EUROPEAN COMMISSION

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

Subject: **State Aid SA.52917 (2019/N) – Italy – Liquidity support to Banca Carige – Cassa di Risparmio di Genova e Imperia**

Sir,

1. PROCEDURE

(1) By call of 31 December 2018, Italy initiated contacts with the Commission in view of a potential request for aid to Gruppo Banca Carige - Cassa di Risparmio di Genova e Imperia S.p.A. ("Carige" or the "Bank").

(2) On 7 January 2019, the Italian Ministry of Economy and Finance issued a decree ("the Decree-law") laying down the legal framework to provide State support to the Bank in the form of State guarantees on newly issued liabilities or emergency liquidity assistance ("ELA") granted by the Bank of Italy, as well as in the form of a precautionary recapitalisation.

(3) On 17 January 2019, the Italian authorities submitted a notification to the Commission for granting a State guarantee on three instruments to be issued by the Bank. The Italian authorities included in the notification the Bank's request for liquidity support, a letter from the Minister of Economy and Finance, the Bank's latest capital conservation plan, a letter accompanied with statistical data on

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liquidity from the Bank of Italy, a letter from the ECB in its capacity of the banking supervisor exercising the tasks conferred on it by Regulation (EU) No 1024/2013, a decision by the ECB, and a list of commitments undertaken by Italy.

(4) By letter dated 16 January 2019, Italy agreed exceptionally to waive its rights deriving from Article 342 Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958[1] and to have the present decision adopted and notified in English.

2. FACTS

2.1. Description of the beneficiary

(5) The Bank is the tenth largest Italian bank, based in Genoa and active primarily in the north-western regions of Italy. Carige has its main business in Liguria, where it has a market share of around 35% for loans and 23% for deposits. The main shareholders of the Bank are Malacalza Investimenti which holds 27.5% of the Bank's capital, Compania Financiera Lonestar (9.09%) and Pop 12 S.a.r.l. (5.43%), while 57.9% is floating capital.

(6) Between December 2014 and September 2018, the Bank generated total losses of around EUR 1.6 billion[2]. Its profitability has been weakened by a progressive deterioration in asset quality and a decrease in net operating income. On 30 September 2018, the Bank had a total balance sheet of EUR 24 billion (of which EUR 13 billion of deposits), 4 293 employees and 503 branches. The losses booked by the Bank during the first nine months of 2018 amounted to EUR 189 million.

(7) In terms of capital position, the Bank has been breaching its overall capital requirement ("OCR") for total capital between January 2018 and November 2018. The Bank's plans to restore its capital position through the issuance of a Tier 2 instrument in the beginning of 2018 did not materialise. In such circumstances, the ECB asked the Bank to submit by November 2018 a plan to restore and ensure in a sustainable manner compliance with capital requirements by the end of 2018 and assess the option of a business combination. The Bank envisaged a capital plan structured in two phases: firstly, the issuance of a Tier 2 instrument for an amount of up to EUR 400 million by the end of 2018, followed by a capital increase of up to EUR 400 million in April 2019 with the possibility to convert the Tier 2 instrument into own funds. The transaction was subject to approval by the extraordinary shareholders meeting of 22 December 2018.

(8) On 30 November 2018, the Bank issued a Tier 2 subordinated bond for an amount of EUR 320 million, which was subscribed by the voluntary scheme of the Italian Interbank Deposit Protection Fund ("FITD") and Banco di Desio e della Brianza. The bond has a ten-year maturity with a 13% fixed-rate coupon (to be stepped up to 16% in case of failure of the envisaged capital raise).

(9) On 22 December 2018, the main shareholder decided to abstain from the vote on the proposed capital plan. As a consequence, the extraordinary shareholders

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

[2] See the financial reports available on the Bank's website for the years 2018, 2017, 2016, 2015, 2014.

meeting did not approve the mandate for the Board of Directors to increase the share capital by up to EUR 400 million.

