) NLB will enhance its pricing policies and risk management framework in particular through a number of rules and measures aiming at protecting the best business interests of the bank. Those measures include the training of the staff, the scoring of clients, the pricing of the new production and the review of the credit risk process.

(133) In particular the pricing of new loans will lead by 31 December 2017 to a positive RoE of at least […] % on each client relationship. That pricing will be progressively phased in, starting at […] % RoE on each client relationship in 2014 and reaching […] % by 31 December 2017.

(134) The resulting improvement in NLB's pricing policies and risk management framework is appropriate and necessary in order to implement more rigorous credit policies on new lending and a more conservative provisioning policy. Those reforms address NLB’s weakness that led to a poor quality of its loan portfolio, an excessive level of non-performing loans and a high cost of credit. By addressing those causes of low profitability, those measures contribute to the long-term viability of NLB.

(135) The Restructuring Plan also includes an organisational separation of non-core business from the core-business of NLB. That reorganisation of the bank will enable NLB to streamline its core activities. That separation will also allow it to implement a more specialised approach to running off the bank’s non-core business and to manage its non-performing assets so as to maximise recovery value.

c. Rebalancing the business toward less risky activities

(136) As a result of the Restructuring Plan, NLB’s RWA will decrease from EUR 11,1 billion at 31 December at 31 December 2012 to EUR [5-10] billion at 31 December 2017. The reduction of RWA, in particular in the bank's most problematic sectors of financial holdings, transport companies and construction companies, ensures that the risk associated with those exposures will decrease over the restructuring period.

(137) NLB will transfer a portfolio of EUR 2,3 billion impaired loans to the BAMC enabling NLB to focus on the management of the performing loans, while releasing resources for the workout of the remaining non-performing loans.

(138) NLB’s future strategy will refocus its activities on a more conservative business with core segments of banking services to retail, SME and selected corporate banking in Slovenia. That development will be achieved through substantial divestments and reductions of non-core businesses releasing resources for the core activities.

d. Repairing the balance sheet structure

(139) NLB already received capital injections by the State in March 2011 and in July 2012. With the additional third recapitalisation NLB is able to comply with the capital requirements of the Bank of Slovenia, enabling its return to viability.

(140) The amount of the third recapitalisation takes into account the needs of the bank resulting from the AQR/ST. After that recapitalisation the Core Tier 1 ratio of the

bank under the CRR will immediately reach 15 % and a level of [10-20] % by 31 December 2017, largely exceeding the capital requirement set by the Bank of Slovenia at 9 % Core Tier 1 ratio under the CRR.

(141) Further, NLB will clean its balance sheet through the transfer of a substantial portfolio of non-performing and impaired assets to the BAMC.

(142) NLB will enhance its funding profile by the reduction of intra-group funding for its subsidiaries, the divestment of non-core activities and the refocusing on its historical funding base of retail deposits. Loan-to-deposit ratios will strengthen from 105 % in 2012 to [70-80] % at 31 December 2017.

e. Restoring long-term profitability

(143) The restoration of long-term profitability will result from the strategic repositioning of the bank to its core basic banking business to retail, SME and selective corporate banking in Slovenia allowing the bank to meet its RoE targets.

(144) The bank will improve its net interest margin by ensuring that new lending will be adequately priced. In particular, pricing for new loans will contribute to achieve a positive RoE of at least […] % in 2014, […] % in 2015, […] % in 2016 and […] % in 2017 on each client relationship.

(145) NLB will also document all restructuring decisions. It will include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement. It will demonstrate that it has chosen the solution which maximises the net present value for the bank.

(146) NLB is also planning a far-reaching cost-reduction programme through a significant consolidation of its business premises and branch network and a reduction in personnel, as well as by improving operational efficiency, pursuing risk-adjusted profitability-driven client acquisition and optimising liquidity and other costs. As a result the restructuring plan foresees a reduction of the cost-income ratio to less than 60 %, comparable to the levels attained by the bank pre-crisis. By 31 December 2017 NLB will achieve a RoE after taxes of [5-10] % and a Core Tier 1 ratio under the CRR of [10-20] %. NLB’s profits after taxes will amount to EUR [100-150] million in 2017.

(147) The flow of impairments is expected to decrease over time as the Restructuring Plan is gradually implemented. The bank will have a sounder credit risk profile as a result of the transfer of impaired assets to the BAMC, the commitments related to the management of credit risk and the restructuring of non-performing loans remaining in its books so as to maximise their net present value for the bank, as well as other measures enhancing the bank's risk management framework.

(148) The Commission therefore considers that the restructuring plan is apt to restore NLB’s long-term viability.

(ii) Own contribution and burden-sharing

(149) The Restructuring Communication supplemented by the 2013 Banking Communication indicates that an appropriate contribution by the beneficiary is necessary to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides (i) that both the restructuring costs and the amount of aid should be limited and (ii) that there should be a maximum burden-sharing by existing shareholders and subordinated creditors.

(150) Adequate burden-sharing will normally entail, after losses are first absorbed by equity, contributions by hybrid capital holders and subordinated debt holders. Hybrid capital and subordinated debt holders must contribute to reducing the capital shortfall to the maximum extent. Such contributions can take the form of either a conversion into Common Equity Tier 1[19] or a write-down of the principal of the instruments. In any case, cash outflows from the beneficiary to the holders of such securities must be prevented to the extent legally possible.

