EUROPEAN COMMISSION

Brussels, 5.12.2019
C(2019) 8821 final

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.49094 (2019/N) – Germany
Market-conform measures for strengthening capital and restructuring of Norddeutsche Landesbank

Excellency,

The Commission wishes to inform the German authorities that the notified measures do not constitute State aid under Article 107(1) Treaty on the Functioning of the European Union (TFEU).

1. PROCEDURE

(1) Germany approached the Commission regarding a public solution for the capital needs of Norddeutsche Landesbank – Girozentrale ("NordLB" and/or "the Bank"). Germany submitted, in the context of a pre-notification discussion of the envisaged public sector solution, a draft recapitalisation plan on 10 May 2019, including the proposal for a direct capital injection and several other measures, including asset guarantees. The latter were further elaborated in a submission received on 23 May 2019. On this basis, discussions between the Commission services and the German authorities on the planned measures started.

Seiner Exzellenz Herrn Heiko MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
D -10117 Berlin

(2) Additional information and supporting documentation were submitted by Germany between June and November 2019. Several conference calls took place between the German authorities and the Commission services during this period, as well as electronic mail exchanges.

(3) In particular, Germany submitted additional information on 28 June 2019, 5 July 2019 and 11 July 2019. On 15 August 2019, Germany submitted a modified business plan and updated draft structure of the capital relief measures. On 30 August 2019, the Commission sent a list of questions based on the received submissions.

(4) On 18 September 2019, Germany submitted an additional update of the business plan and a revised structure of the planned capital relief measures.

(5) By letter dated 14 November 2019, Germany notified the measures for the strengthening of capital and the restructuring of NordLB. A business plan and relevant documents, including contracts between the stakeholders taking part in these measures, were submitted in this regard. Germany stated in the letter it submitted that the proposed measures did not constitute State aid and asked the Commission for a formal decision for reasons of legal certainty. Further information was provided to the Commission in the period running up to 22 November 2019.

(6) By letter dated 15 November 2019, Germany agreed to waive its rights under 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. RELEVANT BACKGROUND

(7) NordLB is the fourth largest Landesbank in Germany, with its seat in Hannover, Braunschweig and Magdeburg. It is owned by two German Federal States, Lower Saxony (59.1%) and Saxony-Anhalt (5.6%), as well as the Lower Saxony Savings Banks and Giro Association "Sparkassenverband Niedersachsen" ("SVN", owning 26.4%), the Saxony-Anhalt Savings Banks Holding Association "Sparkassenbeteiligungsverband Sachsen-Anhalt" ("SBV", owning 5.3%), and the Mecklenburg-Western Pomerania Savings Banks Association "Sparkassenbeteiligungszweckverband Mecklenburg-Vorpommern" ("SZV", owning 3.7%).

(8) NordLB is active as a commercial bank and it exercises the function of a central and clearing bank for savings banks (Sparkassen) located in Lower Saxony, Saxony-Anhalt and Mecklenburg-Western Pomerania. NordLB is incorporated as a public law institution (Anstalt des öffentlichen Rechts, "AöR"). Its subsidiaries include Braunschweigische Landessparkasse ("BLSK"), Bremer Landesbank, NordLB Covered Bond Bank Luxemburg ("CBB"), NordLB Leasing as well as Deutsche Hypothekenbank ("Deutsche Hypo"). The Bank is active mainly in Germany but it also has branches in London, New York, Singapore, and Shanghai.

[1] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 401.

(9) At the end of 2018, NordLB had total assets of EUR 154 billion. The Bank serves customers in the following segments: Private and Commercial Customers (5% of total assets), Corporate Customers (16% of total assets), Savings Bank Network Customers (13% of total assets), Markets (7% of total assets), Energy and Infrastructure Customers (10% of total assets), Real Estate Banking Customers (10% of total assets), Ship Customers (7% of total assets) and Aircraft Customers (3% of total assets). The remaining part of the balance sheet is made up of the segment Group Control and others, including central management and treasury functions.

(10) In 2011, NordLB received capital support of around EUR 500 million from Lower-Saxony and around EUR 100 million from the savings banks associations. The 2011 EU-wide EBA stress test no longer accepted silent participations held by the State as loss-absorbing instruments in light of upcoming regulatory changes. These instruments therefore had to be converted into core tier 1 ("CT-1") capital to the amount of EUR 1.07 billion[2]. Subsequently, in response to the EU-wide capital target of a CT-1 ratio at 9% as agreed by the European Council in 2011, the public owners of NordLB responded in 2012 with EUR 931 million in form of conversion of further silent participations, additional funding and a contingent asset guarantee on performing assets (which was not triggered). Thus the largest part of the measures consisted in the conversion of a particular type of loss-absorbing instruments held by the different public owners of the Bank into equity in response to new EBA requirements, while keeping the Bank in public ownership. Germany notified these measures as aid[3]. The 2012 measures were accompanied by commitments on restructuring which ended in December 2016.