(10) On 31 December 2018, the Bank submitted to the ECB an update to the capital plan, removing the impact of the capital increase which was not supported during the extraordinary shareholders meeting of 22 December 2018 and taking into account the effective step-up of the fixed-rate coupon on the Tier 2 subordinated bond issued on 30 November 2018 from 13% to 16%.

(11) On 2 January 2019, following the resignation of the majority of the members of the Board of Directors, the ECB decided to place the Bank under temporary administration for a period of three months (thus expiring on 31 March 2019, with the possibility to be renewed), appointing three temporary administrators for a period of three months. The ECB's decision quotes the weak capital position of the Bank, the quality of the credit portfolio, the significant amount of losses, the governance instability and the fragility of the liquidity situation. The temporary administrators have been entrusted with the task to ensure the Bank meets again its capital requirements in a sustainable manner, including the task of exploring a business combination with other financial institutions.

(12) The events described in recitals (7) to (11) gravely affected the Bank's liquidity position, which was seriously weakened by significant unexpected outflows. On 8 January 2019, the Bank of Italy provided ELA in the amount of EUR […][3].

(13) On 10 January 2019, the ECB sent a letter (the "ECB letter") to the Italian authorities, copying it to the Commission, containing an assessment of the solvency and describing the liquidity position of the Bank.

(14) As regards the solvency assessment, the ECB letter considers solvency as point-in-time and forward-looking compliance with minimum capital requirements (as per Article 92 of Regulation (EU) No 575/2013[4]), including the applicable Pillar 2 requirements[5].

(15) The ECB letter notes that at the day of its sending (10 January 2019), the Bank met the minimum capital requirements, including the applicable Pillar 2 requirements on the total capital level of 11.25%. However, the Bank falls short of the overall capital requirement on total capital level of 13.75%, which includes the capital conservation buffer[6]. The Bank also fails to comply with the Pillar 2 guidance on the common equity Tier 1 ("CET1") capital level (11.80%). More specifically, based on 30 September 2018 data, the Bank's CET1 amounted to EUR 1.6 billion

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3 Covered by the obligation of professional secrecy

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, 27.6.2013, p.1).

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

6 Article 129 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

(CET1 ratio of 10.81%) and its total capital amounted to EUR 1.61 billion (total capital ratio of 10.88%). On 30 November 2018, following the issuance of the EUR 320 million Tier 2 bond, according to the Bank's own estimates, the total capital ratio increased to 13.18% as of 31 December 2018.

(16) The ECB letter mentions that, taking a forward-looking perspective, the capital projections included in the current capital plan of the Bank show no evidence that the Bank would breach the minimum capital requirements, including the applicable Pillar 2 requirements, over a 12-month horizon. However, the ECB considers that the Bank would face a widening of the breach of the Pillar 2 guidance and of the capital conservation buffer going forward. The ECB letter specifies that this forward-looking capital position of the Bank does not reflect all adverse developments and risks which might materialise within a 12-month horizon, such as:

(a) A further deterioration of the already weak operating performance;

(b) The potential restructuring costs necessary to prepare for a business combination;

(c) A stronger-than-expected increase in funding costs;

(d) The potential negative impact on capital of the transfer of a significant portion of the non-performing loan ("NPL") portfolio;

(e) The transitional arrangements for mitigating the impact of the introduction of the International Financial Reporting Standard 9.

(17) With respect to incurred or likely losses that the Bank could face, the ECB letter notes the following points:

(a) The ECB stress testing exercise of 2018 revealed that the Bank had no capital shortfall in the baseline scenario compared to a threshold of 8% CET1, but revealed a significant depletion of the Bank's capital in the adverse scenario by the end of 2020, driving the Bank's CET1 ratio below down to [0-5]%.

(b) Previous on-site inspections, notably the credit file review in 2018 which concerned 15.5% of total assets, revealed additional provisions totalling EUR 254 million, of which the Bank booked EUR [200-250] million at the end of the third quarter of 2018. In addition, the inspections led to a high reclassification rate of performing loans to NPLs. The targeted scope of this last inspection was judgementally selected, which excludes the possibility to extrapolate the results to the whole asset portfolio.

