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C(2017) 4501 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA. 45664 (2017/N) – Italy – Orderly liquidation of Banca Popolare di Vicenza and Veneto Banca - Liquidation aid

Sir,

1. PROCEDURE

- (1) On 18 January 2017, the Commission approved liquidity support¹ to Veneto Banca S.p.A. ("VB") and Banca Popolare di Vicenza S.p.A. ("BPVi") – together the "two banks" – in the form of Government Guaranteed Bonds ("GGBs") (the "First Liquidity Decisions"). The liquidity support of EUR 3.5 billion granted to VB took the form of a State guarantee on two bonds of EUR 1.75 billion each with a maturity of two and three years respectively². The liquidity support of EUR 3

¹ Commission Decision of 18 January 2017 in State aid case SA.47150 (2016/N) – Liquidity support to Veneto Banca, not yet published. Commission Decision of 18 January 2017 in State aid case SA.47149 (2016/N) – Liquidity support to Banca Popolare di Vicenza, not yet published.

² The State guaranteed bonds with a maturity of two years have a coupon rate of 0.4% and maturity date 2 February 2019 (ISIN: IT0005239527). The State guaranteed bonds with a maturity of three years have a coupon rate of 0.5% and maturity date 2 February 2020 (ISIN: IT0005239535). See <https://www.gruppovenetobanca.it/documents/17503/1443157/02.02.17+PRESS+RELEASE.PDF>.

Onorevole Angelino Alfano
Ministro degli Affari esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Telefono: 00-32-(0)2-299.11.11

billion granted to BPVi took the form of a State guarantee on a single bond with a maturity of three years³. In the context of the commitments undertaken by Italy for the approval of that decision, Italy committed to submit a restructuring or a wind-down plan for VB and BPVi within two months of the granting of the guarantees (unless the aid is reimbursed within two months).

- (2) On 14 February 2017, the Italian authorities shared with the Commission services by email a slide presentation entitled "Project Tiepolo: Industrial Plan" dated 10 February 2017 (the "Tiepolo plan") for a planned merged entity between BPVi and VB. The high-level plan was based on a capital increase of EUR 4.7 billion without initially stating on what basis that capital would be provided or by whom. The Italian authorities informed the Commission services that the same document had been sent to the Single Supervisory Mechanism ("SSM"). The Commission administratively registered that plan as well as its subsequent updates and additional information submitted by the Italian authorities under State aid cases SA. 47316 (2017/PN) and SA. 47317 (2017/PN).
- (3) On 12 April 2017, the Commission approved additional liquidity support⁴ (the "Second Liquidity Decisions") to VB and BPVi. In line with the State aid decisions of 12 April 2017, VB issued EUR 1.4 billion State guaranteed bonds on 31 May 2017⁵ and BPVi issued EUR 2.2 billion State guaranteed bonds on 1 June 2017⁶.
- (4) During the months of April, May and June 2017, the Commission services had numerous meetings, teleconferences and electronic mail exchanges with the representatives of Italian authorities regarding the Tiepolo plan. The SSM and the two banks were also closely involved in those discussions.
- (5) On 23 June 2017⁷, the SSM/ECB concluded that VB and BPVi are "failing or likely to fail" in accordance and as a consequence of the circumstances established in Article 18(4)(a) of the Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR")⁸. On the same date, the ECB communicated those decisions

³ The State guaranteed bond has a coupon rate of 0.5% and maturity date 3 February 2020 (ISIN: IT0005238859). See https://www.popolarevicenza.it/bpvi-web/data/bpvi-comunicato/comunicati-stampa/eng-nodiscl/2017/Issuance-of-State-guaranteed-bond/allegato/03_02_2017-Issuance_of_State_guaranteed_bond.pdf.

⁴ Commission Decision of 12 April 2017 in State aid case SA. 47941 (2017/N) – Italy – Additional liquidity support to Veneto Banca, not yet published. Commission Decision of 12 April 2017 in State aid case SA. 47940 (2017/N) – Italy – Additional liquidity support to Banca Popolare di Vicenza, not yet published.

⁵ Veneto Banca issued two State guaranteed bonds, each one for an amount of EUR 700 million. The bonds with a maturity of two years have a coupon rate of 0,4%, maturity date 31 May 2019 (ISIN: IT0005250185). The bonds with a maturity of three years have a coupon rate of 0,5%, maturity date 31 May 2020 (ISIN: IT0005257768). Fitch assigned a 'BBB' rating and DBRS a 'BBB (high)' rating. See <https://www.gruppovenetobanca.it/documents/17503/1443157/01.06.2017+PRESS+RELEASE.PDF>.

⁶ The State guaranteed bonds have a coupon rate of 0,5%, maturity date 1 June 2020 (ISIN: IT0005247645). Fitch assigned a 'BBB' rating and DBRS a 'BBB (high)' rating. See https://www.popolarevicenza.it/bpvi-web/data/bpvi-comunicato/SalaStampa/Comunicati-Stampa-IR/EN/2017/01_06_2017_State_guaranteed_bond_issuance/allegato/01_06_2017_State_guaranteed_bond_issuance.pdf.

⁷ Press Release of the SSM/ECB, 23 June 2017. See <https://www.bankingsupervision.europa.eu/press/pr/date/2017/html/ssm.pr170623.en.html>.

⁸ Regulation (EU) no 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain

to the competent resolution authority – the Single Resolution Board ("SRB") – in line with the provisions of Article 18(1) SRMR.

- (6) On 23 June 2017⁹, the SRB concurred with the ECB's assessment and decided not to take resolution action in respect of VB and BPVi. The SRB assessed that, while the conditions for resolution action of Article 18(1)(a) and (b) SRMR were met, the condition of Article 18(1)(c) was not satisfied.
- (7) On 25 June 2017, Italy notified to the Commission the forthcoming liquidation of VB and BPVi under the Italian Insolvency Law for Banks¹⁰ (compulsory administrative liquidation - "CAL"). According to the notification, Italy envisages to grant State aid measures to allow the immediate sale out of liquidation of assets and liabilities of VB and BPVi to Intesa Sanpaolo S.p.A. ("Intesa Sanpaolo" or the "Buyer"), including staff and branches. Italy also envisages a State financed entity (asset management company, "AMC") to purchase assets that were not included in the sale perimeter and thus left in the entities in insolvency. The notification further included the envisaged agreement with the Buyer (the "Envisaged Agreement"), a plan for the integration of the economic activities of VB and BPVi into the Buyer, a decree law which will allow the State support measures to be granted to the two banks in the sale process and in insolvency ("the envisaged Decree Law"), and a letter from the Bank of Italy ("BOI"). Finally, the notification includes a set of commitments undertaken by Italy in respect of the activities transferred to the Buyer, the residual entities in insolvency and the AMC. Italy complemented the notification with additional documents.
- (8) By letter dated 25 June 2017, Italy agreed exceptionally to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958¹¹ and to have the present decision adopted and notified in English.

2. FACTS

2.1. VB and its difficulties

- (9) VB is an Italian commercial bank, which is located in the Veneto Region and mainly operates in the North of the country. It is the parent company of VB Group whose activities consist of commercial lending to retail, SMEs and corporate clients, and includes other banking entities, located in Italy as well as abroad. As of 31 December 2016, VB had total assets of EUR 28 billion, 418 branches in Italy and around 5 000 employees in Italy (see Table 1). VB's market share in deposits as well as in loans is around 1% in Italy and around 4% for deposits and around 5% for loans in the Veneto region¹².

investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1.

⁹ Press Release of the Single Resolution Board, 23 June 2017. See <https://srb.europa.eu/en/node/341>.

¹⁰ By decree of the Italian Ministry of Economy and Finance on proposal of Bank of Italy under Section III-Article 80 of the Italian Banking Act – Testo Unico Bancario ("TUB").

¹¹ Council Regulation No. 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

¹² Source: Tiepolo plan.