(11) The Bank's performance in recent years suffered from the losses in shipping finance and an additional need for provisioning in this segment. One portfolio of non-performing shipping loans (the "Big Ben" portfolio) was sold to a private investor in early 2019, requiring adjustments to the level of provisioning as of 31 December 2018. A second portfolio of also mostly non-performing shipping loans (the "Tower Bridge" portfolio) was kept by the Bank but also further provisioned. As a consequence the capital ratio (Common Equity Tier 1 – "CET-1") fell to 6.8%[4]. Its ratio of non-performing loans ("NPL") stood at 4.0% as of 31 December 2018. Following the divestment of the Big Ben portfolio and some further measures taken in the first half of 2019, the Bank has reached a NPL ratio of 2.7%[5] as of 30 June 2019.

(12) NordLB is supervised by the European Central Bank (ECB) in its capacity as the competent banking supervisor according to Regulation 1024/2013[6].

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2 Case SA.33571 (2011/N) – Kapitalstärkungsprogramm NORD/LB.

3 Case SA.34381 (2012/N) – Restructuring aid to Norddeutsche Landesbank.

4 Significantly below regulatory requirements, as of 1/3/2019, the OCR set within the SREP stood at [10-11]%.

5 See slide 10 Nord/LB Group Presentation https://www.nordlb.com/fileadmin/redaktion_en/branchen/investorrelations/praesentationen/NORDLB_Group_Presentation.pdf.

6 Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63.

3. DESCRIPTION OF THE PROPOSED MEASURES

(13) Due to losses stemming from the portfolio of non-performing shipping loans and due to planned structural measures under the business plan and capital stengthening activities, the submitted plan foresees a number of measures that will have the combined total effect of approximately EUR 3.635 billion capital increase of NordLB. Given the level of CET-1 ratio of 6.8%[7], and in light of the Overall Capital Requirements ("OCR") of [10-11]% set within the Supervisory Review and Evaluation Process ("SREP"), the actual capital gap is less than EUR 2 billion. However, Germany has proposed to invest on top of the actual capital needs approximately EUR 700 million for restructuring costs as well as approximately EUR 800 million as an additional voluntary capital buffer. In total, the measures are expected to lead to a target CET-1 ratio of 15% in 2024.

(14) In order to recapitalise and restructure NordLB, several potential options were explored by Germany, including a private sales process. The latter was put on hold following a non-binding offer submitted on 25 January 2019.

(15) On 31 January 2019, the Institutional Protection Scheme ("IPS") of the German public banking sector (the Sparkassenfinanzgruppe – "SFG"), managed by the Deutscher Sparkassen und Giroverband ("DSGV"), declared its intention to intervene, requiring the development of a business plan and regulatory approvals.

(16) On 21 June 2019, NordLB together with its current owners and the DSGV agreed to a Comprehensive Agreement ("Grundlagenvereinbarung" - "GLV"), providing the framework for the intended recapitalisation, subject to required regulatory approvals. Part of this agreement formed the cornerstones of the future business model, namely a risk reduced, resized bank with regional focus and a risk appetite slightly below comparable Landesbanken. The GLV contains also the agreement between the parties involved that the strategy of the Bank should enable it to participate in any potential future consolidation of the German savings bank sector, subject to the ordinary internal approval procedures.

(17) According to the plan as presented by Germany, the specific measures (collectively referred to as the "Measures") to be taken will consist of several non-cash capital enhancing and capital protecting measures leading to an equivalent effect of a capital increase of approximately EUR 0.8 billion (Measures A, B, C and D) and a direct capital injection worth EUR 2.835 billion (Measure E). In total, the planned measures will have a capital relief effect equivalent to approximately EUR 3.635 billion. In addition, the State of Lower Saxony has agreed to make subsequent investments amounting to the guarantee fees received in compensation for the asset guarantees (Measure F) and provide a limited coverage in case specific health care related benefits for some of the Bank's employees under old contracts would exceed the bank’s audited planning. (Measure G).

Table 1: Summary of the different Measures and estimated capital effects

No.	***Measure***	***Capital effect***

[7] As of 31 December 2018.

A	Sale of Porzellanmanufaktur Fürstenberg ("PMF") and Toto Lotto Niedersachsen ("TLN")	EUR 100 million
B	Asset guarantee non-performing "Tower Bridge" portfolio	EUR 300 million[8]
C	Asset guarantee performing "Maritime Industries" portfolio	EUR 260 million
D	Asset guarantee performing "Aviation" portfolio	EUR 140 million
E	Direct capital injection in 2019	EUR 2 835 million
F	Subsequent capital investments by Lower Saxony	EUR 341 million[9]
G	Coverage of health-care cost above plan	No effect

3.1. The Measures

3.1.1. Measure A: Sale of assets

(18) NordLB plans to sell two participations, namely its shares in Toto Lotto Niedersachsen GmbH ("TLN") and Porzellanmanufaktur Fürstenberg GmbH ("PMF").