(151) The Restructuring Plan does not contain any elements that suggest that the aid exceeds the means required to cover the costs resulting from the restoration of viability of NLB. The capital shortfall which needs to be covered by the third recapitalisation was determined on the basis of an AQR/ST. That capital injection estimation is based in particular on an asset evaluation which shows that level to be necessary and sufficient to sustain a stress situation. The AQR/ST brought further certainty on the level of capital needed. The amount of the third recapitalisation makes it possible for the bank to meet its regulatory capital requirements and market expectations. In addition, a capital repayment mechanism will be in place to limit the build-up of excess capital in NLB, under which NLB will have to pay dividends for the fiscal years 2015, 2016 and 2017 calculated on increasing percentage of any excess capital. The capital repayment mechanism ensures that excess capital above minimum regulatory capital requirements will not permit the bank to enter into new business before repaying the State.

(152) Notwithstanding the dividend ban, in order to allow NLB d.d. to obtain dividends from its subsidiaries and to avoid the build-up of liquidity in them they may pay out dividends. Those companies may make such dividend payments if NLB d.d. is – directly or indirectly – the majority shareholder and all external shareholders combined hold less than [10-20] % of shares and voting rights in the relevant company. The Commission considers that the possibility for the subsidiaries to make such dividend payments to NLB d.d. contributes to maintain the aid amount to the minimum necessary, will allow an appropriate degree of flexibility for the efficient management of NLB's consolidated capital and liquidity and will facilitate the repayment of aid. The fact that, as a result of that, also minority shareholders of the subsidiaries would receive part of the dividends represents a proportionate spill-over effect compared to those benefits considering in particular the relative small amount of dividends eventually payable to all shareholders other than NLB d.d. which will not exceed of more than one-tenth the amount of dividends eventually payable to NLB d.d..

[19] As defined by Article 26 of the Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, OJ L 176, 27.6.2013, p. 1.

(153) First, the commitments regarding the burden-sharing of shareholders and subordinated debt holders comply with the Restructuring Communication supplemented by the 2013 Banking Communication.

(154) In that respect, Slovenia committed that before any State aid is granted to NLB (i.e. the third recapitalisation and the transfer of impaired assets to the BAMC), the latter will write-down in full its shareholders' equity and outstanding subordinated debts so ensuring compliance with the requirements of 2013 Banking Communication. The Commission positively notes that the contribution of subordinated debt holders is achieved to the maximum extent possible, thus ensuring adequate burden-sharing. The State capital injections will only be implemented after the complete implementation of the wipe-out of the subordinated debt holders. That sequence ensures that all existing subordinated debt holders have to fully contribute to the restructuring costs of the bank prior to the State stepping in. The State will thereby own 100 % of the bank's shares after the third recapitalisation compared to 33,1 % prior to the first capital injection by the State.

(155) Second, point 24 of the Restructuring Communication provides that an adequate remuneration of State capital is also a means of achieving burden-sharing.

(156) As regards the first and the second recapitalisations, the Commission notes that they were conducted at prices compatible with the burden-sharing principles[20]. Concerning the third recapitalisation included in the Restructuring Plan, the State will own 100 % of the bank after the recapitalisation, thereby maximising the burden-sharing. The Commission has also already established that the transfer of impaired assets to the BAMC is appropriately remunerated.

(157) Third, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by NLB, NLB will carry out cost-cutting measures resulting in a decrease of operating costs from EUR 368 million at 31 December 2012 to EUR [250-300] million at 31 December 2017 in a base case scenario. The Restructuring Plan also provides for a divestment of at least [80-90] % of the bank's non-banking activities. In addition a capital repayment mechanism is put in place allowing payment of dividends to the State for the fiscal years 2015, 2016 and 2017 to a maximum extent without endangering the regulatory capital requirements of the bank.

(158) Fourth, in addition to those structural measures, Slovenia also committed to a coupon ban, an acquisition ban and a ban on advertising and aggressive commercial practices.

(159) The Commission notes that the commitment not to pay coupons does not apply to newly issued capital instruments provided any payment of coupons on such newly issued capital instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of this decision[21]. The Commission accepts that limitation of the coupon ban in order to

[20] See recitals (50) to (63) of the first rescue decision and recitals (73) to (88) of the second rescue and opening decision.

[21] Other decisions refer to similar commitments: see recital 218 of Commission Decision in Case Restructuring of Royal Bank of Scotland and participation in the Asset Protection Scheme C(2009)10112 final, OJ C 119, 07.05.2010, p.1 and recital 165 of Commission Decision in Case Restructuring of Lloyds Banking Group C(2009)9087 final, OJ C 46, 24.02.2010, p.2.

permit the group to raise fresh hybrid capital on the market in line with point 26 of the Restructuring Communication. The issuance of subordinated securities after the date of adoption of this decision will permit the bank to raise additional funding and hybrid capital while not triggering the payment of coupons on existing securities, in particular on existing subordinated debt. By virtue of the limitation of the coupon ban the bank will therefore be in a position to issue additional Tier 1 capital under the CRR, which may potentially reduce the capital it needs in form of equity. In that respect, it must be recalled that coupons must be optional and cannot be mandatory for debt instruments to qualify as Tier 1 capital under the CRR. Finally, in the present case it can also be noted that, after the full write-down of NLB's shareholders' equity and outstanding subordinated debt, no equity and no subordinated debt is left in the bank. The limitation of the coupon ban does not undermine the useful effect of a coupon ban of the kind contemplated by the Restructuring Communication because the commitment provided by NLB that the payment of coupons on new instruments will not create a legal obligation to make any coupon payments on NLB's existing securities will prevent any unnecessary outflow of capital.

(160) Accordingly, burden-sharing on equity, hybrid and subordinated debt-holders, cost reductions, divestments and adequate remuneration for the aid represent a sufficient own contribution by NLB to the costs of its restructuring.