Table 1 – Evolution of main indicators for VB, 2012-2016¹³

	2012	2013	2014	2015	2016
Operating income (EUR mn)	1,097	1,068	841	1,020	721
Operating expenses (EUR mn)	-683	-668	-597	-671	-760
Pre-provisions profits (EUR mn)	414	400	252	388	-39
Impairments (EUR mn)	-476	-507	-734	-846	-1,332
<i>ow Loan loss provisions</i>	-474	459	-717	-754	-1,288
Other provisions (risks and burdens) (EUR mn)	-12	-11	-38	-88	-434
Net income (EUR mn)	-72	-100	-984	-907	-1,582
Total assets (EUR mn)	40,165	37,307	36,167	33,349	28,078
Branches in Italy	524	522	521	487	418
Staff in Italy	5,277	5,276	5,207	5,310	5,039
NPL ¹⁴ ratio (%)	13.2%	17.5%	22.3%	28.2%	38.7%

- (10) Table 1 shows the trend of VB's continuously deteriorating financial performance since 2012. VB has been loss making for the last five years. The losses in the last three years were particularly high. In 2016, VB was not even in a position to cover its operating costs from its operating income, leading to negative pre-provisioning profit.
- (11) Regarding VB's asset base, the amount of loan loss provisions increased rapidly over the past five years and was three times higher at the end of 2016 compared to 2012. At the end of 2016, nearly 40% of all loans by gross book value were non-performing, which is more than double the aggregate ratio for non-performing loans registered for the whole Italian banking system.¹⁵
- (12) Regarding funding and client confidence, VB lost around EUR [5-10] billion or [30-40]% of its deposits between June 2015 and December 2016. In the first three months of 2017 VB lost a further EUR [0-5] billion in deposits¹⁶. In total, VB lost around [40-50]% of its deposit funding base in less than two years.
- (13) Against the background of the continuous deterioration of its business results, VB went through a number of other changes, in particular related to its

¹³ Source: Submission of Italy of 22 June 2017.

¹⁴ Non Performing Loans (NPLs) are defined as the sum of three subcategories of non-performing exposures: 1. Bad loans (also referred to as "sofferenze") are exposures to debtors that are insolvent or in substantially similar circumstances. 2. Unlikely-to-pay exposures (aside from those included among bad loans) are those in respect of which banks believe the debtors are unlikely to meet their contractual obligations in full unless action such as the enforcement of guarantees is taken. 3. Overdrawn and/or past-due exposures (aside from those classified among bad loans and unlikely-to-pay exposures) are those that are overdrawn and/or past-due by more than 90 days and for above a predefined amount. The ratios are computed as Gross Book Value of Non Performing Loans over total Gross Book Value of loans.

¹⁵ Source: Bank of Italy:

<http://www.bancaditalia.it/media/views/2017/npl/index.html?com.dotmarketing.htmlpage.language=1>

¹⁶ Source: Tiepola plan.

governance structure¹⁷. In 2016 VB completed its transformation into a joint-stock company. As there was very little interest of other parties in acquiring shares, the Atlante Fund¹⁸ injected EUR 1 billion at end-June 2016. As a consequence, at end-2016, Atlante Fund held 97.64% of VB's capital. Atlante Fund supported VB with additional capital on 30 December 2016 and on 5 January 2017 for a total amount of EUR 628 million¹⁹.

2.2. BPVi and its difficulties

- (14) BPVi is an Italian commercial bank, located in the Veneto Region and mainly operates in the northeast regions of Italy. BPVi is the parent company of Banca Popolare di Vicenza Group, which provides retail and corporate clients with banking, financial and related services such as deposit-taking, lending, asset management, securities trading, investment banking, trade finance, corporate finance, leasing, and insurance products. As of 31 December 2016, the Group had total assets of EUR 34.4 billion, 502 branches in Italy and around 5 300 employees in Italy. BPVi's market share in deposits as well as in loans is around 1% in Italy and around 4.5% for deposits and around 6.5% for loans in the Veneto region²⁰.

Table 2 – Evolution of main indicators for BPVi, 2012-2016²¹

	2012	2013	2014	2015	2016
Operating income (EUR mn)	1,047	1,082	1,064	1,035	712
Operating expenses (EUR mn)	-672	-657	-669	-696	-687
Pre-provisions profits (EUR mn)	375	425	394	339	25
Impairments (EUR mn)	-242	-455	-1,521	-1,826	-1,453
<i>ow Loan loss provisions</i>	-216	-432	-868	-1,333	-1,077
Other provisions (risks and burdens) (EUR mn)	-6	-12	-18	-513	-265
Net income (EUR mn)	100	-32	-759	-1,407	-1,902
Total assets (EUR mn)	46,709	45,236	46,475	39,783	34,424
Branches in Italy	640	640	654	579	502
Staff in Italy	5,496	5,463	5,515	5,466	5,365
NPL ratio (%)	13.4%	16.6%	21.9%	31.6%	35.8%

- (15) Table 2 shows the trend of BPVi's continuously deteriorating financial performance since 2012. BPVi has been loss making for the last four years. The losses in the last three years were particularly high. In 2016, BPVI was barely able to cover its operating costs from its operating income, leading to a negligible pre-provisioning profit.

¹⁷ Source: Veneto Banca Consolidated half yearly financial report 2016
<https://www.gruppovenetobanca.it/documents/17503/1416714/Consolidated+half-yearly+financial+report+as+at+30+June+2016.pdf>

¹⁸ Atlante is a closed-end alternative investment fund regulated by Italian law reserved for professional investors. The fund is managed by Quaestio Capital Management SGR S.p.A. See
<http://www.quaestiocapital.com/en/products/atlante-fund#fund>

¹⁹ See recital (8) of the Commission Decision of 12 April 2017 in State aid case SA. 47941 (2017/N) – Italy – Additional liquidity support to Veneto Banca, not yet published.

²⁰ Source: Tiepolo plan.

²¹ Source: Submission of Italy of 22 June 2017.

- (16) Regarding BPVi's asset quality, the amount of loan loss provisioning increased rapidly over the past five years. At the end of 2016, nearly 36% of all loans by gross book value were non-performing. That is more than double the aggregate ratio for non-performing loans for the whole Italian banking system.
- (17) Regarding funding and client confidence, BPVi lost around EUR [5-10] billion or [30-40]% of its deposits between June 2015 and December 2016. In the first three months of 2017 BPVi lost further EUR [0-5] billion²². In total, BPVi lost around [40-50]% of its deposit funding base in less than two years.
- (18) In March 2016, BPVi transformed into a joint stock company. As of end-2016, the main shareholder of BPVi is Atlante Fund which holds 99.33% of BPVi's capital, following the full subscription of a EUR 1.5 billion capital increase finalized on 4 May 2016 in the absence of any other interest. The remaining part of the capital is held by about 119,000 shareholders. Atlante Fund supported BPVi with additional capital in December 2016 and January 2017 for a total amount of EUR 310 million²³.

2.3. The sale process

- (19) In view of the two banks' deteriorating situation [...](*), the Italian authorities started a sales process aiming at a potential sale of assets and liabilities of VB and/or of BPVi to other bank(s) in the scope of an operation that could also envisage an intervention from public finances.
- (20) For that purpose, on 18 June 2017, the Italian authorities supported by an investment advisor, launched a tender process that was open to any potential interested bidder. Six counterparties were formally invited ([...], [...], [...], Intesa Sanpaolo, [...] and [...]). Even if not invited, the Italian authorities submit that all potential interested buyers could have requested to participate to the tender procedure given that it was easily detectable from press rumours that the tender procedure for the sale was started²⁴.
- (21) According to the process letter, the assets and liabilities that were part of the tender process²⁵ included all loans classified as performing (with the possibility for the bidder to also take over loans classified as Unlikely-To-Pay ("UTP")) and other assets of the two banks, and all liabilities with the exception of subordinated debt and equity that would eventually be left behind in the residual entities in liquidation (the "residual entities"). The activities offered for transfer also included all property rights, and legal relationships, as well as all of the branches of the two banks²⁶, and the holdings held by VB and by BPVi in particular domestic and foreign subsidiaries. The process letter also stated guidance for restructuring, including for branches and staff. The process letter asked each bidder to clarify the gap between the assets and liabilities that would

²² Source: Tiepolo plan.

(*) covered by the obligation of professional secrecy

²³ See recital (8) of the Commission Decision of 12 April 2017 in State aid case SA. 47940 (2017/N) – Italy – Additional liquidity support to Banca Popolare di Vicenza, not yet published.

²⁴ Source: Notification of Italy.

²⁵ Source: Notification of Italy.

²⁶ Source: Process Letter dated 18 June 2017

be transferred, the needed capitalisation of those assets, and the estimated restructuring costs.