(18) As regards the liquidity position of the Bank, the ECB letter notes that since 2017, the Bank has experienced several episodes of liquidity stress due to a number of factors. These include changing market conditions and internal governance crises translating into reputational events and subsequent rating downgrades. The ECB letter takes note of the deterioration of the Bank's liquidity situation following the resignation of the majority of the members of the Board of Directors and the appointment of the temporary administrators on 1 January 2019. The Bank experienced unexpected and increasing outflows, mainly driven by retail

customers' transactions, which started to erode its counterbalancing capacity[7]. The ECB letter concludes that due to its weak market standing, the possibility for the Bank to restore the counterbalancing capacity on the basis of additional market transactions is hampered.

(19) The Commission notes that according to the ECB letter, the ECB stands ready to […] provide an updated and comprehensive review of the solvency position.

2.2. Description of the aid measures

(20) The Bank requests up to EUR 3 billion of liquidity support in the form of a State guarantee ("the measures"), structured as follows:

(a) Measure 1: State guarantee on two newly-issued debt instruments, whereby each instrument has a nominal amount of EUR 1 billion and whereby the respective maturities are 12 months and 18 months. The two State-guaranteed instruments will be issued within one month from the approval of the aid measure.

(b) Measure 2: A contingent third instrument with a nominal amount of EUR 1 billion and a maturity of 6 months, either in the form of a State guarantee on ELA or on a newly-issued instrument, may be issued in case of a new episode of liquidity stress, upon fulfilment of the following cumulative conditions:

– The two EUR 1 billion instruments with respective maturities of 12 and 18 months plus one day have been issued;

– The capacity of the Bank to access ELA has been exhausted;

– The Bank's remaining counterbalancing capacity has fallen below EUR […];

– The third instrument must be issued within the current three-month mandate of the temporary administrators, and in any event no later than 30 June 2019.

(21) The fee for the State guarantee is set at 86 basis points for Measure 1 and 90 basis points for Measure 2.

3. POSITION OF ITALY

(22) In its letter dated 17 January 2019, Italy argues that the aid is required to remedy a serious disturbance in the economy, in particular at the regional level, and thus to preserve financial stability. Italy explains that the current liquidity difficulties of the Bank are exacerbated by systemic and macroeconomic factors which are affecting the whole Italian banking sector, making it necessary to provide the Bank with temporary liquidity support. Italy also argues that a possible liquidity crisis of the Bank would hamper its capacity to fund the real economy, especially in the region of Liguria, and would have a strong effect at the economic and social level.

[7] The counterbalancing capacity of a bank designates its total holdings of freely available assets eligible for use as collateral for Eurosystem refinancing operations.

The extent of the liquidity crisis would exacerbate the difficulties of the region, already hit by the economic crisis and a more recent severe event.

(23) Furthermore, Italy argues that a liquidity crisis of the Bank could generate contagion effects, especially for the weaker banks, which may seriously undermine the trust among Italian financial institutions and also between the latter and banks' customers, thereby jeopardising the stability of the domestic financial system and of the economy as a whole.

(24) In its letter of 10 January 2019, the Bank of Italy argues that the aid amount of EUR 3 billion is justified by the need to restore the medium to long-term financing capacity of the Bank, taking into account the needs for liquidity that Carige will be faced with in 2019, as well as any adverse impact that could arise on the assets that could readily be liquidated in the case of downgrading by credit rating agencies and additional unexpected outflows from customers.

(25) Italy submits that the expected liquidity outflows in 2019 amount to EUR [2-3] billion, of which EUR […] relate to the maturing of senior bonds (EUR 330 million) and of term deposits (EUR […]), and of which EUR […] are linked to the ELA currently drawn.

(26) Moreover, Italy argues that the potential impact of possible rating downgrades on the Bank's retained covered bonds could range from EUR [0-0.5] billion to EUR [1-2] billion.