(161) For those reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

(iii) Measures limiting the distortion of competition

(162) Finally, section 4 of the Restructuring Communication requires that the Restructuring Plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates post-restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the beneficiary's own contribution and burden-sharing over the restructuring period.

(163) NLB has received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 2,321 billion equivalent to 20 % of NLB's RWA[22]. The adequate remuneration of the aid and the need to implement measures to limit potential distortions of competition are necessary in particular in view of the relatively large amount of aid.

(164) A first measure that will limit distortions of competition is the divestment of NLB's stakes in […]. The divestment of its […], will reduce NLB's market share […]. The divestment of NLB's […] will also contribute to limit NLB's market share and open the market to competitors.

(165) The reduction of NLB's market presence in loans to the corporate sectors of construction, transport and financial holdings is achieved thanks to the yearly

[22] RWA as of December 2012.

limitations on RWA in those sectors.

(166) In addition, NLB will discontinue leasing, factoring, forfeiting and non-core business in Slovenia and abroad so further contributing to limit the possible spill-over effect of the State aid received to activities other than its core banking business.

(167) NLB will continue its operations under conditions limiting the distortion of competition. As a monoline bank with enhanced risk management and governance policies and a more efficient lending policy with enhanced pricing achieving a RoE of [10-20] % on new loans at 31 December 2017, the bank will refrain from providing excessively advantageous conditions to its clients. Those elements contribute to the viability of NLB but also limit distortions of competition.

(168) Slovenia committed to an acquisition ban, ensuring that NLB will not use the State aid received to acquire any new business. In addition a capital repayment mechanism is put in place allowing NLB to pay dividends to the State for the fiscal years of 2015, 2016 and 2017 to a maximum extent without endangering the regulatory capital requirements of the bank. That capital repayment mechanism ensures that excess capital above regulatory capital requirements or any other regulatory requirements will not permit the bank to enter into new business before repaying the State.

(169) In addition to those structural measures, Slovenia also committed to a set of behavioural constraints preventing distortions of competition. The Commission welcomes a ban on advertising State support and on aggressive commercial practices, thus preventing NLB using the aid for anti-competitive market conduct.

(170) Taking into account that mix of measures and commitments, there are sufficient safeguards to limit potential distortions of competition in view of the amount of aid to NLB.

8.2.4. Monitoring of the Restructuring Plan

(171) Pursuant to section 5 of the Restructuring Communication supplemented by the 2013 Banking Communication, regular reports are required to allow the Commission to verify that the Restructuring Plan is being implemented properly. Slovenia will appoint a monitoring trustee who will provide the Commission with semi-annual monitoring reports.

(172) To ensure proper implementation of the Restructuring Plan throughout its duration, the Slovenian authorities will take all the necessary measures to ensure that NLB complies with the commitments listed in the Term Sheet.

(173) Moreover, the correct implementation of the Restructuring Plan and the full and correct implementation of all commitments contained in the Term Sheet attached in the Annex to this Decision will be continuously monitored by an independent, sufficiently qualified Monitoring Trustee. The Monitoring Trustee will have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustee may ask NLB for explanations and clarifications. Slovenia and NLB are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring.

8.2.5. Conclusion and closure of the opening on the Restructuring Plan

(174) The Commissions notes that the Restructuring Plan presented by Slovenia adequately addresses the issues of viability (corporate governance included), burden-sharing and distortion of competition and is in line with the requirements of the Restructuring Communication supplemented by the 2013 Banking Communication.

(175) The Commission thus removes the doubts of the Commission on the compatibility of the Restructuring Plan raised in the second rescue and opening decision.

9 CONCLUSION

(176) The Commission concludes that the first, second and third State recapitalisations of NLB and the transfer of impaired assets to the BAMC constitute restructuring aid in favour of NLB.

(177) The Commission concludes that the restructuring measures consisting of the first, second and third recapitalisations and the transfer of impaired assets to the BAMC are apt to enable NLB to restore its long-term viability, sufficient in respect to burden-sharing and appropriate and proportional to offset the market-distorting effects of the aid measures in question. The Commission therefore considers that the submitted Restructuring Plan fulfils the criteria of the Restructuring Communication as supplemented by the 2013 Banking Communication and the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication. The restructuring measures can therefore be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. The first, second and third recapitalisations and the transfer of impaired assets to the BAMC can therefore be approved in accordance with the Restructuring Plan,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring aid provided to NLB by the Republic of Slovenia, consisting of the first recapitalisation of EUR 250 million, the second recapitalisation of EUR 382,9 million, the third recapitalisation of EUR 1 558 million and the transfer of impaired assets to the BAMC with an aid element of EUR 130 million, constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

The restructuring aid is compatible with the internal market, in light of the Restructuring Plan and the commitments set out in the Annex.

Article 2

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 18.12.2013

For the Commission

Joaquín ALMUNIA
Vice-President

Notice

If the decision contains confidential information which should not be published, 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 publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels

Belgium

Fax No: +32-2-296 12 42

ANNEX

COMMITMENTS TOWARDS THE EUROPEAN COMMISSION

The Republic of Slovenia ("**Slovenia**") ensures that NLB d.d. and its affiliates ("**NLB**") will implement the restructuring plan submitted on 7 January 2013 as amended on 25 February 2013 and lately in November and December 2013. In connection with this, Slovenia commits to implement in particular the measures and actions and to achieve the objectives listed below (the **"Commitments"**) which are integral part of said restructuring plan.

The Commitments shall take effect upon the date of adoption of the European Commission's ("**Commission**") decision approving the restructuring plan.

The restructuring period will end on 31 December 2017. The Commitments apply throughout the restructuring period unless the individual Commitment states otherwise.