(19) TLN operates various lotteries in the state of Lower Saxony in Germany. The company’s business is regulated and protected under German law and operates under the direction of the state of Lower Saxony.

(20) PMF produces porcelain tableware, in particular for business customers in the premium- to luxury market segment. Despite the company’s strategy to focus on premium segments, sales continued to decline throughout the last four years at an average rate of 4.2% annually.

(21) NordLB will divest all of its shares in TLN which amount to 49.85% of all outstanding shares in that company. It will also divest all of its shares in PMF which amounting to 98% of all outstanding shares in that company. Both assets will first be transferred internally and then sold to the State of Lower Saxony for a total price of EUR 150 million. NordLB expects that the RWA reduction achieved by this sale would have an equivalent effect of EUR 100 million capital increase.

8 This capital effect was already achieved based on the accounting corrections following the decision to wind-down the portfolio on the Bank's books and not sell it to a market investor. Strictly speaking, the guarantee does not therefore lead to this relief but rather protects the capital relief already achieved.

9 Approximately EUR 341 million as final amount is depending on actual payments of guarantee fees under Measure B. See 3.1.2 for details.

3.1.2. Measure B: Asset guarantee non-performing "Tower Bridge" portfolio

(22) The Tower Bridge portfolio is a collection of Maritime-linked NPL assets, with a projected exposure at default ("EAD") of EUR [2-2.5] billion. Its net book value will likely be EUR 0.8 billion[10]. The assets comprise about 175 transactable units, i.e. loan segments that are linked by the same counterparty or counterparty group.

(23) The Tower Bridge portfolio is covered by a financial guarantee by the State of Lower Saxony on the Net Book Value ("NBV") of all outstanding loan assets. The guarantee will take effect as of 20 December 2019 and the contract ends when the portfolio is fully unwound and all contractual commitments are settled.

(24) The guarantee entails an early termination clause from the Bank's perspective subject to a number of conditions, which include an agreement by the DSGV, sufficient capital ratio and whether early termination is economically appropriate for the Bank.

(25) NordLB is currently selling parts of the Tower Bridge portfolio and has realised around EUR 97 million of excess proceeds over and above their book value already[11]. All such excess proceeds will be used to cover the first losses prior to making any call on the guarantee.

(26) The guarantee covers both the Maritime assets and a number of related client derivatives. The maximum guaranteed amount is the entire NBV of the portfolio (with a maximum of EUR 1.0 billion[12]).

(27) As a fee, NordLB is paying 7.15% per annum on the respective outstanding NBV. It is assumed that about EUR 44 million in guarantee fees will flow to the guarantor, if the normal wind down plan is followed.

(28) The contract also stipulates several governance mechanisms within the management of the portfolio, such as the appointment of a Trustee, who will ensure – according to the contractual terms – that decisions taken in relation to the guarantee will be in the economic interest of the guarantor. Relevant deviations from the wind down plan require approval by the Trustee.

3.1.3. Measure C: Asset guarantee performing "Maritime Industries" portfolio

(29) The Maritime industries portfolio is covered by a financial guarantee by the State of Lower Saxony on the Gross Book Value ("GBV"), with starting date 20 December 2019.

(30) The guarantee ends on 31 December 2024, with some additional early termination clauses. As long as [...], the guarantee can be prolonged by the Bank to ensure

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10 Both values are forecasts for 30.11.2019; 30 June figures are EAD of EUR [3-3.5] billion and Net Book Value of EUR 1.2 billion (USD 1.2 billion, EUR 0.3 billion and a small fraction of CHF 2 Million).

11 As of 30.10.2019, excess sales proceeds amounted to EUR 106 million, of which EUR 97 million was already paid in, with for the remaining EUR 9 million having a Memorandum of Agreement signed.

12 This is a theoretic maximum, given that the guarantee will cover a predefined set of assets that have a cumulative value expected to be about EUR 0.8 billion as of the moment when the guarantee will come into place (see recital (22) above).

maturity matching with the underling portfolio. In any case, the guarantee ends once the portfolio as defined *ex ante* is fully unwound and all contractual commitments are settled.

(31) The portfolio contains an EAD of EUR [1.5-2] billion, corresponding to an amount of risk-weighted assets ("RWA") of EUR [1.5-2] billion, in 204 transactable units, with about 50% of the exposure being concentrated in the top 21 transactable units.

(32) NordLB will pay a quarterly fee for 5 years (in 20 pre-defined instalments), starting with value date 31 March 2020 until 31 December 2024 for a cumulative amount of EUR [200-250] million. NordLB plans to run-down the portfolio based on a predefined wind-down plan. The proposed fee structure takes into account the possibility of an extension of the guarantee under the conditions described in recital (30) above. In such a scenario, no further payments will be required. In any case, the guarantee will expire at the latest once all loans of the underlying portfolio have matured, based on their contractual maturities.

(33) The contract also stipulates several governance mechanisms within the management of the portfolio, such as the appointment of a Trustee, who will ensure – according to the contractual terms – that decisions taken in relation to the guarantee will be in the economic interest of the guarantor. Relevant deviations from the wind down plan require approval by the Trustee.