- (22) In the process letter, the Italian authorities stated that the bidders would have to submit their bids by 21 June 2017 and their binding offer would have to allow for the immediate transfer of the two banks' activities to the selected bidder. The bidders were also granted access to an electronic data room containing information on the businesses of the two banks, prior to submitting their bids.
- (23) Even if several parties were invited and demonstrated initial interest within the envisaged deadline, only Intesa Sanpaolo and [...] submitted formal offers for selected assets and liabilities of VB and BPVi. [...] offer was only related to a very limited perimeter (i.e. 17 branches in Tuscany and related performing loans and deposits). Intesa Sanpaolo submitted an offer for the entire sales perimeter. It submitted a bid of EUR 1, in exchange for assets and liabilities of both VB and BPVi. The bid submitted by Intesa Sanpaolo on 21 June 2017 was based on the following conditions to be fulfilled by Italy:
- i. A contribution of an amount up to EUR [...] billion in cash to cover for a recapitalisation of the transferred activities up to a 12.5% CET1 ratio²⁷;
 - ii. A contribution of an amount up to EUR [...] billion in cash to cover for future restructuring costs;
 - iii. A coverage of the deficit between the value of the assets transferred to the Buyer compared to the transferred liabilities up to an amount of EUR [...] billion in the form of a guarantees;
 - iv. A guarantee for an amount of up to EUR [...] billion to cover for legal risks relating to the liquidation procedure of the two banks, as well as on the carrying value of the assets in the transfer perimeter; and an additional guarantee for up to 50% of those risks, exceeding the initial EUR [...] billion covered.
- (24) After the submission of its offer dated 21 June 2017, the Italian authorities started the negotiations with the bidder Intesa Sanpaolo, which results in the agreement containing the measures notified by Italy.

2.4. Description of the Buyer

- (25) Intesa Sanpaolo ("the Buyer") is a banking group which provides banking services to retail, corporate, and wealth management. On 31 December 2016, Intesa Sanpaolo had a network of over 3 900 branches in Italy and over 64 000 employees in Italy²⁸. At the end of 2016, the total assets of Intesa Sanpaolo amounted to around EUR 725 billion²⁹. It registered a net income of EUR 3.1

²⁷ CET 1 ratio: Common Equity Tier 1 ratio.

²⁸ Source: Intesa Sanpaolo – Annual Report 2016, p. 26. See <http://www.group.intesasanpaolo.com/scriptIsir0/si09/contentData/view/content-ref?id=CNT-05-0000004D7191>.

²⁹ Source: Intesa Sanpaolo – Annual Report 2016, p. 24. See <http://www.group.intesasanpaolo.com/scriptIsir0/si09/contentData/view/content-ref?id=CNT-05-0000004D7191>.

billion in 2016. In Italy, Intesa Sanpaolo had a market share of around 16% in terms of loans and 17% in terms of deposits at end-2016³⁰.

- (26) Intesa Sanpaolo has a selected presence in Central Eastern Europe and Middle Eastern and North African areas with over 1 100 branches and 7.7 million customers belonging to the Group's subsidiaries operating in commercial banking in 12 countries. As of 1 June 2017, Intesa Sanpaolo had a long-term rating of BBB (high) from DBRS, BBB from Fitch Ratings, Baa1 from Moody's and BBB- from S&P Global³¹.

2.5. Perimeter of the transferred activities

- (27) In the notified Envisaged Agreement, the Buyer has agreed to take over all the assets and liabilities of VB and BPVi (the "transferred activities"), except, on the assets side, the NPLs and a limited number of participations, and, on the liabilities side, the equity, the subordinated debt, and some provisions for litigations and legal risks. In total, the net book value of the NPLs left in the residual entities will amount to around EUR 10 billion, with, in addition, less than EUR 2 billion of other assets. The liabilities of VB and BPVi left in the residual entities will amount to around EUR 6.4 billion, out of which around EUR 4 billion of equity and EUR 1.2 billion of subordinated debt. Those amounts will be confirmed at the end of the due diligence.
- (28) The transfer of assets and liabilities of the two banks to the Buyer will take place after the adoption of the present Decision.

2.6. The integration plan for the transferred activities into the Buyer

- (29) According to the integration plan submitted by the Buyer and notified to the Commission, the Buyer anticipates that the acquisition of the two banks' transferred activities will further strengthen its presence in the North Eastern region of Italy and Sicily and will lead to significant value creation by leveraging on the Buyer's best practices across all the products range coupled with a new commercial approach aiming at restoring the clients' trust.
- (30) The transferred activities will immediately cease to operate as a stand-alone entity and will become part of the structure and network of the Buyer, where they will be subject to restructuring (the "Sold Entities"). By 30 June 2019, the Buyer will reduce the number of branches of the Sold Entities to [250-500] and decrease the number of employees by at least [2 500-5 000] employees (of which at least [500-1 000] employees in the Sold Entities).

2.7. The residual entities

- (31) All assets and liabilities that are not included in the transferred activities will remain in the residual entities of VB and of BPVi in liquidation (the "residual

³⁰ Source: Intesa Sanpaolo – Presentation of 2016 results, 3 February 2017, p. 85. See <http://www.group.intesasanpaolo.com/script/Isir0/si09/contentData/view/content-ref?id=CNT-05-00000004CECB7>.

³¹ Source: Intesa Sanpaolo – Presentation, updated as of 1 June 2017. See http://www.group.intesasanpaolo.com/script/Isir0/si09/contentData/view/Brochure_istituz_en.pdf?id=CNT-04-0000000418CF&ct=application/pdf.

entities”). The residual entities will cease operating as going-concern banks. The residual entities will give up their banking licences and be wound up under normal insolvency procedures within a reasonable timeframe.

- (32) The equity and subordinated liabilities of VB and of BPVi will not be transferred to the Buyer, but will be left in the residual entities.
- (33) In return for its contribution for covering the funding gap, the Italian State will receive a senior claim on the residual entities. In addition, any claims resulting from mis-selling litigations arising from the past capital increases of the two banks will also be transferred to the residual entities. [...].

3. DESCRIPTION OF THE MEASURES

- (34) Table 3 provides an overview over all State aid measures granted or to be granted to VB and BPVi.

Table 3 – State aid measure for VB and BPVi, (nominal size in EUR million)

State aid measure	Guarantee	Paid out	Purchase of impaired assets above market price
Measure 1 - Liquidity support granted in January and April 2017	10 100		
Measure A - Lump sum capital contribution to the Buyer		Up to 3 500	
Measure B - Lump sum contribution to the Buyer for restructuring costs		Up to 1 285	
Measure C+D - Guarantee to the Buyer on the funding gap	Up to 6 351		
Measure E - Asset Protection Scheme for the transfer of high risk performing loans	Up to 4 035		
Measure F – Guarantee on funding costs for Measure C+D	0		
Measure G – Guarantee on ongoing legal disputes taken over by the Buyer	Up to 491		
Measure H - Guarantee on the legal risks and mis-representation of the transferred assets	Up to 1 500		
Measure J - Tax measures to allow transfer of tax assets and to avoid taxation of the transferred assets	na	na	na
Measure K - Transfer of NPLs to an AMC			Up to 10 000

3.1. Aid measures authorised in the past

- (35) VB and BPVi have benefitted twice, in January 2017 and April 2017, from liquidity support in the form of government-guaranteed bonds (GGBs), VB for a

total amount of EUR 4.9 billion and BPVi for a total amount of EUR 5.2 billion (**Measure 1**).