(1) **[reduction of the balance sheet]** According to the content of the restructuring plan NLB will reduce its group balance sheet total from approximately EUR 17.9 billion in 2010 to EUR [10-20] billion by 31 December 2017, with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance sheet total.

(2) **[reduction of costs]** NLB's operating costs amounted to EUR 368 million in 2012 at Group level. NLB will reduce its operating costs at Group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to achieve either a cost-to-income ratio below 55% or in case the cost-to-income ratio is above [50-60] % to EUR [300-350] million by the end of 2014, EUR [300-350] million by the end of 2015, EUR [250-300] million by the end of 2016 and to EUR [250-300] million by the end of 2017.

If the annual inflation in the period 2013-2017 exceeds 2,5% the operating cost targets will be adjusted to accommodate for the difference between inflation rate projections in the restructuring plan and actual inflation in the particular year.

(3) **[sale of participations]** NLB holds inter alia participations in the following companies:

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As of 31 December 2012, participations aimed for divestment represented a total asset value of EUR [100-150] million.

(3.1) The above participations shall be sold, or their sale shall be procured, to the extent that by 31 December 2015, the asset value of the participations shall be reduced by at least [40-50] % (i.e. to at least EUR [70-80] million) and by at least [80-90] % (i.e. to at least EUR [20-30] million) by 31 December 2016.

(3.2) The sale of a participation is deemed to be completed once NLB has concluded a binding sale and purchase agreement for the respective participation with one or more Purchasers that is independent of and unconnected to NLB.

(3.3) If NLB misses the asset reduction target for 2015, prompt corrective action should be implemented and notified to the Commission.

(3.4) If NLB misses the asset reduction target for 2016, NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by […] the above participations or the remainder thereof.

(3.5) In any case participations shall be sold in a manner consistent with the Commitments.

(4) **[divestment of non-core subsidiaries]** NLB d.d. also holds participations in the following non-core subsidiaries:

- […]
- […]
- […]
- […]
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As of 31 December 2012, non-core participations represented a total asset value of EUR [950-1000] million.

(4.1) The above participations shall be divested (i.e. sold, liquidated or wound down), or their divestment shall be procured, to the extent that by 31 December 2015, the asset value of these participations shall be reduced by at least [40-50] % (i.e. to at least EUR [550-600] million) and by at least [80-90] % (i.e. to at least EUR [150-200] million) by 31 December 2016.

(4.2) The divestment of a participation is deemed to be completed once the respective company has been liquidated or wound down or NLB d.d. has concluded a binding sale and purchase agreement for the respective participation with one or more Purchasers that are independent of and unconnected to NLB.

(4.3) The commercial activity of participations that have not been divested within the deadlines set out in (i) above, e.g. due to pending lawsuits or disputes with other shareholders, will be terminated in accordance with the duration and nature of the underlying business. No new business will be executed (except forced prolongations of existing engagements). In such a case, the respective divestment is deemed to be completed if either the total assets of a particular participation have been reduced to 10% compared to the total assets of the participation as of 31 December 2012, or the statutory formal liquidation procedure has been initiated, or the capital requirements for the subsidiaries concerned do not exceed a total of EUR 5 million on a consolidated level.

(4.4) If NLB misses the asset reduction target for 2015, prompt corrective action should be implemented and notified to the Commission.

(4.5) If NLB misses the asset reduction target for 2016, NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by […] the above participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth in paragraph 4.2 above.

(4.6) In any case participations shall be divested in a manner consistent with the Commitments.

(5) **[sale of joint venture participations]** NLB d.d. will sell all of its joint venture participations in the following companies by […]:

- […]
- […]
- […]
- […]
- […]
- […]

(5.1) The sale of the above joint venture participations is deemed to be completed once: (i) NLB has concluded a binding agreement for the respective participation with one or more Purchasers that are independent of and unconnected to NLB. (ii) the ownership of the joint ventures had been reduced to […] %.

(5.2) If NLB has not concluded binding sale and purchase agreements concerning each of the above participations or reduced its ownership to […] % by […], NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by […] the participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth in in paragraph 5.1 above.

(5.3) In any case participations shall be sold in a manner consistent with the Commitments.

(6) **[sale of participations in banks]** NLB d.d. will sell its participations in […] by […].The sale of a participation is deemed to be completed once NLB d.d. has concluded a binding sale and purchase agreement for the respective participation with one or more Purchasers that meet the following requirements: (i) be independent of and unconnected to NLB (ii) have the financial resources, proven expertise and incentive to maintain and develop the acquired business and/or companies as a viable and active competitive force (iii) do not create prima facie competition concerns or give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the concerned business. If NLB d.d. has not concluded binding sale and purchase agreements concerning its participations in […] by […], NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by […] these participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth above in this paragraph 6 and at no minimum price.

(6.1) NLB d.d. will also fully divest its participation in […] by […]. If the participation of NLB d.d in […] is not fully divested by […], NLB d.d. will propose on its own initiative, fully support, vote in favour and execute any measure, decision or shareholders' resolution necessary to put […] in run-off starting from […] until extinction of its loan portfolio (3 years maximum). In any case, NLB d.d. will propose on its own initiative, fully support, vote in favour and execute any measure, decision or shareholders' resolution necessary to have […] refraining from any new lending origination by […].