3.1.4. Measure D: Asset guarantee performing "Aviation" portfolio

(34) The Aviation portfolio is covered by a financial guarantee by the State of Lower Saxony on the GBV, with starting date 20 December 2019.

(35) The guarantee ends on 31 December 2024, with some additional early termination clauses. As long as [...], the guarantee can be prolonged by the Bank to ensure maturity matching with the underlying portfolio. In any case, the guarantee ends once the portfolio as defined *ex ante* is fully unwound and all contractual commitments are settled.

(36) The portfolio contains an EAD of about EUR [1.5-2] billion[13], corresponding to about EUR [1-1.5] billion in RWA in just over 90 transactable units. The longest loan maturity is in 2029, but a few covered instruments (client derivatives) mature only in 2030.

(37) NordLB will pay a quarterly fee for 4 years (in 16 pre-defined instalments) for a total amount of EUR [50-100] million. The contract contains the specific payment scheme in an annex. NordLB plans to run-down the portfolio based on a predefined "managed case" assumption. The proposed fee structure takes into account the possibility of an extension of the guarantee under the conditions described in recital (35) above. In such a scenario, no further payments will be required. In any case, the guarantee will expire at the latest once all loans of the underlying portfolio have matured, based on their contractual maturities.

[13] EUR [1.5-2] billion in the forecast managed case; EUR [1.5-2] billion estimated in a non-managed scenario.

(38) The contract also stipulates several governance mechanisms within the management of the portfolio, such as the appointment of a Trustee, who will ensure – according to the contractual terms – that decisions taken in relation to the guarantee will be in the economic interest of the guarantor. Relevant deviations from the "managed case" scenario require approval by the Trustee.

3.1.5. Measure E: Direct capital injection

(39) The current shareholders and the DSGV have agreed to increase NordLB's capital through a joint capital injection of EUR 2 835 million. The individual contributions of the parties concerned are set out in Table 2 below. Before injecting capital, the nominal of the shareholder's equity ("Stammkapital") will be reduced to EUR 1. In the following recapitalisation, all investors are treated equally in terms of resulting shares per EUR invested (1:1 "Kapitalerhöhungsverhältnis").

Table 2: Overview of investments and resulting share of ownership

Investor	**New investment** in EUR million	**Current Ownership**	**Ownership after direct capital injection**
Land of Lower Saxony	1 502	59%	53%
Land Sachsen Anhalt	198	6%	7%
SVN	283	26%	10%
SBV	57	5%	2%
SZV	39	4%	1%
IPS	757	0%	27%
Total	**2 835**	**100%**	**100%**

(40) The investment by the DSGV will be made via two investment vehicles, FIDES Delta GmbH and FIDES Gamma GmbH. Both entities are controlled by the DSGV in its function for the IPS for the savings bank sector. The split into two investment vehicles is due to the internal differentiation of the IPS between the support fund of the Landesbanken and Girozentralen ("Sicherungsreserve", financing FIDES Delta)[14] and the support fund of the savings bank ("Sparkassenstützungsfonds", financing FIDES Gamma)[15].

[14] According to chapter 2(*) [*read: 3] Rahmensatzung für das als Einlagensicherungssystem anerkannte institutsbezogene Sicherungssystem der SFG as of 18 June 2018.

[15] According to chapter 1 Rahmensatzung für das als Einlagensicherungssystem anerkannte institutsbezogene Sicherungssystem der SFG as of 18 June 2018

(41) Following the decision to provide capital to NordLB, the Parties[16] involved have agreed on a contract specifying the conditions for the investments as described above. The contract outlines the main elements of the future business plan (as described in detail in section 3.2 below) and provides the DSGV with specific monitoring rights to ensure effective implementation of the plan. It includes certain minority protection clauses, including a quorum of 80% ("Trägerversammlung") for the approval of certain pre-defined decisions at the shareholder meetings. The decisions concerned include those that would lead to significant investments in or divestments of parts of NordLB or material deviations from the business plan as agreed.

(42) The Land of Lower Saxony has explained that it will implement its contribution via two financial holding companies that act as special purpose vehicles for this specific transaction, namely the Niedersachsen Invest GmbH ("NIG"), which will hold 45% of NordLB, and the Hannoversche Beteiligungsgesellschaft Niedersachsen mbH ("HanBG"), which will hold the remaining 7.98%. The NIG will also hold the assets to be sold under Measure A.

(43) Each shareholder will, in return for the capital injection, have the same rights with respect to the payment of dividends in the future[17]. The economic return for the investment under Measure E therefore depends on future cash flows from NordLB to its owners and the development of the value of the Bank.