3.2. New aid measures

- (36) In order to ensure that the activities acquired do not lead to any additional capital requirements on the Buyer, Italy will contribute a cash amount of EUR 3.5 billion, which corresponds to the recapitalisation of the transferred activities up to 12.5% CET1 ratio (**Measure A**). The final amount is subject to confirmatory due diligence after closing of the transaction, but will not be higher than EUR 3.5 billion.
- (37) The Buyer will have to incur significant costs to integrate the activities acquired. According to its initial estimation, the main costs related to the integration and downsizing of the transferred activities include among others the following items: around EUR 1.5 billion in provisions for early retirements, around EUR 300 million for staff mobility costs, almost EUR 190 million in investments for branches integration and around EUR 110 million for IT integration. To cover part of the future restructuring costs of the Buyer associated with the acquisition of assets and liabilities of VB and BPVi, Italy will make a lump sum payment to the Buyer amounting to EUR 1.285 billion (**Measure B**).
- (38) The net asset value (book value of assets minus book value of liabilities) of the assets and liabilities acquired by the Buyer from the two banks is negative ("funding gap") to the amount of minus EUR 3.8 billion. Moreover, the exclusion of NPLs also from the subsidiaries included in the acquisition leads to an additional funding gap of minus EUR 1.551 billion. The final amount of the funding gap is subject to confirmatory due diligence after closing of the transaction.
- (39) The sum of those funding gaps, EUR 5.351 billion plus any additional shortfall up will be covered by funding provided by the Buyer towards the entities in insolvency. That funding will be provided for a term of five years, paying an interest rate of 1%. That funding will be guaranteed by the State up to a maximum amount of EUR 6.351 billion (**Measure C+D**). The related interest payments are covered by that same State guarantee, as well (**Measure F**) which is however included in the maximum coverage amount. The additional value is correspondingly 0. Any additional claim beyond EUR 6.351 billion by the Buyer will be registered in the respective Residual Entities but will be subordinated to the existing State claims.
- (40) A portfolio of EUR 4.035 billion of high risk performing loans is included in the assets and liabilities acquired by the Buyer³². As part of the measure, the Buyer will have the right, during [...] months following the transaction, to transfer back to the relevant Residual Entities any loans which have become non-performing and qualify as UTP. In exchange of such transfer, the Buyer will receive an additional guaranteed claim towards the respective Residual Entities (**Measure E or "APS" for asset protection scheme**).

³² High risk performing loans in this context are defined as SME loans where the debtor has a probability of default greater than 4.5% and loans to large corporates where the debtor has a probability of default greater than 8.5%.

- (41) In order to incentivise the Buyer to service the high risk loans appropriately and in line with the non-guaranteed loans in its portfolio, the Buyer will carry 50% of the provisioning required when a guaranteed loan is reclassified as UTP prior to the guarantee under **Measure E** being activated. That provisioning is currently 30% of the gross book value of the loan.
- (42) The Buyer is acquiring all liabilities related to ongoing litigation (apart from old shareholder claims) including the existing provisioning. The net liability of EUR 491 million is guaranteed to the Buyer by the Italian State (**Measure G**).
- (43) Under the SPA, Italy will provide legal guarantees to the Buyer regarding the existence of assets and mortgages as well as representation and data which are capped at EUR 1.5 billion (**Measure H**).
- (44) Italy foresees also a number of measures to allow the transfer of tax assets of VB and BPVi to the Buyer and measures to avoid taxation of the assets and liabilities at the moment of the transfer to the Buyer. More specifically, the measure foresees (i) a transfer of the existing tax credits to the Buyer, (ii) the exemption of the transferred assets from VAT and a flat rate of EUR 200 covering registration duty, mortgage tax and cadastral duties arising from the transfer, (iii) the Buyer rather than the original entities will be exempt from capital gains tax for the purposes of corporate and regional income tax (iv) the Buyer will be exempted from direct taxes for the grants and funding it receives from the State. (**Measure J**).
- (45) Regarding the NPLs that are not part of the sales perimeter and which are left in the residual entities in insolvency, Italy intends to sell them to a publically owned and funded AMC (**Measure K**). Without providing any detailed description of the measure, Italy provides in its commitments that such a transfer will be made at the net book value³³ of those loans at the inception of the residual entities or at a lower price.
- (46) While the State guarantees under Measure C+D, E and F are already implicitly collateralised by the NPLs remaining in the Residual Entities (as those guarantees ensure a prior claim on those assets), Italy will also receive a senior claim on the Residual Entities corresponding to the cash payments under Measures A and B. The precise value of the claim will be equivalent to the actual payments determined following the confirmatory due diligence after closing.

4. POSITION OF ITALY

- (47) Italy notifies the measures as State aid and requests the Commission to verify their compatibility with the internal market on the basis of Article 107(3)(b) on the functioning of the "TFEU", as they are necessary in order to remedy a serious disturbance in the Italian economy.
- (48) In particular, the Italian authorities put forward in the notification form that "The liquidation process provides for the sale of a pool of assets and liabilities

³³ The net book value corresponds to the nominal value of the loan, the gross book value, less than the provisions built in the balance sheet for losses on that loan.

of the two banks, supported by the State intervention. The public support is aimed at allowing an orderly exit from the markets of the two banks without causing disruption. In case of inapplicability of such solution, the only viable alternative would be the trigger of the so-called “atomistic liquidation”, entailing the sudden interruption of the ordinary business of the liquidating entity, aiming at the sale on the market of the banks’ assets, on an item-by-item basis. This would imply the disruption of value of the concerned banks, with related big losses for senior creditors, imposing a sudden termination of the creditor relationships for households and SMEs.” The envisaged Decree Law indicates, in its preamble, that the objective is notable to avoid serious disturbance in the economy in the area where the banks operate.

- (49) The notification also contains a note of the Bank of Italy laying down grounds for State Aid measures: "the only viable alternative would be the trigger of the so-called “atomistic liquidation”, entailing the sudden interruption of the ordinary business of the liquidating entity, aiming at the sale on the market of the banks’ assets, on an item-by-item basis. The realized value is used to satisfy the outstanding claims against the banks in the manner and order prescribed by law. As such, in the absence of a sale of business, it entails the risk of dissipation of the entities’ value, thus determining relevant losses in charge to non-professional and non-protected customers, as well as the sudden termination of credit relationships both for households and SMEs. This would lead to the disorderly wind down of the institutions, causing disturbances in the economic system, especially at local level. In particular: (i) given the need of carrying out a piecemeal liquidation, the assets would be sold at fire prices, remarkably lower if compared to normal market transactions, therefore destroying the value of the business. (...) (ii) all the ongoing contracts in place with the customers, including banking contracts, would be suddenly terminated. Credit lines would be called back overnight, thus enforcing credit constraints on customers, mainly represented by households and SMEs, and determining a credit shortfall. The main consequences would be borne by SME clients, whose ability to carry out their businesses would be seriously hampered. According to an estimates performed by Banca d’Italia, the credit crunch could hit around 55,000 firms, for an aggregated shortfall of ca. 22bn, without taking into consideration the second round effects. Given the common geographic footprint of the two banks and their main focus in some specific regions, negative effects would entail the risk of a serious disturbance to real economy at local level, which could also impact on the ongoing moderate recovery, remaining fragile despite latest improvements. (...)"
- (50) The Italian authorities also submit that the measures ensure full burden-sharing by the shareholders and subordinated creditors of VB and BPVi who will be left in the residual entities and will be subordinated to the claims of the Italian State on the remaining assets so that they will effectively absorb losses.
- (51) According to the Italian authorities, the tender procedure organised for the sale of the assets and liabilities of VB and BPVi was open to any potential bidder on the basis of the following: a) all potential buyers, although not formally invited, could participate in the tender process; b) that the tender process was open and easily detectable because the market was aware of the search for a banking partner and c) that the sale process itself aimed at selling assets and liabilities to the highest bidder.

- (52) The Italian authorities further state that for the liquidation of VB and BPVi, the only alternative to the sale via the tender procedure would have been the wind-down of VB and BPVi under normal insolvency proceedings without State aid (bankruptcy). According to the counterfactual scenario run by the BOI³⁴ that would have increased the liquidation costs. The wind-down scenario was developed based on the assumption of the sale of all the assets, rights and liabilities in part. The main assumption used for this scenario is based on the sale of loans portfolio to private investors, using a table of discounted values for each asset class with a 3 to 5 year time horizon.
- (53) Italy submitted a list of commitments, included in Annex I to the present decision (the "Commitments"), in which Italy commits to the following:
- (a) Activities of VB and BPVi that are sold will be fully integrated by the Buyer in terms of IT systems or risk management policies at the latest by 30 June 2019.
 - (b) By 30 June 2019, the Buyer will reduce staff numbers by [2 500-5 000] of which [500-1 000] in the Sold Entities.
 - (c) By 30 June 2019, the Buyer will reduce branch numbers of the Sold Entities to [250-500].
 - (d) All claims of holders of subordinated debt instruments or shares in VB and BPVi will remain in the two Residual Entities put into liquidation.
 - (e) The Residual Entities will give up their banking licenses, they will not conduct any banking business, acquire new clients or sell new products or enter into new contracts with any existing clients. However, they shall have the right to manage any non-performing loans that remain in their respective perimeters. In addition, they will not acquire any stake in any undertaking, be it an asset or share transfer.
 - (f) The Residual Entities have the right to transfer the entire NPL portfolio to any other publically owned Asset Management Company (AMC) at a transfer value lower or equal to the net book value at which the assets are accounted in the books at inception of the Residual Entities in order not to put in question the full burden sharing of subordinated debt holders and shareholders in any way. That AMC will also not conduct any banking business related to the NPL portfolio.
 - (g) Any subsidiary or participation where the two Residual Entities hold a controlling stake, either individually or jointly, will have to be sold out of liquidation within a defined period or be wound down.