(7) **[reduction of credit business and closure of […]]** NLB d.d. will reduce its market presence in the following ways:

(a) closure […] by […];

(b) reduction of credit business in Slovenia with:

(b.1) financial holdings [SIC codes 64.200, 64.300, 64.920, 64.990, 70.100, 70.200, 70.220[1]]; the risk-weighted assets ("**RWAs**") of this portfolio amounted to EUR [500-550] million as of 31 December 2012. NLB d.d. will ensure that the RWAs of this portfolio will be reduced according to the following schedule:

End-2013	End- 2014	End-2015	End-2016	Mid- 2017	End-2017
[…]	[…]	[…]	[…]	[…]	[…]

(b.2) corporate clients from the transport sector with an exposure over 1 million [SIC codes 49.392, 49.410, 50.200, 51.100, 52.290[2]]; the RWAs of this portfolio amounted to EUR [100-150] million as of 31 December 2012. NLB d.d. will ensure that the RWAs of this portfolio will be reduced according to the following schedule.

End-2013	End- 2014	End-2015	End-2016	Mid- 2017	End-2017
[…]	[…]	[…]	[…]	[…]	[…]

(b.3) corporate clients from the construction sector with an exposure over 5 million [SIC codes 41.100, 41.200, 42.110, 42.220, 68.1003]; the RWAs of this portfolio amounted to EUR [900-950] million as of 31 December 2012. NLB d.d. will ensure that the RWAs of this portfolio will be reduced according to the following schedule:

End-2013	End- 2014	End-2015	End-2016	Mid- 2017	End-2017
[…]	[…]	[…]	[…]	[…]	[…]

(7.1) If in any of these three sectors the provided RWA's reduction targets are missed by more than [10-20] %, NLB d.d. shall refrain from undertaking any new credit activities in Slovenia in the relevant sector until the respective RWA's reduction target is achieved. In addition, NLB shall promptly submit to the Commission a contingency plan showing its ability to achieve by 31 December 2017 the relevant RWA's reduction target(s).

(8) **[business with foreign clients]** NLB d.d. shall refrain from undertaking any new credit activities with corporate clients incorporated outside Slovenia and are not members of the groups whose headquarter or final beneficiary is in Slovenia. NLB d.d. will limit its activities with such clients to the orderly execution and management of credit contracts. For the sake of clarification, trade and export financing for Slovenian companies in relation to foreign countries and treasury operations with foreign banks are not subject to this limitation.

(9) **[corporate governance]** Slovenia undertakes to implement in NLB up-to-date corporate governance structures in accordance with the EU Capital Requirements Directive and

[1] Definition refers also to the appropriate codes written in a XX.X and XX.XX format (i.e. 64.200 refers also to 64.2. and 64.20)

[2] The same logic applies to financial holdings.

Slovenian domestic legislation. The related necessary changes to NLB d.d. bylaws and internal rules have to be implemented in three months after the adoption of the decision of the Commission on the restructuring plan of NLB. In particular:

(9.1) Slovenia undertakes to observe:

(a) the corporate governance rules according to paragraphs from 9.2 to 9.9.

(b) the framework and segregation of duties set by Slovenian corporate and banking/regulatory legislation for shareholders, management and supervisory board of financial institutions; and

(c) the Commission's Guidance on Corporate Governance and Relationship Framework for Banks in which the State has a Stake;

(9.2) the management board of NLB d.d. will have the sole powers and responsibilities for managing the day-to-day business of NLB independently and in the sole interest of the bank. Neither the supervisory board nor the shareholders' assembly or any representatives of shareholders may issue any instructions to the management board or interfere otherwise with the day-to-day management of the bank;

(9.3) apart from supervising and monitoring by the Supervisory Board, no other corporate body or unit shall issue instructions to the Management Board; in particular, there shall be no direct or indirect instruction by any shareholder or by the State to the Management Board. This shall also apply to the Assembly General Meeting, whose decision taking competence shall be limited to the catalogue of decisions as foreseen by the law and in the statutes. Furthermore, individuals who use their influence on a company to induce members of the Management Board to act in a manner which causes damage to the company or its shareholders must reimburse the company for the resulting damage.

(9.4) the arm's length principle shall apply to the relationship between the bank and its shareholders, in particular Slovenia;

(9.5) all members of the supervisory board shall pass the "fit and proper test", i.e. they shall be reliable and avail of the necessary professional skills to properly assess and monitor NLB's business. Slovenia will not intervene in the appointment of supervisory board members and executives over and above its own nominees and its shareholder rights under ordinary Slovenian corporate law;

(9.6) two thirds of the seats and voting rights on the supervisory board and its committees shall be allocated to independent experts, i.e. persons who are neither currently employed nor have been employed 24 months prior to their appointment by the Slovenian government and who do not currently hold nor have held 24 months prior to their appointment a leadership or managing function within a Slovenian political party;

(9.7) NLB will ensure an effective, independent and objective internal audit function. For this purpose, the internal audit function will report and be answerable only to the Management Board and Supervisory board's Audit Committee, where at least one member

[3] The same logic of codes as for financial holdings and construction.

has recent and relevant financial experience. Further, the findings and recommendations by the internal audit function shall receive proper attention and be discussed in the Audit Committee/Management Board, followed by an appropriate action plan to address identified problems. Decision not to act on findings by the internal audit function shall be well substantiated and, upon request, reported to the Monitoring Trustee

(9.8) NLB will follow a prudent, sound business policy geared towards sustainability while implementing the planned measures. NLB will further review its internal incentive schemes and remuneration policy and take steps to ensure that they do not encourage unreasonable risk-taking, that they are geared towards long-term and sustainable goals, and are transparent. The remuneration of board members and leading employees of the bank shall particularly take into account the relevant person's contribution to the bank's economic position and the necessity of market-oriented salary levels so as to be able to employ particularly suitable individuals who can achieve a sustainable business development. NLB's remuneration policies and practices will be compliant with the EBA Guidelines on Remuneration Policies and Practices published on the 10 December 2010. The variable annual remuneration will be limited as follows:

(a) management board: five monthly salaries ;

(b) employees performing special work[4] employed in the front office function: five monthly salaries;

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

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

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

(9.9.1) After informing the Monitoring Trustee, the NLB may adjust the above maximum limit for the annual remuneration in line with Slovenian inflation.