(27) Italy included in the notification the evolution of two indicators: the Bank's 1-month net liquidity position[8] and the counterbalancing capacity, as well as an indication of the former indicator of peer banks. According to the data, the Bank's counterbalancing capacity shrank from EUR […] in early November 2018 to EUR […] on 7 January 2019. In parallel, the Bank's 1-month net liquidity position deteriorated from EUR […] to EUR […] over the same period.

(28) Italy refers to the ECB letter[9] and underlines that the aid is confined to a solvent institution.

(29) Italy also confirms that the aid will not be granted until a positive State aid decision is taken.

(30) Italy underlines that the aid is of a precautionary and temporary nature. Based on the Bank's request, Italy notes that the support is requested in order to prevent future liquidity tensions. Furthermore, the envisaged instruments have an average maturity of 12 month with a maximum of 18 months.

(31) Italy also submits that as the aid takes the form of a State guarantee, the aid will not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(32) Italy notes that the aid is proportionate to remedy a serious disturbance in the Italian economy. Italy also notes that the required support is deemed consistent

[8] The 1-month net liquidity position of a bank is calculated as the difference between the counterbalancing capacity and the cumulative expected net cash-flows over the next 30 days.

[9] See recital (15)

with the liquidity needs of the Bank. Furthermore, Italy notes that the liquidity support requested by the Bank is deemed appropriate in relation to the size of the institution, the amount of its own funds and its prospective liquidity needs.

(33) Italy submitted the following commitments relating to the measures:

i. To grant the guarantees only for new issuance of the Bank's senior debt (subordinated debt is excluded) to be issued after the Commission's decision approving the aid is released;

ii. To provide guarantees only on debt instruments with maturities from 6 months to 18 months plus one day;

iii. To ensure that the Bank will issue no later than one month from the Commission's decision the first two EUR 1 billion tranches, with respective maturities of 12 months and 18 months plus one day;

iv. To ensure that the Bank will issue the third EUR 1 billion tranche with a 6-month maturity only if the following conditions are met, as confirmed by the Ministry of Economy and Finance:

1. The two EUR 1 billion tranches have already been issued;
2. The capacity of the Bank to access ELA has been exhausted;
3. The Bank's counterbalancing capacity is equal to or lower than EUR […] million; and
4. The tranche is issued during either the current period of temporary administration or no later than 30 June 2019;

v. To determine the minimum level of State guarantee remuneration in line with the formula set out in the Commission's Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis[10];

vi. To submit a restructuring or a wind-down plan of the Bank within two months of the granting of the guarantees (unless the aid is reimbursed within two months);

vii. To submit any further update of the capital conservation plan of the Bank on the same date when it is submitted for endorsement to the ECB;

viii. To impose a ban on advertising referring to the State support granted to the Bank for acquiring new clients and business and to prevent the Bank from employing any aggressive commercial strategies which would not take place without the State support;

ix. To impose on the Bank to suspend any dividend and coupon payments on outstanding instruments by the Bank, unless those payments stem from a legal obligation, as long as the Bank is still benefitting from the State guarantee;

x. To impose on the Bank to suspend the exercise of any call options or other capital management operations (e.g. buy-backs) without prior authorization of the Commission, as long as the Bank is still benefitting from the State guarantee;

xi. To impose an acquisition ban for the Bank, as long as the Bank is still benefitting from the State guarantee.

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

4. ASSESSMENT

4.1. Existence of State aid

(34) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

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

(36) The Commission observes that the Italian authorities intend to provide the Bank with State guarantees, using the legal basis of the Decree-Law. The financial resources to implement the measures come directly from the State budget[11]. The Commission therefore concludes that the measures entail the use of State resources and are imputable to the State.