5. EXISTENCE OF AID

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

³⁴ Source: Notification of Italy, Letter of the Bank of Italy.

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

- (55) The Commission observes that the Italian authorities do not dispute that the measures constitute State aid.

5.1. Existence of aid in the liquidity aid measures (Measure 1)

- (56) With regard to the liquidity support temporarily approved by the Commission as rescue aid in the First and Second Liquidity Decisions, the Commission has already concluded that it fulfilled the conditions laid down in Article 107(1) TFEU, and hence qualified as State aid to the benefit of VB and BPVi.
- (57) The Commission's assessment of the existence of aid laid down in the First and Second Liquidity Decisions remains applicable.
- (58) The Commission notes that the GGBs are part of the liabilities which will be transferred to the Buyer, such that the State guarantee will not be activated due to the insolvency of VB and BPVi.

5.2. Existence of aid in Measures A to J

5.2.1. State resources and imputability

- (59) Regarding State Resources, the Commission notes that Measures A and B are directly financed by the Italian State. Measures C+D, E, F, G and H are guarantees that constitute a direct claim against the Italian State budget. Measure J consists of foregone tax income by the Italian State. All those support measures will be decided directly by the Italian government by adopting the envisaged Decree Law.

5.2.2. Advantage

- (60) As regards Measures A to J, the Commission notes that they allow the economic activities of the two banks offered for transfer to be sold to the Buyer. Without the contribution provided by Italy, those activities would not have been an economically interesting proposal and would not have found a buyer. All assets and liabilities and the associated activities would have remained in the entities in insolvency and would have been wound down.
- (61) With respect to Measure H, the Commission has considered in past cases that guarantees by the seller in a contract regarding misrepresentation or non-existence of the assets sold are normal market practice. In that context, the Commission recalls that in this case, the guarantee is provided by Italy on behalf of the sellers VB and BPVi, something for which Italy has no obligation.
- (62) On that basis, the Commission considers that all Measures A to J provide the economic activities of the two banks offered for transfer with a clear advantage.
- (63) The Commission recalls that neither the direct cash outflow of EUR 4.785 billion (Measures A and B) nor the guarantees of up to EUR 12.7 billion (Measures C+D to H) are in any way remunerated and are implicitly collateralised only by the NPLs remaining in the residual entities.

- (64) Those NPLs have a current net book value of no more than EUR [10-20] billion and the banks themselves expected billions of additional losses on those loans in the Tiepolo plan. Therefore, the Italian State will not only fail to be remunerated but has in fact no prospect of recovering in full the money granted or not to suffer losses on the guarantees.
- (65) Moreover, the Italian State did not have any prior commercial interest on market terms in those banks either. In that respect, the comparison with the cost to the Deposit Guarantee Scheme ("DGS") and the State as guarantor of EUR 10 billion of the banks' senior bonds in orderly wind down is not a valid comparison. Any payment by the Italian DGS to indemnify depositors would not be made as a market operator but would be made as a public authority. It is settled case law³⁵ that payments made by an entity as public authority should not be counted in the application of private investor test or private creditor test. The same holds true with respect to the EUR 10 billion of liquidity support provided by the State as public authority.
- (66) On that basis, the Commission considers that no private investor would have undertaken Measures A to J as described and concludes that the measures undertaken by Italy do not comply with the market economy operator principle.
- (67) For those reasons, the Commission considers that Measures A to J provide an advantage to the activities of VB and BPVi sold to the Buyer.

5.2.3. *Selectivity*

- (68) The Commission notes that the Measures A to J are not general measures but ad-hoc measures that were only made available for VB and BPVi and the transferred activities. This is clearly stated in Article 1 of the envisaged Decree Law based on which the support is made available. Those aid measures are therefore selective.

5.2.4. *Distortion of competition and effect on trade between Member States*

- (69) Measures A to J distort or threaten to distort competition as they allow the activities of VB and BPVi to be sold to the Buyer with an advantage that competitors did not receive, whereas those activities would have been wound down in the absence of State support.
- (70) Those State support measures are also likely to affect trade between Member States as the financial services market is open to competition from banks of other Member States and, by its nature, affects trade between Member States. The proposed aid measures benefit the economic activity offered for transfer of former VB and BPVi compared to that of its competitors. Some of the direct competitors in Italy are subsidiaries or branches of foreign banks.

³⁵ See Joined Cases C-214/12 P, C-215/12 P and C-223/12 P *Land Burgenland and others v Commission* EU:C:2013:682, para 52.

5.2.5. Conclusion

- (71) In conclusion, Measures A to J meet all cumulative State aid criteria and therefore constitute State aid within the meaning of Article 107(1) TFEU.

5.3. Existence of aid in Measure K

- (72) Under the envisaged Decree Law, Italy creates the legal framework for a potential transfer of some or all of the NPLs of the residual entities to an AMC. Italy has provided commitments in respect of such transactions and the activities of the AMC.
- (73) However, Italy has not provided a complete description of the measure, since it has not finalised it. The Commission understands that the AMC would be fully State controlled and funded which would imply that such a transaction would fulfil the requirements of State aid regarding State resources and imputability.
- (74) At the same time, following the implementation of Measures A to H, the most senior claims on the assets in the Residual Entities will be either directly owned by the State or subject to a State guarantee. Moreover, the value of those State claims is significantly larger than the value of the assets in the Residual Entities (see recital (64)).
- (75) Therefore, transferring those assets to a different State-funded entity will add one layer in the chain of claims on the economic benefit of these assets. Following a transfer of these assets from the Residual Entities to an AMC, these assets would be replaced on the balance sheet of the Residual Entities by a State guaranteed claim on these assets in the AMC to where they were transferred. However, this will not change the fact that the ultimate claim on the economic benefits of those assets remains with the State in its capacity as most senior creditor of the Residual Entities.
- (76) Such a transaction cannot provide an additional advantage to the Residual Entities as long as the transfer price is not higher than the net book value at which those assets are held by the Residual Entities. Based on the commitment by Italy that any transfer will occur at a value less or equal to the net book value, the Commission considers that Measure K does not confer an additional economic advantage and therefore does not constitute additional aid in the meaning of Article 107(1) TFEU.

5.4. Quantification of the aid

- (77) Measures A and B consist of cash payments. The Commission considers the full amount of up to EUR 4.785 billion as recapitalisation aid amount.
- (78) Measure C+D consists of a State guarantee on a claim by the Buyer on the respective Residual Entities equivalent to a combined funding gap of up to EUR 6.351 billion. That maximum amount guaranteed includes also the coverage of all related interest payment under Measure F. The Commission has no indications not to consider the full amount as a contribution to the capital of the sold entities in line with past case practice.

- (79) Measure E consists of the right by the Buyer over the next [...] months to transfer back to the liquidation mass in the respective Residual Entity any loan which the Buyer had to reclassify to UTP in a portfolio of EUR 4.035 billion of high risk performing loans. However, according to the current risk sharing mechanism, the Buyer will cover half of the necessary provision of 30% on reclassification of a loan to UTP, resulting in a write-down to 85% of gross book value.
- (80) The Commission understands that in the Tiepolo plan roughly EUR [0-5] billion of loans had already been identified as high risk where the plan foresaw to reclassify those loans as UTP over the coming two years. For a conservative estimate of the market value of those high risk loans, the Commission considers it therefore appropriate to treat those loans as UTP.
- (81) For UTP, the Commission has significant amounts of detailed data allowing it to do a valuation. On the basis of that data, the Commission finds that in line with valuation criteria of the Impaired Asset Communication, the market value of the UTP portfolio is roughly between [30-40]% of its gross book value. On the basis of this estimate and the risk sharing mechanism in place, the Commission considers that the amount of aid in Measure E is unlikely to be greater than [50-60]% of gross book value, corresponding to EUR 2.22 billion.
- (82) Measure G consists of a guarantee on ongoing litigation risks transferred to the Buyer. According to the information submitted by Italy, the full litigation exposure minus existing provisions covered by the guarantee amounts up to EUR 491 million.
- (83) Measure H consists of a EUR 1.5 billion guarantee for legal risks. While the Commission has some indications based on the precise terms and conditions covering that guarantee that payouts under this guarantee will be unlikely, the Commission is not in a position to take a final position on this point and therefore considers the entire amount of up to EUR 1.5 billion as aid.
- (84) Measure J consists of various tax advantages which the Commission cannot currently quantify given the too limited time available.
- (85) On the basis of the preceding elements, the Commission considers the capital aid amount contained in the Measures to be up to EUR 13.356 billion, split into up to EUR 4.785 billion in the form of cash payments (Measures A and B) and up to EUR 8.571 billion in the form of capital guarantees (Measures C+D and E) and additional guarantees covering a further amount of up to EUR 1.991 billion (Measures G and H). Regarding the net cost to Italy, those aid amounts will need to be offset against any recoveries from the NPL portfolios in the Residual Entities.