(9.9.2) To the extent legally possible, NLB shall remunerate members of its bodies and committees, employees and essential agents in line with the following principles:

[4] Employees performing special works as defined in the bank's remuneration policy are beside management board; (i) Business function – employees in the front offices of NLB d.d;direct risk assumers: directors at the second level of management, directors of departments in financial markets, directors of retail branch offices, directors of corporate (large, SME) business centres; (ii) Common function – directors at the second and third levels of management; (iii) Supervisory function – directors at the second and third line of management, employees included in the internal control system (internal audit, etc.) and other independent control functions (risk management, etc.), Chief Information Security Officer (CISO); (iv) Other employees whose total annual income exceeds EUR 100,000 gross.

(b.1) the relevant person's contribution to NLB economic position, especially in the context of previous business policies and risk management; and

(b.2) the necessity of a market-oriented salary, so as to be able to employ particularly suitable persons who can achieve sustainable growth.

(9.10) Slovenia will ensure that each state-owned bank shall remain a separate economic unit with independent powers of decision within the meaning of the EC Merger Regulation and the Jurisdictional Notice. In particular, Slovenia ensures that:

(a) any confidential, commercially sensitive or personal information provided to government bodies and marked as such will be treated accordingly and not circulated to other banks and undertakings in which the state has a stake;

(b) the government will manage and maintain its stake in the bank separately from the management of its interests in any other bank in which the state has a stake;

(c) the exercise of any rights held by the state and the management of the state's interests in any banks shall be on a commercial basis and shall not prevent, restrict, distort or significantly lessen nor impede effective competition. Any disposal of the state's shareholding must be conducted in a transparent, open and competitive process.

(10) **[risk management and credit policies]** NLB will overhaul its risk management process and in particular NLB d.d. . and its core banking affiliates[5] will:

(10.1) price every new loan (considering as new loan any new business not related to an existing transactions) by using an appropriate internal pricing tool (such as the currently used "Kreditni Kalkulator" and its future version) or (in the case of mass market retail and SME[6] exposures) using appropriate internal pricing guidelines. Pricing for new loans will be considered adequate if the new loan contributes to achieve a positive Return on Equity before tax ("**RoE**") of at least […] % in 2014, […] % in 2015, […] % in 2016 and […] % 2017 on either the individual loan or on each client relationship. The calculation of the ROE of a client relationship can include interest income, fees as well as other combined products of the same client. The calculation of RoE on client level and pricing according to minimum RoE has to be implemented by 30 June 2014 on standalone level and by 31 December 2014 for all core banking affiliates

(a) For the purpose of this calculation, the volume weighted average of all loans with a single client (since the date of this decision), other fee business or banking transactions contributing to the profitability of the relationship with the same client can be taken into account, so that a new loan might generate a lower return if it is compensated by revenues of other fee business or banking transactions. New loans will have a credit documentation demonstrating a pre-deal calculated RoE for the either the individual loan or other live exposure on single client including fee business or banking transactions. In the case of

[5] NLB Razvojna banka, NLB Montenegrobanka, NLB Banka Tuzla, Tutunska banka, NLB Banka Priština and NLB Bank Beograd.

[6] Middle size companies: companies with the exposure from EUR 500.000 to 10 million on NLB Group level or with revenue in the amount from EUR 2.5 million to 50 million in two consecutive years., Small companies: companies with the exposure up to EUR 500.000 on NLB Group level or with revenue up to EUR 2.5 million in two consecutive years.

mass market retail and SME transactions, this pre-deal calculated RoE may be replaced by a verification that the transaction is in line with internal pricing guidelines and a centralized demonstration that pricing guidelines assure a return on equity of […] % in 2014, […] % in 2015, […] % in 2016 and […] % 2017.

(b) Any deviation from the pricing resulting in a lower price level will be documented. This documentation will include robust commercial reasoning for the deviation and will be presented to the Monitoring Trustee. The total amount of deviations will not exceed the amounts defined in paragraph 10.6.

(c) Credit deals not falling under this pricing policy regime: Transactions with related parties (i.e. Group members and employees), restructuring cases (of D, E and C clients with a delay in payments of more than 90 days) and all money market transactions.

(10.2) adapt the credit rating process such that a financial statement analysis and a credit scoring indicating at the very least leverage and performance parameters such as return on capital, EBIT Interest Coverage, Debt/EBITDA, Debt / (Debt+Equity) etc. will be taken into account before engaging on a new credit exposure with any business client. Every customer to which NLB d.d. has an exposure exceeding EUR 1 million should be re-rated annually;

(10.3) document all restructuring decisions i.e. all new credit deals with non-performing corporate clients with an exposure over EUR 10.000 and include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement, demonstrating that the solution which maximizes the net present value for the bank is chosen. Unless a RoE of at least […] % can be obtained, restructuring decisions will be such that the bank is able to terminate the engagement at least every 12 months. Where NLB d.d. does not have the exclusive right to accept, propose or approve restructuring agreements or to take restructuring decisions it shall exercise its rights according to the above principles. A list of all recent restructuring decisions will be regularly provided to the Monitoring Trustee (at least every 6 months). The documentation of any restructuring decision will be presented to the Monitoring Trustee upon request.