(37) Due to the recent liquidity stress, the Bank lost access to the funding market and the Bank of Italy provided ELA on 8 January 2019. Moreover, the Bank will receive State guarantees under conditions that would not be available to the Bank in the market, which implies that the Bank receives an advantage. This advantage is also selective in nature as it is only granted to the Bank. The measures will strengthen the liquidity position of the Bank and thus provide an advantage that is liable to distort competition. Since financial institutions from other Member States operate in Italy, the measures are also liable to affect trade between Member States.

(38) In conclusion, the measures meet all cumulative State aid criteria and therefore constitute State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility assessment

4.2.1. Legal basis

(39) Under the measures, Italy intends to provide aid in the form of a State guarantee on three instruments to be issued by the Bank.

(40) The Commission notes that since the second half of May 2018, sovereign bond spreads and corporate CDS premiums in Italy have structurally increased. Given these tensions on financial markets and the systemic and macroeconomic factors that are affecting the Italian banking system, and in light of the persisting circumstances and risks, the Commission considers it appropriate, as confirmed by the 2013 Banking Communication[12], to examine the measures under Article 107(3)(b) TFEU.

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11 See Article 22 of the Decree-Law

12 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, 30.7.2013, p. 1-15, points 4-6

(41) Article 107(3)(b) TFEU, in particular, 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 does not dispute the position of the Italian authorities[13] regarding the stressed liquidity position of the Bank. In addition, the ECB and the Bank of Italy informed the Commission that the liquidity position of the Bank rapidly deteriorated as reflected in the evolution of its counterbalancing capacity since November 2018. Due to its weak position, the Bank's ability to restore its counterbalancing capacity is hampered. The measures are therefore necessary to strengthen the liquidity position of the Bank in the face of potential stress. Given the substantial weight of the Bank in the Ligurian economy, the Commission finds that the measures aim at ensuring financial stability and thus at remedying a serious disturbance in the economy, especially at the regional level.

(42) For aid to be compatible with the internal market, it must comply with the general principles for compatibility under Article 107(3) TFEU, viewed in the light of the general objectives of the Treaty. Therefore, according to the Commission's decisional practice[14], any aid or scheme must comply with the following conditions: (i) appropriateness, (ii) necessity and (iii) proportionality.

(43) The 2013 Banking Communication and the Restructuring Communication[15] formulate assessment criteria that reflect those general principles and their requirements in light of the specific policy context.

4.2.2. Compatibility assessment of the measures

Appropriateness

(44) The measures are appropriate to remedy a serious disturbance in the economy. The objective of the measures is to strengthen the liquidity position of the Bank. As set out in recital (18), the Bank has been facing bouts of significant deposit outflows since 2017, with a new prolonged episode at the beginning of 2019. Furthermore, as set out in recital (27), Italy indicated that between the beginning of November 2018 and early January 2019, both the Bank's counterbalancing capacity and the 1-month net liquidity position deteriorated significantly, which led the Bank to access ELA on 8 January 2019. Hence, the provision of liquidity support to the Bank is an appropriate measure to stabilise the liquidity position.

(45) The Commission notes that Italy has committed to grant guarantees only for new issuances of the Bank's senior debt and on new ELA provided by the Bank of Italy, as prescribed in point 59(a) of the 2013 Banking Communication.

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[13] See recital (22).

[14] See Commission decision of 7.10.2016 in State Aid Case SA.46558 "Liquidity Support to Attica Bank", OJ C 51, 17.02.2017, p.1; Commission decision of 29.12.2017 in State Aid Case SA.47081 "Liquidity support to MPS Bank", OJ C 121, 6.4.2018, p.1; Commission decision of 18.1.2017 in State Aid Case SA.47149 "Liquidity support to Banco Popolare di Vicenza", OJ C 140, 20.04.2018, p.1; Commission decision of 18.1.2017 in State Aid Case SA.47150 "Liquidity support to Veneto Banca", OJ C 140, 20.04.2018, p. 1

[15] Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("Restructuring Communication"), OJ C 195, 19.8.2009, p. 9-20