5.5. Beneficiaries of the aid measures

- (86) The Commission has to analyse whether any of the following three parties could potentially benefit from the aid: (i) the Buyer, Intesa Sanpaolo; (ii) VB and BPVi; and (iii) the economic activities of VB and BPVi offered for transfer and sold to the Buyer.

- (87) The Commission has already concluded in its decisions approving liquidity support (Measure 1) that that support benefited VB and BPVi. The economic activities of VB and BPVi offered for transfer will now be sold and transferred to the Buyer. Therefore, the Commission considers that Measure 1 also benefited the economic activities of VB and BPVi that will be sold to the Buyer and integrated into its operations.
- (88) The Commission considers the economic activities of VB and BPVi sold and transferred to the Buyer as the beneficiary of the aid Measures A to J, as the aid allows the continuation of those economic activities within the Buyer. Without the support by Italy, those activities would not find a buyer, would be left in the legal entities in insolvency, and would therefore cease to exist.
- (89) As to whether the sale of VB and BPVi's activities supported by Measures A to J entails State aid to the Buyer, in line with points 79, 80 and 81 of the 2013 Banking Communication³⁶ the Commission has to verify that the sales process has been fair, open, competitive and transparent, that the sale happens on market terms and that the offer chosen maximises the value of the assets and liabilities sold. The assets and liabilities have been offered through the sales procedure described in section 2.3 above.
- (90) Italy puts forward that the process was entirely transparent and visible in the market. The Commission observes that the advisor of the Italian authorities contacted six large Italian and foreign banks with activities in Italy. The Commission notes that the process letter specified the subject of the sale as assets and liabilities, and not the shares of the financial institutions. The potential availability of State support was known to the bidders, as the process letter stated that the sale of assets and liabilities could be within the scope of an operation that could also envisage an intervention from public finances. Moreover, the process letter asked each bidder to clarify the gap between the assets and liabilities that would be transferred, the needed capitalisation of those assets, and the estimated restructuring costs.
- (91) Taking into account the above elements and circumstances, the Commission considers that the process was open, fair and transparent.
- (92) The Commission notes that there was only one comprehensive bid for the perimeter put for sale. Regarding the minimisation of costs, the Commission takes into account that in the negotiations subsequent to receiving the binding offer, the Italian authorities have negotiated with the bidder to reduce the demands for State support made in the binding offer as demonstrated by the difference between the formal bid of 21 June 2017 (see recital (23)) and the Envisaged Agreement.
- (93) On that basis, the Commission considers that the bid chosen was the best available and concludes that the Buyer is not a beneficiary of aid.

³⁶ 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 ("2013 Banking Communication") OJ C 216, 30.07.2013, pages 1

- (94) In as much as the Residual Entities are concerned, the Commission considers that they benefit from the aid provided to BPVi and VB, as well, in as much as they will continue any economic activity. The same holds true if assets and related activities were to be transferred onwards to an AMC under Measure K. Therefore, the Commission considers important the commitments provided by Italy with respect to the Residual Entities as well as the AMC limiting to a minimum the economic activity conducted by those entities.

6. COMPATIBILITY OF THE AID

6.1. Legal Basis

- (95) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State."
- (96) The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State, which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications³⁷, and then again confirmed in the 2013 Banking Communication.
- (97) In the 2013 Banking Communication, the Commission acknowledged that Member States should encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability.
- (98) According to the Italian authorities it would not be possible to avoid a serious disturbance in the economy in the areas where VB and BPVI operate with a particular impact on interruption of SME's business activities and lending to households (see recital (48)).
- (99) In view of the above the Commission considers that Measures A to J for the liquidation and sale of assets and liabilities of VB and BPVi have to be assessed under Article 107(3)(b) TFEU. The Commission recalls that, since the beginning of the financial crisis, it has systematically used Article 107(3)(b) TFEU as legal basis to assess any restructuring or liquidation aid to banks in

³⁷ 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; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication*"), OJ C 329, 7.12.2010, p. 7 and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*"), OJ C 356, 6.12.2011, p. 7.

difficulty. Assessing the present measures under Article 107(3)(b) TFEU is therefore fully consistent with previous cases.

6.2. Compatibility assessment

- (100) The 2013 Banking Communication, and in particular section 6, sets out the State aid rules applicable to the orderly winding down of financial institutions.
- (101) Points 71 to 78 of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of an orderly winding down. Point 70 states that the Commission will assess the compatibility of measures aimed at resolving credit institutions on the same lines *mutatis mutandis* as set out in sections 2, 3 and 4 of the Restructuring Communication. Point 78 states that sections 3.1.2 and 3.1.3 must be complied with *mutatis mutandis*.
- (102) Therefore, the Commission will assess the compatibility of the aid measures with Article 107(3)(b) TFEU, according to the following criteria:
- (a) *Limitation of costs of winding down*: aid amounts should enable the credit institution to be wound down in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary credit institution continues to operate;
 - (c) *Own contribution (burden-sharing)*: appropriate own contribution to the costs of winding down should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity;
 - (d) *Restoring long-term viability*: the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.
- (103) Measure E consists of an APS on a portfolio of up to EUR 4.035 billion. Therefore, the compatibility of Measure E must also be assessed under the Impaired Assets Communication. In the context of the present procedure, it is appropriate to examine the measures' compatibility with the 2013 Banking Communication and the Restructuring Communication before examining the compatibility of Measure E with the Impaired Assets Communication.

6.3. Compatibility of Measures A to J under the 2013 Banking Communication and the Restructuring Communication

6.3.1. Limitation of costs of winding down

- (104) As described in Section 3, the amount of aid needed to sell the assets and liabilities of VB and BPVi has been determined by the outcome of a competitive

sale process with the aim of minimising the support needed for the sale. In that context, the offer that was selected minimised the charges to be borne by the Italian State.

- (105) The counterfactual scenario consists of the liquidation of VB and BPVi under normal insolvency proceedings without any State support. Under that scenario, the liquidator would have overseen the termination of the activities, the seizure of the pledged performing assets by the secured creditors, the administration of the unencumbered assets and the activation of the DGS to protect depositors.
- (106) The Commission has no information on an alternative scenario in insolvency which could have allowed achieving the same policy objectives of the Member State at a lower cost for the State. Nonetheless, the Commission points out that it was the decision of Italy not to implement a greater degree of participation from senior creditors in order to distribute the resulting costs between creditors of VB and BPVi and the Italian taxpayers. Such a greater degree of burden sharing would have reduced the net cost to the State and have been fully in line with – although not required under State aid rules.
- (107) The Commission also notes that VB and BPVI have not yet completed the process of adjusting their balance sheet to the requirements of the BRRD, which are aimed among other things at limiting the impact of resolution or orderly liquidation on the economy.
- (108) Regarding Measure E, the Commission takes positive note of the risk sharing mechanism included in the APS which ensures that covered assets are managed with the same degree of diligence as any other assets of the Buyer. Moreover, the mechanism chosen which is linked to the reclassification of loans as UTP limits somewhat the discretion of the Buyer with respect to the activation of the guarantee mechanism. The Commission considers that those safeguards ensure that the losses to be borne by the Italian State will be limited.
- (109) In light of the above, the Commission can conclude that the costs for the State have been reduced to the minimum necessary to achieve its policy objectives.