(10.4) ensure that all credit officers approving credits to SME and corporate clients will have attended an internal training familiarizing them with the credit rating process and established pricing methodologies no later than 30 June 2014;

(10.5) implement a refinement of the client rating process to a fully internal ratings based system, approved by the Bank of Slovenia, by no later than 31 December 2014

(10.6) should the Monitoring Trustee reveal a failure on behalf of NLB to comply with any of the Commitments under this paragraph 10 NLB d.d. shall provide the Monitoring Trustee with a remedial plan indicating which actions it has taken and intends to take in order to avoid a breach in the following quarter. The plan will be submitted in time for the Monitoring Trustee to report on it in its next semi-annual report to the Commission. Should the remedial plan not deliver the expected results and objectives, NLB d.d. will limit for a term of twelve months – starting the quarter following the reporting of such breach of Commitments – the new lending volume per reporting period to 66% of the new lending volume[7] of the reporting period in which the Commitment was breached. This does not apply to an

7 New lending volume per reporting period means the loan amounts contractually agreed in a given reporting period.

individual breach of a Commitment under paragraphs 10.1, 10.2 and 10.3 provided that a further investigation by the Monitoring Trustee reveals that such breach can be considered an isolated error or omission and that there is no evidence hinting that a total volume per client of more than EUR […] million of deals is affected by such breach.

(11) **[non-discrimination]** Slovenian State-owned companies will by no means be treated more favourably than non-state-owned companies (non-discrimination). NLB d.d. should make available throughout the restructuring period an annual report comparing the lending conditions applied to state-owned companies and to similar private companies.

(12) **[behavioural commitments]** Slovenia commits to introduce the following behavioural safeguards in respect of NLB's restructuring:

(12.1) **[bans on advertising and aggressive commercial strategies]** to impose a ban on advertising related to the state support to NLB and to the state ownership in NLB (or to any competitive advantages arising in any way from the aid to NLB or the state ownership in NLB) and to prevent NLB from employing any aggressive commercial strategies which would not be pursued without state support (advertisement ban);

(12.2) **[Capital repayment Mechanism and dividend ban]** Based on the audited year end accounts NLB d.d. will pay in form of dividend disbursement the following amounts to its shareholders:

(i) For the fiscal year 2015 and 2016: the lower of (i) 50% of the excess capital above the applicable minimum capital requirement on the consolidated level under European and Slovenian law (including pillar 1 and 2) plus a capital buffer of 100 basis points; or (ii) the net income for the relevant year;

(ii) For the fiscal year 2017: the lower of (i) 100% of the excess capital above the applicable minimum capital requirement on the consolidated level under European and Slovenian law (including pillars 1 and 2) plus a capital buffer of 100 basis points; or the net income for the relevant year.

(12.2.1) Without prejudice to the competences of Bank of Slovenia as banking supervisor of NLB, the dividend disbursement shall be, totally or partially, suspended if, on the basis of a reasoned request by NLB endorsed by the Monitoring Trustee, it is considered that it would endanger the solvency position of the bank in the following years.

(12.2.2) For the fiscal years 2013 and 2014 no dividend will be paid.

(12.2.3) The subsidiaries of NLB d.d. are subject to a dividend ban along the same lines as outlined above for NLB d.d. Notwithstanding this ban, NLB Group companies may pay out dividends to their shareholders if NLB d.d. is – directly or indirectly - the majority shareholder and all external shareholders combined hold less than [10-20] % of shares and voting rights in the respective company.

(12.3) **[coupon ban]**; to ensure that NLB will refrain during the restructuring period from making any payments on capital instruments, unless those payments stem from a legal obligation, and not to call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the state may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. This commitment not to pay coupons during the restructuring period does not apply for newly issued instruments (meaning instruments issued after the final Commission's approval of the restructuring plan), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of the Commission's Restructuring Decision (coupon ban);

(12.4) **[acquisition ban]** to ensure that NLB will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and pool of assets which form a business.

(a) Exemption requiring Commission's prior approval: Notwithstanding this prohibition, NLB may, after obtaining the Commission's approval, acquire businesses if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition[8];

(b) Exemption not requiring Commission's prior approval: NLB may acquire stakes in undertakings provided that the purchase price is less than EUR 1.5 million (0,01% of NLB's total assets as of Dec 2012) in each individual case and that the cumulative purchase prices paid by NLB for all such acquisitions over the whole restructuring period is less than EUR 3.75 million (0,025% of NLB' total assets as of Dec 2012).

(c) Activities not falling under the acquisition ban: 1) Acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms; 2) Disposals and restructuring within NLB Group, including buy-outs of minority shareholders and the buy-out of the remaining shares of NLB Vita from KBC.

(13) **[Burden sharing]** Slovenia commits that before any State aid is granted the existing shareholders' equity and all outstanding subordinated debt will be written off in full.

(14) **[reduction of State's shareholding and […]]** Slovenia will reduce its shareholding in NLB d.d. to […] (" […] ") by […]. If Slovenia has not entered into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB d.d. exceeding the […] by […], Slovenia and NLB d.d. shall grant to the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell NLB d.d.'s participations in the following […], for a minimum price not lower than […] book value:

- […]
- […]
- […]
- […]
- […]
- […]

The sale process will be conducted by the Divestiture Trustee appointed in accordance with paragraph 19.

(14.1) Should Slovenia sell its shareholding in NLB d.d. exceeding […] by […], at the latest, all commitments defined in this document will cease to apply from 31 December 2016 onward,

[8] See point 41 of the Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

with the exception of the commitment to restrict to an appropriate level the total remuneration to any board member and employee performing special work according to paragraph (9.9) which will apply and be complied with until 31 December 2017.

(15) [**Transfer of assets to the BAMC**] The transfer value of the assets transferred to the BAMC will be equal to or below their Real Economic Value (REV) established by the Commission's experts in line with the state aid rules.