3.1.6. Measure F: Subsequent capital investments

(44) In addition to the investment described as Measure E, the State of Lower Saxony has agreed to invest additional funds, equal to the amounts received as guarantee fees under Measures B-D as new equity into NordLB. These investments will be made subsequently at the end of each year. Shares will be allocated on the basis of these additional investments as if they were done at the same time as the initial capital injection (Measure E). Hence, the *Kapitalerhöhungsverhältnis* is the same for each subsequent investment as it is for the initial investment and has been predefined *ex ante* for all parties involved.

(45) As a result of the subsequent investments by the State of Lower Saxony into CET-1 capital, its total ownership of the Bank will increase from approximately 53% to approximately 58% over the duration of the guarantees. In accordance with this increase in ownership, the State of Lower Saxony will also receive additional rights to dividends as well as all other rights linked to the shares it acquires.

(46) While this Measure F is not required to achieve or maintain regulatory capital ratios, it has been agreed between all investors participating under Measure E as part of the overall approach.

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[16] Namely the DSGV, the two "FIDES" SPVs established by the IPS, NordLB, Lower Saxony, Niedersachsen Invest GmbH ("NIG"), Hannoversche Beteiligungsgesellschaft Niedersachsen mbH ("HanBG"), Saxony Anhalt, SVN, SBV, and SZV (collectively referred to as the "Parties").

[17] The total amount of dividends to be distributed has to be decided by the shareholder meeting of NordLB in line with the quorums required for such decisions in the proposed corporate statutes of NordLB.

3.1.7. Measure G: Coverage of health-care cost above plan

(47) NordLB has provided employees with additional health care benefits that mimic the system used in the German public sector (a top-up to the private health insurance) in contracts concluded with staff before 2005. The evolution of the total top-up cost is projected by the bank to increase on average by 3.5% each year. Germany explained that the projection was validated by the Bank's auditors in the audited accounts of 2018.

(48) The plan puts forward that in case potential risks on the provisions made for the top-up cover would exceed the audited projection (including the already projected 3.5% annual increase mentioned above), the eventual excess cost would be borne by the State of Lower Saxony calculated only at the end of the guarantee which will be in the year the IPS exits as shareholder but at the earliest in 2025. The parties agreed in their negotiations to a maximum theoretical capped amount of EUR 200 million for this cover.

(49) In practice, the plan states that the guarantee covers (i) actual cost increases compared to the trend that is in the provisions of the preceding year and (ii) the "pro-forma" difference in the provisions in case the underlying parameters for the calculation of the provisions need to be adjusted. These parameters are, in particular, the past scheme trend, the average unit cost, the mortality tables, and the interest rate. The differences calculated annually can be either positive or negative. Every year, the differences will be booked but an actual payment will only be made if the sum of the annual differences is positive when the IPS exits as shareholder but in any case not before 2025.

(50) This guarantee was agreed between the stakeholders to enable the capital injection by addressing the information asymmetry between the Land as a current owner and the DSGV as a new shareholder. The cover has no capital relief effect by itself. NordLB will pay a one-off fee of EUR 9.89 million for this guarantee.

3.2. Presentation of the business plan

(51) Germany has notified a detailed business plan for the period up until 2024. This plan forms the basis for the investments to be made under all of the measures above. All of the above Measures are included in the plan. According to the plan, NordLB will take a number of measures to reduce the size of the bank and increase its profitability. In 2024, total assets will be reduced to EUR 95 billion (compared to EUR 154 billion today) while profits after tax are expected to rise to EUR [450-500] million. Risk weighted assets ("RWA") will be reduced over the same period from EUR 46 billion to EUR 43 billion[18].

(52) The planned structural measures to be taken by the Bank lead to improvements reflected in the business plan. Table 3 below summarises the main resulting changes along key indicators.

[18] Taking into account likely adjustments required under expected regulatory changes. Excluding these effects, RWA would stand at EUR [35-40] billion at the end of 2024.

Table 3: Development of key indicators

	2018	2019	2020	2021	2022	2023	2024
FTE	5 664	[...]	[...]	[...]	[...]	[...]	2 840
RWA (per YE, in m)	45 513	[...]	[...]	[...]	[...]	[...]	42 799
Cost Income Ratio	94.8%	[...]	[...]	[...]	[...]	[...]	46.2%
CET-1 ratio (fully loaded)	6.8%	[...]	[...]	[...]	[...]	[...]	15.0%
RoE before tax	-60.4%	[...]	[...]	[...]	[...]	[...]	8.5%
RoE after tax	-69.1%	[...]	[...]	[...]	[...]	[...]	7.0%
RoRaC before tax	-30.7%	[...]	[...]	[...]	[...]	[...]	9.5%
RoRaC after tax	-35.1%	[...]	[...]	[...]	[...]	[...]	7.7%

(53) As a result of the implementation of the restructuring measures, the Bank plans to achieve an after-tax return on equity ("RoE") in 2024 of 7.0%. The RoE is calculated as the ratio between the profits after tax and the total accounting equity[19]. The Bank has also provided the expected Return on Risk adjusted Capital ("RoRaC"), which is the relation between the profits of the Bank divided by its regulatory capital. This is defined as RWA multiplied by a theoretical minimum CET-1 target ratio of 14.5%, conservatively chosen by the Bank for the purpose of this calculation. Based on this methodology, the RoRaC is expected to reach 9.5% before and 7.7% after tax in 2024.