6.3.2. Limitation of distortions of competition

- (110) The State aid contained in all measures amounts to roughly EUR 15,3 billion (see recital (85)). This corresponds to over 40% of the combined RWA of VB and BPVi as of 31 December 2016.
- (111) The Commission notes that both VB and BPVi are not very large banks (see recitals (9) and (14)). The Commission considers the impact on competition through the acquisition of the transferred activities by the Buyer as small.
- (112) Moreover, the sold activities were offered to competitors through an open sale process providing opportunity to any competitor to acquire the corresponding market share.
- (113) Finally, and above all, following the sale of assets and liabilities, VB and BPVi will cease to exist entirely as a stand-alone competitor. According to the Commitments provided by Italy, the transferred activities will be fully integrated into the Buyer by 30 June 2019. By 30 June 2019, the Buyer will close all but

[250-500] of the branches of the Sold Entities (a reduction of roughly two thirds) and will reduce its staff by almost [2 500-5 000] employees of which at least [500-1 000] in the Sold Entities.

- (114) All assets and liabilities excluded from the acquisition will be liquidated following the ordinary insolvency procedure or through professional work out in an AMC should Italy decide to transfer those loans from the Residual Entities.
- (115) Correspondingly, the aid will not be used to allow VB and BPVi to continue to offer products and compete on the market with other banks. The aid will have as only effect the orderly market exit of those two not very large banks.
- (116) Taking into account the preceding elements, in particular the size of the Sold Entities which is not very large, the open sales process, the full absorption of those parts of VB and BPVi's activities acquired by the Buyer and the disappearance of VB and BPVi in their entirety, the Commission concludes that there are no undue distortions of competition, despite the large amount of aid in relation to the size of the two banks and the absence of remuneration.

6.3.3. *Burden-Sharing*

- (117) According to the legal basis of the assessment, shareholders and subordinate debt holders have to contribute to a maximum to the cost of the intervention. In both banks, the shareholders will remain in the respective Residual Entities and will not be transferred to the Buyer. Furthermore, subordinated debt is not transferred to the Buyer but remains subordinated debt of the Residual Entities in liquidation.
- (118) While the shareholders and subordinated debt holders are in principle entitled to proceeds from the winding-down of the Residual Entities, the Commission recalls that both Buyer and the State have created large senior claims towards the Residual Entities. Those claims have to be repaid before other creditors will be served³⁸. Given that those claims exceed the value of the residual assets (see recital (64)), subordinated debt holders and shareholders will in all likelihood not benefit from the proceeds of the liquidation.
- (119) According to point (46) of the 2013 Banking Communication, to which point (44) refers, which in turns is referred to by point (66), when a full write down of shareholders and subordinated creditors is necessary prior to State aid being granted, it has to be ascertained that shareholders and subordinated creditors will not be worse off than they would have been if VB and BPVi had been liquidated without any State aid measures.
- (120) Based on the capital plan³⁹ the two banks expected a capital shortfall in 2017 of about EUR [...] billion, which would have left the entities with negative equity of about EUR [...] million at the end of 2017. In their assessment, SSM/ECB⁴⁰ and SRB⁴¹ stated on 23 June 2017 that this capital plan was not a credible

³⁸ With the exception of any claims arising from the litigation referred to in recital (33) that will have priority over the State's claim on the residual entity.

³⁹ Source: Tiepolo plan.

⁴⁰ See footnote 7.

⁴¹ See footnote 9.

solution for the two banks going forward, implying that expected losses would have been even higher than that estimate.

- (121) Recalling that those losses would have occurred already in a going concern scenario and that it is safe to assume that losses would have been significantly greater in insolvency, the Commission considers that the entire amount of subordinated debt of roughly EUR 1.2 billion in the two banks would have been lost in insolvency without State aid.
- (122) The Commission considers that shareholders and subordinated debt holders will have contributed to the maximum extent possible and are not economically worse off than if the two banks were liquidated without the accompanying aid measures.

6.3.4. Long-term viability of the resulting entity

- (123) A significant part of assets and liabilities as well as staff and branches will be sold and transferred from VB and BPVi in liquidation to the Buyer. The Commission will assess the viability of the entity resulting from the integration of the sold assets and liabilities into the Buyer.
- (124) The Commission considers Intesa Sanpaolo to be capable of absorbing the assets and liabilities transferred from VB and BPVi. Intesa Sanpaolo is more than 15 times larger than the transferred economic activities in terms of total assets.
- (125) Furthermore, Intesa Sanpaolo will fully integrate and rationalise the acquired business. For instance, it will close most of the acquired branches until 30 June 2019, as it has own branches in the vicinity of most of the VB and BPVi branches.
- (126) Finally, the assets and liabilities acquired by Intesa Sanpaolo will constitute a business that is significantly cleaned up of legacy risks. In particular, Intesa Sanpaolo will not take over the NPL and will have a guarantee against the most risky performing loans. Moreover, the terms and conditions of the acquisition are such that it remains capital neutral for Intesa Sanpaolo.
- (127) On the basis of the preceding elements, the Commission concludes that the acquisition of the assets and liabilities from VB and BPVi by Intesa Sanpaolo does not pose any significant risks to the viability of the latter.

6.3.5. Conclusion

- (128) In light of the considerations above, and given the commitments issued by Italy, the Commission concludes that Measures A, B, C+D, E, F, G, H and J meet all the conditions and requirements of the 2013 Banking Communication and the Restructuring Communication, without prejudice to the specific requirements for Measure E with respect to its compatibility under the Impaired Assets Communication.

6.4. Compatibility of Measure E under the Impaired Assets Communication

6.4.1. Measure E

- (129) Measure E provides the Buyer with the right to transfer back to the residual entities those loans from a pool of up to EUR 4.035 billion of high risk performing loans which have to be reclassified as UTP during a given period of [...] months.
- (130) The measure contains a risk sharing mechanism requiring the Buyer to share half of the provisioning losses required on reclassifying a loan as UTP. According to the information provided by Italy, this is equivalent to 15% of gross book value. Therefore, Measure E is equivalent to a contingent sale of the loans at 85% of their gross book value.
- (131) Regarding ex ante transparency, the Commission notes that it has not received a clear identification of the loans. However, the Commission had been provided with significant amounts of detailed information on the loan portfolio. On the basis of that information and information of how those loans had been chosen, the Commission has been put in a position to identify the relevant loans.
- (132) The Commission notes that the loans are currently not yet impaired in an accounting sense but performing. However, the loans are considered high risk defined by probabilities of default of the corresponding clients which are very high. Moreover, under the Tiepolo plan, the two banks had already identified a portfolio of high risk loans which they were planning to reclassify as NPLs over the coming two years. On that basis, the Commission considers that there is a large re-classification risk on those assets which are therefore eligible for protection under the Impaired Asset Communication.
- (133) The Commission has also not received a valuation from the Italian authorities. However, on the basis of the data available to the Commission and in line with the valuation work described in recitals (79) to (81), the Commission has been able to estimate the real economic value of the portfolio to be likely no less than [40-50]% of gross book value.
- (134) Under point (41) of the Impaired Assets Communication, the purchase price of impaired assets by the State should not exceed their real economic value. At the same time, Measure E provides the Buyer with an insurance of those loans at [80-90]% of gross book value which will in most cases be significantly higher than the real economic value. Under point (41) of the Impaired Asset Communication, this can only be authorised in the presence of a clawback mechanism and if a bank undergoes more in-depth restructuring.
- (135) However, Measure E is not supporting restructuring but liquidation. Measure E is part of an overall sales package with the effect that the Buyer accepts to take over risky performing loans at their current book value. In the absence of this measure, the Buyer would not accept to take over those loans at all or would require the price to be lowered significantly. In both cases, in order to conclude a sale of the same amount of liabilities, the State would have to increase the size of other support measures. The same would be true if Measure E was accompanied by a clawback mechanism.

- (136) Finally, the two banks will exit the market, be integrated fully into the Buyer and cease to exist as stand-alone entities. The restructuring can correspondingly be considered as particularly significant.
- (137) On the basis of the preceding considerations, the Commission considers that Measure E can exceptionally be authorised as compatible with the Impaired Asset Communication in the context of a purchase of assets and liabilities of the two banks out of liquidation under ordinary insolvency law⁴².

6.5. Conclusion on Compatibility

- (138) The Commission considers that the aid measures are compatible with the internal market within the meaning of Article 107(3)(b) TFEU.