Necessity

(46) With regard to the scope of the measures, the Commission notes that Italy limited the size of Measure 1 to EUR 2 billion and that the maximum maturity of the State guarantees on newly issued liabilities is 18 months. In addition, in case of a new episode of liquidity stress, upon fulfilment of the conditions detailed in recital (20)(b), the Bank could issue an additional instrument with a nominal value of EUR 1 billion and a maturity of six months (Measure 2). The Commission notes that the Bank's liquidity position has deteriorated since November 2018, as shown by the significant decrease of its counterbalancing capacity and 1-month net liquidity position. Taking also in account the current stress and the Bank's liability maturity schedule as set out in recital (25), the Commission finds that the two measures, in the form of State guarantees on newly issued senior liabilities or on new ELA, are necessary to tackle the liquidity stress faced by the Bank.

(47) The Commission notes that Italy has committed to grant the State guarantees only on debt instruments with a maturity of 6 months, 12 months and 18 months, which complies with the requirement in points 59(b) of the 2013 Banking Communication.

Proportionality

(48) As regards the overall amount of the State guarantees (up to EUR 3 billion), the Commission notes that it is subdivided in two legs, with Measure 1 granted from the outset and Measure 2 to be granted only upon fulfilment of the conditions set out in recital (33)iv. A proportionate aid amount would need to be sufficient to address the present liquidity stress in the short run. This would mean restoring the Bank's liquidity position, even in a situation of stress. At the same time, it would have to make sure that the Bank can face foreseeable liquidity outflows in the medium term, even in the unlikely case of a further liquidity stress.

(49) As regards Measure 1, based on the Bank of Italy's data, the Commission observes that on 10 January 2019, the Bank had EUR […] in counterbalancing capacity. Its net 1-month liquidity position was EUR […]. Excluding the EUR […] ELA, the counterbalancing capacity amounted to EUR […].

(50) According to information submitted by Italy, the Bank is expected to face EUR […] of contractual repayments during 2019. These cash outflows include EUR […] of term deposits and EUR 330 million of senior bonds. Moreover, if the Bank were to be downgraded, it would lose access to at least EUR [0-0.5] billion of covered-bond funding.

(51) In a hypothetical short-term stress scenario (spanning five working days) whereby deposits are unexpectedly withdrawn and the Bank's rating is downgraded, the Bank would face net unexpected cash outflows of up to EUR […][16]. Thus, the EUR 2 billion liquidity line, as proposed by Italy, would enable the Bank to reach a counterbalancing capacity of EUR […].

[16] The stress scenario over 5 days assumes deposit outflows comparable to those observed during the November 2017 liquidity crisis, i.e. an average of EUR […] per day.

Table 1: Simulation of the Bank's counterbalancing capacity

Date	**Counterbalancing capacity**	**ELA**	**Counterbalancing capacity net of ELA**
31-12-2018	[…]	-	**[…]**
07-01-2019	[…]	-	**[…]**
08-01-2019	[…]	[…]	**[…]**
10-01-2019	[…]	[…]	**[…]**
5-day stress scenario on withdrawal of deposits			*-[…]*
Issuance of the first State-guaranteed instruments			*+2.00*
Final counterbalancing capacity			**[…]**

Note: all figures in EUR billion.

(52) Based on the Bank of Italy's data, the Bank would actually restore its counterbalancing capacity to the level of 31 December 2018, at which time it did not require ELA (see Table 1). Thus, the Commission takes comfort in the fact that Measure 1 would be sufficient to address the current liquidity crisis also in a situation of stress, i.e. the Bank would be able to withstand a short-term stress and restore its liquidity position. Furthermore, if the short-term liquidity stress does not materialise due to the provision of aid, Measure 1 would also allow the Bank to face its foreseeable outflows of liquidity in the next 12 months (i.e. EUR […] – see recital (50)). This would allow the Bank to maintain a final counterbalancing position of at least EUR […], assuming that confidence does not eventually return and deposits do not flow back in the course of 2019.