(16) **[Recapitalisation of subsidiaries]** Unless Stated differently under applicable legislation

a) Recapitalisation of subsidiaries via equity injections will be subscribed at the lower of (i) 25% discount to the share price (after adjustment for the 'dilution effect') immediately prior to the announcement of the capital injection, or (ii) the lowest price at which other shareholders of NLB 's subsidiaries will contribute to the recapitalisation of subsidiaries. The 'dilution effect' can be quantified using generally accepted market techniques (for instance, the theoretical ex-rights price (TERP)). For non-listed subsidiaires, the market value of the shares should be established using an appropriate market-based valuation approach (including a peer group multiplier approach or other generally accepted valuation methodologies).

b) In case the capital injection takes the form of hybrids instruments, those instruments will contain alternative coupon satisfaction mechanism and the provision determining the conversion rate of the hybrid into equity capital at the 25% discount to TERP (established analogically as in case of equity injection stipulated in a)).

The stipulation in point 16 applies only in cases where other shareholders of NLB's subsidiaries hold more than [5-10] % and do not participate in the capital increase or subscription of hybrid instruments in the existing shareholding proportions.

(17) **[reporting]** Until the end of the restructuring period, Slovenia undertakes to send to the Commission a semi-annual progress report. The report shall summarize the progress in implementing the restructuring plan and details on disposals of equity participations, liquidation of subsidiaries and reduction of RWAs. The report will be submitted every six months no later than by each 30 November for the first half of the year and each 31 May for the second half of the year.

(18) **[Monitoring Trustee]** The complete and correct implementation of all Commitments and obligations set out in this catalogue will be continuously and thoroughly monitored and checked by a suitably qualified Monitoring Trustee who: i) is independent from NLB and the government of Slovenia; ii) possesses the necessary qualifications to carry out its mandate; iii) will neither have nor become exposed to a conflict of interest.

(18.1) The Commission will have discretion to approve or reject the proposed trustees, and to approve the proposed mandate subject to any modifications it deems necessary for the trustees to fulfil their obligations.

(18.2) The trustee(s) will assume its specified duties in order to ensure compliance with the Commitments. The Commission may give any orders or instructions to the trustee in order to ensure compliance with the conditions and obligations referred to in this Decision and the Commitments.

(18.3) Slovenia (Ministry of Finance) commits that NLB d.d. will provide and cause to provide the Monitoring Trustee with all such cooperation, assistance, rights, powers and information as the Monitoring Trustee may reasonably require and need for the proper performing of its tasks, duties and obligations.

(18.4) NLB d.d. and its core banking affiliates will set up an internal process to channel to the Monitoring Trustee all necessary information and documentation in order to monitor the implementation of the Commitments. NLB d.d. will give the Monitoring Trustee upon its request full and complete access to any of its books, records (including board minutes), documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties. NLB will make available to the Monitoring Trustee one or more offices in the bank's head office and will be available for meetings on request of the Monitoring Trustee.

(18.5) For the proper performing of its tasks, duties and obligations, the Monitoring Trustee shall be entitled to participate at the NLB d.d.'s Supervisory board meeting in line with the relevant legislation and to interview NLB d.d.'s Management and Supervisory Board members in relation to the compliance with the Commitments and to:

(a) monitor the internal organisation of NLB, in cooperation with NLB's internal control bodies. For this purpose, the Trustee will be entitled to interview the members of the NLB d.d.'s Supervisory board and its Risk and Audit Committees. The Trustee will upon its request receive all reports emanating from internal control bodies. The trustee shall monitor (i) that recommendations related to the Commitments from permanent supervisors or periodic controllers/auditors are dully enforced and (ii) that action plans are implemented in order to correct any failure identified within the internal control framework;

(b) monitor commercial practices of NLB d.d. and its core banking affiliates, with a focus on credit policy and deposit policy. The Trustee may interview members of all relevant credit committees, in particular those responsible for (i) the scoring/rating of customers,(ii) the granting of loans to customers (iii) the management of non-performing loans and restructured loans and (iv) the provisioning of non-performing loans and restructured loans.

(c) monitor policy of NLB d.d. and its core banking affiliates toward the restructuring and provisioning of non-performing loan, and interview all members of the relevant committees responsible for the restructuring and the provisioning of non-performing loans. NLB shall upon its requests communicate to the Trustee any risk report communicated to the Supervisory Board, or any analysis/review aimed at assessing the credit exposure of NLB. The trustee shall perform its own analysis, on the basis of the above-mentioned reports, interviews, and, if need be, the review of individual credit files (this should be without prejudice to the banking secrecy framework). In that regard, the Trustee should be entitled to interview credit analysts and risk officers who were involved in the sample cases when deemed appropriate.

(19) [**Divestiture Trustee]** The following provisions apply to the appointment of a Divestiture Trustee:

(a) Slovenia must propose to the European Commission for approval, no later than one month before the deadlines specified in (12) a list of one or more persons whom it proposes to appoint as Divestiture Trustee;

(b) the Divestiture Trustee must be appointed within one week of the European Commission’s approval in accordance with the mandate approved by the European Commission;

(c) Slovenia must grant comprehensive powers of attorney to the Divestiture Trustee:

   (i) to effect the disposal of State's shareholding in NLB (including the necessary powers to ensure the proper execution of all the documents required for effecting the disposal); and

   (ii) to take all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the disposal, including the appointment of advisors to assist with the disposal;

(d) NLB d.d. and its affiliates must provide the Divestiture Trustee with all such co-operation, assistance and information as the Divestiture Trustee may reasonably require to perform its tasks; and

(e) the Divestiture Trustee shall be remunerated by NLB d.d. and in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee’s mandate.