6.6. Monitoring

- (139) Point 88 of the 2013 Banking Communication notes that the Commission must be in a position to monitor the orderly liquidation process and its impact on competition. In that regard, the Commission takes positive note of the commitment undertaken by Italy to appoint a monitoring trustee to monitor the compliance with the Commitments, undertaken by the Italian authorities and Intesa Sanpaolo towards the Commission. The monitoring trustee will report to the European Commission.

7. COMPLIANCE OF THE LIQUIDATION AND SALE OF ASSETS AND LIABILITIES OF THE BANK WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU⁴³ ("BRRD") AND OF THE REGULATION (EU) No 806/2014

- (140) The Commission needs to assess that whether the proposed aid measures violate indissolubly linked provisions of the BRRD and of the SRMR. That obligation is in line with the case-law of the Union Courts, which have consistently held⁴⁴ *"that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108]"*⁴⁵.

⁴² See recital (120) of the Commission decision of 30 May 2012 in the State aid case SA.34255 (2012/N) – Restructuring of CAM and Banco CAM, OJ C 173, 19.6.2013, p. 1, available online at http://ec.europa.eu/competition/state_aid/cases/243405/243405_1344573_85_1.pdf.

⁴³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1903/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance, OJ L 173, 12.6.2014, p. 190-348.

⁴⁴ See *inter alia* Joined Cases C-134/91 and C-135/91 *Keramina-Keramische v Greece* EU:C:1992:434, paragraph 20; Case T-184/97 *BP Chemicals v Commission* EU:T:2000:217, paragraph 55; and Case T-289/03 *BUPA and others v Commission* EU:T:2005:78, paragraphs 313 and 314.

⁴⁵ Case 74/76 *Ianelli v Meroni* EU:C:1977:51 paragraph 14.

- (141) To ascertain whether a breach of a provision of Union law is indissolubly linked to the object of the aid, a relation of necessity has to be established. That relation exists where the State aid measures necessarily breach a specific provision of Union law which is relevant for the compatibility analysis pursuant to paragraphs 2 and 3 of Article 107 of the TFEU.
- (142) According to the SRMR and BRRD, the winding up of an insolvent entity through normal insolvency proceedings should always be considered before a decision is taken to maintain the entity as a going concern. As described in recital (6), pursuant to the ECB's conclusion that BPVi and VB were failing or likely to fail in line with the provisions of Article 18(1) and Article 18(4)(a) SRMR, the SRB concluded that resolution action was not warranted as the condition of Article 18(1)(c) SRMR was not met. Italy has notified the Commission that the State support to BPVi and VB would be granted under national insolvency law (compulsory administrative liquidation).
- (143) Correspondingly, the Commission has not identified BRRD or SRMR provisions, which would be indissolubly linked to the specific aid measures under examination.

8. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid measures granted in the form of guarantees, lump sum payments and tax measures on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

The Commission notes that Italy exceptionally accepts that the present decision be adopted and notified in the English language, for reasons of urgency.

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

Your request should be sent electronically to the following address:

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

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



List of Commitments

COMMITMENTS OF THE REPUBLIC OF ITALY TO THE EUROPEAN COMMISSION

Veneto Banca and Banca Popolare di Vicenza – Liquidation aid

INTRODUCTION

Italy hereby provides the following Commitments in relation to liquidation aid to be provided to Veneto Banca and Banca Popolare di Vicenza.

The Commitments shall take effect upon the date of adoption of the European Commission's (the "Commission") decision approving the liquidation aid and shall cease on 30 June 2019.

The text of the Commitments shall be interpreted in the light of the Decision in the general framework of Union law, and by reference to Council Regulation (EC) No. 2015/1589.

DEFINITIONS

For the purpose of these Commitments, the following definitions apply:

- 1) the "Purchaser": Intesa Sanpaolo S.p.A.;
- 2) "the Banks": Veneto Banca and Banca Popolare di Vicenza;
- 3) "the Sold Entities" : those parts of the Banks which are included in the perimeter sold to the Purchaser as definitely identified after the due diligence process;
- 4) "the Residual Entities": those parts of the Banks which are not included in the perimeter sold to the Purchaser and which remain in orderly liquidation under national law;
- 5) "the Integration Plan": the plan for the integration of the Sold Entities into the Purchaser provided by Italy to the Commission;
- 6) "the Commitments": the commitments in the present document

COMMITMENTS REGARDING THE INTEGRATION AND RATIONALISATION OF THE SOLD ENTITIES

1. Italy ensures that the Integration Plan by the Purchaser for the Banks submitted on 24 June 2017 is correctly and fully implemented.
2. Italy ensures that the Commitments contained in this annex are fully observed during the implementation of the Integration Plan.
3. Italy confirms to have informed the Purchaser of the Commitments regarding the Sold Entity as well as the related monitoring obligations.
4. Italy commits that the conditions of the sale are fully determined with the notification approved in the present decision and that no further guarantees, warranties or other instruments will be included at a later date.
5. Italy will inform the Commission of the final sale price after it has been entirely determined and commits that the full amount of aid including any additional obligations arising under the final price determination will not exceed the maximum aid amount foreseen and approved in the present decision.

6. By 30 June 2019, the Purchaser will fully integrate the Sold Entities into its business including the migration of the Sold Entities to the Purchaser's target IT systems as well as full adoption of the Purchaser's risk management policies and management systems.

7. By 30 June 2019, the brand names of the Banks will disappear.

8. By 30 June 2019, the Purchaser will reduce staff numbers in Italy by at least [2 500–5 000] overall, of which at least [500–1 000] in the Sold Entities. Further reductions may be decided by the Purchaser.

9. By 30 June 2019, the Purchaser will reduce branch numbers of the Sold Entities in Italy to [250-500]. Further reductions may be decided by the Purchaser.

COMMITMENTS REGARDING THE RESIDUAL ENTITIES

10. All claims of holders of subordinated debt instruments or shares in the Bank remain in the two Residual Entities. There will be no later transfer of any such claims to either the respective Sold Entities or the Purchaser.

11. In return for all payments Italy will provide to the Purchaser in the process of selling the Sold Entities, it must receive the most senior claim of equal value on the Residual Entities. The credit of the Purchaser for the financing to the Residual Entities to cover the negative balance has, only for the part guaranteed by Italy, the same ranking of Italy's claim.

12. The Residual Entities will give up their banking licenses and their assets will be put in wind down no later than 2 weeks following the date of the present decision under the control of the public administrator appointed by the Bank of Italy in CAL.

13. The Residual Entities will not conduct any banking business, acquire new clients or sell new products or enter into new contracts with any existing clients. However, they shall have the right to manage any non-performing loans that remain in their respective perimeters having recourse to all legal instruments available to other impaired asset managers under Italian law.

14. The Residual Entities will not acquire any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertakings which have the legal form of a company and any package of assets which forms a business.

15. The Residual Entities have the right to transfer the entire NPE portfolio to any other publically owned Asset Management Company at a transfer value lower or equal to the net book value at which the assets are accounted in the books at inception of the Residual Entities in order not to put in question the full burden sharing of subordinated debt holders and shareholders in any way. Only after all claims by the public authorities generated in compensation for the measures as approved under the present decision have been satisfied can further proceeds be used to repay subordinated debt holders and shareholders.

16. Any subsidiary or participation where the two Residual Entities hold a controlling stake, either individually or jointly, will have to be sold out of liquidation within [...] or be wound down. Italy commits not to provide any State aid to those entities beyond what has been approved in the present decision.

COMMITMENT REGARDING THE ASSET MANAGEMENT COMPANY

17. The Residual Entities may transfer the remaining NPE portfolios either in part or in full to the publically owned Asset Management Company [SGA]. That Asset Management Company will not conduct any banking business, acquire new clients or sell new products or enter into new contracts with any clients related to the NPE portfolio it acquires or the related collaterals, apart from the restructuring of the NPE acquired..

MONITORING

18. A Monitoring Trustee shall be appointed to monitor the full compliance with the Commitments in accordance with the template agreement provided for as Annex I hereto. The Monitoring Trustee shall consist of one or more natural or legal person(s), independent from the Banks, the Sold Entities or the Residual Entities, proposed by Italy and approved by the Commission. The Monitoring Trustee will provide a progress report for the above Commitments to the Commission on 30 June 2018 and a final report after 30 June 2019 by which date all Commitments should have been implemented in full.