(53) As regards Measure 2, the Commission welcomes that the last State-guaranteed instrument of EUR 1 billion is only going to be issued if the conditions set out in recital (33)iv are present. This ensures that the contingent liquidity support will only be used to address adverse circumstances leading to unexpected liquidity outflows that warrant the additional liquidity support. Measure 2 also ensures that the Bank restores its liquidity position. In addition, the period of possible activation of Measure 2 is limited to the duration of the current temporary administration (which expires on 31 March 2019) and, in any event no later than 30 June 2019 (in line with what has been laid down in the Decree-law). The latter approach further constrains the Bank's possibility to benefit from the contingent liquidity support, but also gives the Bank's temporary administrators sufficient time to find a solution for the difficulties of the Bank, which in turn is expected to help the Bank to restore its liquidity position.

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

(55) The ECB letter states that the Bank is falling short on its overall capital requirement on total capital and the Pillar 2 guidance on CET1. It also informs that the Bank has a capital shortfall in the adverse scenario of the ECB stress testing exercise of 2018.

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

(57) Furthermore, points 32-34 of the 2013 Banking Communication refer to a capital-raising plan designed by the Member State and the Bank and endorsed by the competent supervisory authority. For the approval of individually notified liquidity aid, the Commission in principle requires that the Member State submits such a plan. In this regard, the Commission received from Italy the capital-raising plan the Bank sent to the ECB on 30 November 2018. This plan notably included a capital increase of EUR 400 million. After the extraordinary shareholders meeting failed to approve this operation, the Bank submitted to the ECB on 31 December 2018 an updated plan, which the Commission also received from Italy and which the ECB took into account to carry out its assessment of the Bank’s solvency.

(58) The Commission observes that the temporary administrators of the Bank have been entrusted with a mandate to ensure that the Bank returns to its capital requirements in a sustainable manner. The administrators are expected to submit a new capital plan to the ECB before the end of their mandate. As explained in recital (33)vii, Italy has committed to submit any further update of the capital conservation plan of the Bank on the same date as it is submitted to the ECB for endorsement.

(59) In the exceptional circumstances of urgency of the present case and given that:

(a) the ECB did not find evidence of a breach of capital requirements over the year 2019 by relying on the updated plan which was submitted by Italy on 31 December 2018;

(b) the preparation of a new capital plan is already under way in cooperation between the Bank's temporary administrators and the ECB;

(c) any further update to the capital plan should be submitted by Italy to the Commission at the same time as it is submitted to the ECB;

the Commission concludes that points 32-34 of the Banking Communication are complied with.

(60) Point 32(b) of 2013 Banking Communication refers to safeguards preventing the outflow of funds from the Bank, which are a necessary precondition for the liquidity aid to be proportionate and limited to the minimum necessary. The Commission notes that Italy has undertaken commitments to prevent the outflow of funds from the Bank, such as the suspension of dividend and coupon payments and an acquisition ban for as long as the Bank is still benefitting from the State guarantee.

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

(62) Regarding the remuneration level, the Commission notes that Italy set a fee of 90 basis points for Measure 2, the instrument with a maturity of 6 months. For Measure 1, the instruments with a maturity of 12 and 18 months, Italy calculated a fee of 86 basis points on the basis of the CDS spreads of the sample of representative European banks in the lowest rating buckets (BBB and below). The Commission observes that, in line with point 59(c) of the 2013 Banking Communication, Italy has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication[17] that requires, in particular, the application of a pricing method based largely on market data. Therefore, the fees of Measures 1 and 2 are in line with the Commission's guidelines.

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

Conclusions on the compatibility

(64) Based on the above, the Commission finds the measures to be in line with the 2013 Banking Communication and the Restructuring Communication. The measures are appropriate, necessary and proportionate to remedy a serious disturbance of the economy.

5. COMPLIANCE WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND OF REGULATION (EU) 806/2014[18]

(65) Although Italy has transposed Directive 2014/59/EU on bank recovery and resolution ("BRRD") into national law[19], the Commission needs to assess whether the measure violates indissolubly linked provisions of the BRRD.