(54) The CET-1 ratio will further increase after the implementation of the recapitalisation measures due to retained earnings and is expected to reach 15% at the end of the planning period[20]. This projected CET-1 ratio is significantly above the OCR ratio of [10-11]% currently required from the Bank under the SREP[21]. A CET-1 ratio above the regulatory minimum indicates prudence and is typically regarded positively by rating agencies.

(55) The stakeholders have agreed on key performance indicators, the attainment of which is a precondition for the IPS to exit as shareholder. These include notably a CET-1 ratio of 14%, a Cost Income Ratio ("CIR") of 55% and a RoE of 6%. The DSGV can unilaterally waive single indicators. In view of the business plan, the exit of the IPS as shareholder is therefore expected by […].

3.2.1. Balance sheet reduction

(56) The main drivers for the balance sheet reduction are the exit by the Bank from certain business segments and an increased focus on more profitable activities. The reduction of total assets by EUR 59 billion will be achieved by adjustments in certain business activities, including the complete phasing out of the shipping activity (both ship financing and other maritime industries engagements) as well as business done in cooperation with [...]and significant downsizing in [...].

(57) Table 4 below shows the planned development of the balance sheet at group level.

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19 Based on IFRS accounting standards.

20 Total capital ratio as of 2024 is expected to reach [15-20]%.

21 The Bank expects the OCR ratio required under SREP to increase to [10-12]%.

Table 4: Total assets and liabilities 2018-2024

	EUR million	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Assets	Central Bank	8 929	[...]	[...]	[...]	[...]	[...]	[...]
	Receivables from financial institutions	29 205	[...]	[...]	[...]	[...]	[...]	[...]
	Loans to clients	98 394	[...]	[...]	[...]	[...]	[...]	[...]
	Other	17 483	[...]	[...]	[...]	[...]	[...]	[...]
	Total assets	**154 012**	**[140 000 - 150 000]**	**[120 000 - 130 000]**	**[120 000 - 130 000]**	**[110 000 - 120 000]**	**[100 000 - 110 000]**	**[~95 400]**
Liabilities	Central bank	503	[...]	[...]	[...]	[...]	[...]	[...]
	Liabilities to financial institutions	24 674	[...]	[...]	[...]	[...]	[...]	[...]
	Liabilities to clients	40 710	[...]	[...]	[...]	[...]	[...]	[...]
	Debt instruments	61 499	[...]	[...]	[...]	[...]	[...]	[...]
	Other	23 221	[...]	[...]	[...]	[...]	[...]	[...]
	Equity	3 404	[...]	[...]	[...]	[...]	[...]	[...]
	Total liabilities and equity	**154 012**	**[140 000 - 150 000]**	**[120 000 - 130 000]**	**[120 000 - 130 000]**	**[110 000 - 120 000]**	**[100 000 - 110 000]**	**[~95 400]**

3.2.2. Profitability increase

(58) The planned restructuring measures of NordLB lead to the projections included in the Profit and Loss Statement ("PnL") as summarised in Table 5 below. The main levers to achieve this development are significant cost reductions combined with an increased focus on profitable segments and more profitable clients within each segment.

Table 5: Development of Profit and Loss Statement 2018-2024

EUR million	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Net interest income	1 279	[...]	[...]	[...]	[...]	[...]	[...]
Net fee income	52	[...]	[...]	[...]	[...]	[...]	[...]
Results from financial operations and other income	-266	[...]	[...]	[...]	[...]	[...]	[...]
Gross margin	1 066	[...]	[...]	[...]	[...]	[...]	[...]
Staff expenses	-535	[...]	[...]	[...]	[...]	[...]	[...]
Other cotsts (*) [*read: costs]	-476	[...]	[...]	[...]	[...]	[...]	[...]
Net margin	**55**	[...]	[...]	[...]	[...]	[...]	[...]
Provisioning & Impairments	-1 893	[...]	[...]	[...]	[...]	[...]	[...]

Other	-218	[...]	[...]	[...]	[...]	[...]	[...]
Profit before tax	**-2 057**	[...]	[...]	[...]	[...]	[...]	[...]
Tax	-297	[...]	[...]	[...]	[...]	[...]	[...]
Minority interests	40	[...]	[...]	[...]	[...]	[...]	[...]
Profit after tax	**-2 313**	[...]	[...]	[...]	[...]	[...]	**[450-500]**

(59) As can be seen from Table 5 above, the bank recorded significant losses in 2018 mainly due to impairments related to losses in the NPL shipping portfolio. It is expected that costs associated with restructuring will be incurred until 2023. These costs are expected to peak at EUR […] in 2020. Based on these expectations, the Bank plans to return to profitability in 2021 and intends to reach total profits after tax of EUR [450-500] million in 2024.