(66) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held[20] *"that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108 TFEU] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately so that their effect on the compatibility or incompatibility of the aid viewed as a whole must*

[17] Communication from the Commission on the application, from 1 January 2012 , of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7-10

[18] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190; Regulation (EU) no 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1.

[19] "Decreto Legislativo 16 novembre 2015, n. 180" and "Decreto Legislativo 16 novembre 2015, n. 181"

[20] See *inter alia* Joined Cases C-134/91 and C-135/91 *Kerafina-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.

therefore of necessity be determined in the light of the procedure prescribed in [Article 108]".[21]

(67) Without prejudice to the possible application of the BRRD and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"), in the event that the institution benefiting from liquidity support meets the condition for the application of that Directive or of that Regulation, the Commission notes that the measure does not violate intrinsically linked provisions of BRRD and of SRMR, namely Articles 32(4)(d)(i) and (ii) BRRD, and 18(4)(d)(i) and (ii) SRMR, respectively.

(68) The first subparagraph of Article 32(4) BRRD and of Article 18(4) SRMR establish that an institution shall be deemed to be failing or likely to fail, where, *inter alia*, extraordinary public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes the form, *inter alia*, of a State guarantee of newly issued liabilities or a State guarantee to back liquidity facilities provided by central banks according to central banks conditions.

(69) The second subparagraph of Article 32(4) BRRD and of Article 18(4) SRMR provide that, in order not to trigger the assumption of the respective bank being failing or likely to fail, such State guarantees on newly issued liabilities or liquidity facilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature, they must be proportionate to remedy the consequences of the serious disturbance and they must not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(70) The Commission notes that the measures are granted to one bank, i.e. the Bank, which the ECB considers a solvent institution and which experiences temporary liquidity pressure at the date of the ECB letter. The ECB further notes that, on a forward-looking basis, the capital projections included in the current plan of the Bank show no evidence of non-compliance with Pillar 2 requirements over a 12-month horizon. However, the Commission notes that the ECB letter stresses that the capital projections of the Bank show a widening of the breach of the Pillar 2 guidance and of the capital conservation buffer going forward and are subject to downside risks. However, the Bank has been placed under a three-month temporary administration as of 1 January 2019 by the ECB, and the mandate of the administrators is to ensure that the Bank meets again its capital requirements in a sustainable manner. Italy also committed to submit to the Commission any update of the capital plan submitted by the Bank to the ECB. Moreover, there is no indication that the Bank is unable to meet its liabilities. Based on all these elements, the Commission has sufficient comfort to conclude that the measures are granted to an institution that is solvent.

(71) The notified guarantee is of a temporary nature, since the maturity of the new liabilities to be guaranteed is up to 18 months. It is of a precautionary nature, since the guarantee only covers newly issued liabilities of a solvent institution subject to liquidity stress. The guarantee is also proportionate to remedy the consequences of the serious disturbance as explained in recitals (48) to (53).

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[21] Case 74/76 *Ianelli* v *Meroni* EU:C:1977:51 paragraph 14 (emphasis added).

(72) Regarding incurred and likely losses, the ECB letter indicates that, following an on-site inspection, the ECB identified EUR 254 million of incurred losses, out of which EUR 201 million the Bank has already booked in its accounts and charged against its equity. Considering the forward-looking nature of the solvency assessment performed by the ECB, the extent of the losses already booked by the Bank, the unfunded nature of the measures and the seniority of the debt instruments to be covered by the guarantee, the Commission concludes that the measures in question will not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(73) Therefore, at the present stage, the Commission concludes that the aid measures do not seem to violate neither the intrinsically linked provisions of BRRD nor of SRMR. The measures are in compliance with the requirements of Article 32(4) of BRRD and of Article 18(4) SRMR, and they are apt to remedy the consequences of the serious disturbance in the economy.

6. CONCLUSION

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

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

If this letter contains confidential information that 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
Executive Vice-President

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Jordi AYET PUIGARNAU
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