(60) On the revenue side, the bank plans to become less dependent on interest income which is in line with the expected reduction of total assets. At the same time, fee income is expected to grow based on a general shift from interest income to fee based revenues. One of the main drivers for this development is the Bank's intention to develop its "originate-to-distribute" business in specialised financing to an "originate-to-manage" model in this business area. This is intended to increase fee income via loan placements, syndication, and asset management. An additional driver for fee income is the Markets segment where a further development of the [...] is planned. The expansion of the [...] and [...] business is linked to the shift from credit-based products towards capital market products. The [...] will enlarge its product scope and geographic scope within Europe. The Bank was able to increase fees related to [...] in 2018 by 16% in spite of a difficult environment.

(61) In addition, the Bank has provided a detailed assessment of its client base in all segments, based on a scoring model taking into account, among others, the RWA impact of the underlying activities. This allows the Bank to identify profitable business on an individual client basis. The analysis splits the current corporate client base into three categories, namely a portfolio of target clients that should become the core focus for future growth, a portfolio of clients with potential to be further monitored, and a portfolio of clients with the perspective to discontinue business relations. Germany has explained that this strategy is already an element of the internal segment planning process and is essential to achieving the goals defined in the business plan.

3.2.3. Cost reduction

(62) As part of the restructuring measures under the business plan, the Bank is aiming at bringing operating costs down by almost half from EUR 1 011 million in 2018 to EUR 625 million in 2024. The CIR is expected to drop from close to 100% to below 50%.

(63) Out of this planned reduction of EUR [350-400] million annual costs, EUR [150-200] million will be delivered by the "One Bank Program" which is already in implementation. Almost all measures aimed at achieving these reductions are fully detailed and a significant number of them have either already been implemented or are being implemented.

(64) The remaining reduction of EUR [200-250] million will be achieved by a number of levers that have already been identified. The main drivers include a further significant reduction of full time equivalent posts ("FTE"), the upgrading of the IT infrastructure and a further streamlining of internal procedures, especially as regards back office and reporting activities.

(65) Over the full business plan (including "One Bank" effects), personnel costs will decrease from EUR 535 million to EUR [300-350] million and non-personnel costs from EUR 476 million to EUR [250-300] million. In total, NordLB plans a net reduction from 5 664 FTE to 2 840 FTE in 2024. This represents approximately halving the total number of staff of the Bank.

(66) Part of this reduction can be explained with the exiting of specific business lines (including the phasing out of the Maritime Industry and the planned divestment of NordLB's [...]). The remaining reduction has also been allocated to specific business segments and Germany has provided insights from a peer-review benchmark study to validate the number of target FTE required for the specific activities foreseen in the business plan[22].

(67) The effect of the upgrading of the IT infrastructure will enable both a reduction of personnel and other costs. The main driver for cost reduction is a streamlining of the IT infrastructure from a significant number of different IT applications to more standardised programs, […]. The main streamlining of IT systems is intended to reduce costs. It includes, in particular, the roll-out of [...] an integrated solution widely used [...] for a number of applications.

(68) In total, costs (including personnel and non-personnel costs) for IT services will be reduced from EUR [250-300] million to EUR [150-200] million per annum. Out of these savings of close to EUR [100-150] million, EUR [0-50] million will be achieved in the area of bank steering, reporting and controlling, in particular via the significantly reduced need for integration of different systems. The second biggest saving potential lies within the underlying IT platform, which will contribute savings of annually EUR [0-50] million to this goal.

(69) The plan also allocates a budget for the implementation of structural measures. This budget includes EUR [200-300] million related to staff reductions and approximately EUR [350-450] million required for the intended IT adjustments. The Bank has provided excerpts of benchmark studies to validate the magnitude of expected investments in relation to expected cost reductions[23].

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[22] NordLB's long-term planning is based on the following benchmark: "BCG Excellence in Support Functions (ESF) Benchmarking-Datenbank 2017".

[23] NordLB has based its plans on "BCG European IT in Banking Benchmarking (EITBB) 2018".

3.2.4. Future business model

(70) While NordLB intends to fully exit Maritime Industries financing, it will continue its business activities in five business segments, namely, (i) retail business, including savings bank network (approximately 21% of revenues[24]), (ii) corporate clients, including business for agricultural customers and leasing (approximately 28% of revenues), (iii) special financing, including renewable energy, infrastructure and aviation (approximately 26% of revenues), (iv) real estate, comprising the activities of Deutsche Hypo (approximately 14% of revenues), and (v) Markets (approximately 11% of revenues). A separate sixth segment in its internal organisation includes overhead functions, like central management, treasury (collectively referred to as "Konzernsteuerung & Sonstiges" – KSS).

(71) The future model is based on four main pillars, namely the regional focus of the Bank, a clear focus on profitability also within each segment, a re-dimensioning of all activities, and a lower risk. The latter is shown by the reduction in size, combined with continued diversification across different economic sectors and industries. Although NordLB will exit Maritime Industry financing, it will keep its diversified portfolio of other activities.

4. POSITION OF GERMANY

4.1. Absence of State aid

(72) The German authorities notified the Measures accompanied by the business plan to the Commission for legal certainty.

(73) Germany considers that the Measures do not constitute State aid, neither individually nor taken as a whole, because all of the measures proposed are in line with the Market Economy Operator Principle ("MEOP"). Therefore, none of the Measures would lead to an advantage for any undertaking.

(74) In addition, Germany explains that the support measures, as far as they are attributable to the DSGV, cannot constitute State aid because the actions of the DSGV can neither be attributed to the State nor would the funds used for the investments constitute State resources.

4.2. Measure A

(75) As regards the sale of PMF and TLN, Germany refers to a fairness opinion conducted by Ernst & Young GmbH ("EY"), coming to the conclusion that the market value for both participations is between EUR [100-150] million and EUR [150-200] million. The intended sales price of EUR [150-200] million is hence within the range of a market conform price.

(76) Based on their own assessment and the external expertise provided, Germany concludes that the divestment of PMF and TLN are in line with the MEOP. Therefore, NordLB, as the seller of the assets, does not receive an advantage from this transaction.

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24 Revenue split provided as of 30 June 2019 (https://www.nordlb.com/fileadmin/redaktion_en/branchen/investorrelations/praesentationen/NORDLB_Group_Presentation.pdf).

4.3. Measures B, C and D

(77) Germany has described three asset guarantee measures which the State of Lower Saxony would take on with the aim of shielding three portfolios in the shipping (Maritime Industries and "Tower Bridge") and aviation business lines.

(78) According to Germany, two of the guarantees will provide a capital relief of in total EUR 400 million (Aviation and Maritime Industries) and a risk relief on the NPL portfolio (Tower Bridge).

(79) The guarantees end when the portfolios are completely wound down. Germany foresees that both the Aviation and Maritime Industries portfolios will be wound down according to plan (respectively at the end of 2023 and 2024). The guarantee of the Tower Bridge portfolio will expire end of 2020 according to the run-down plan. Any material deviation from this plan is subject to written approval by the Trustee.

(80) Each of the guarantees is remunerated. Germany has provided studies by EY that confirm the market conformity of each of the guarantee premiums.

4.4. Measure E

4.4.1. Germany's position on Measure E

(81) According to the German authorities, the direct upfront capital injection of EUR 2 835 million by the current shareholders and the IPS will generate a positive return corresponding to expectations of normal market investors. On the basis of the submitted business plan, Germany argues that the investors will earn a positive return in line with Market Economy Investor Principles ("MEIP"). This assessment takes into account the cost of the guarantees.

(82) Germany indicates that the current shareholders and the DSGV have to be approached differently from a MEIP perspective. Germany points out the different objectives of the current shareholders and the DSGV. The direct capital injection into NordLB is not comparable to a situation where only financial investors participate. The DSGV has a particular objective and contractual obligation as an IPS, which is the long-term stabilisation of NordLB. Given the legal obligation of the DSGV to intervene based on its statutory provisions, it should be considered more akin to an insurer than a private investor.

(83) In order to show that the transaction is market conform, Germany presents the return of the direct capital injection based on the RoE after tax and the Internal Rate of Return ("IRR"). Germany also highlights that a private investor would take into consideration the riskiness of the business and the robustness of the business plan.

(84) Germany considers that the RoE after tax of 7% in 2024 is high enough to be considered market conform. Germany considers the Bank to be sufficiently profitable compared to relevant benchmarks. A first benchmark study concludes that the RoE for a comparable group of banks is 2.8% in Germany and 7.1% in Europe. A second benchmark study, assessing the expected average RoE in 2021, concludes it is 4.1% for a German peer group and 5.9% for a European peer

group[25]. Based on these studies, the projected RoE of NordLB in 2024 is above the RoE of comparable German banks and in the top of the range for European banks. In addition, Germany explains that, in addition to RoE, the RoRac of 9.5% before and 7.7% after tax shows that NordLB will be profitable also in light of its risk profile and intended capitalisation.

(85) Germany also states that the Commission has so far only assessed investments under the current regulatory framework. The NordLB business plan is taking into account also the expected effects of upcoming regulatory developments[26]. In the case of NordLB this leads to an increase in RWA of around EUR [3-7] billion[27]. This distorts the comparison with previous decisions. Excluding these additional regulatory effects, the RoE after tax would be [7-10]% instead of 7.0%.

(86) Germany indicated that in order to establish the market conformity of Measure E in addition to the RoE the IRR should also be taken into account. According to Germany, the IRR for the direct capital injection is between [9 and 14%]

(87) Germany calculated the IRR on the basis of the business plan. The IRR as presented by Germany takes the perspective of the State of Lower Saxony only and includes both capital injections under Measures E and F (i.e., also taking into account the subsequent capital increases related to the fees of the guarantee measures). Based on these assumptions, a range of IRRs was calculated using a lower band and an upper band scenario. The main differences between both scenarios concern adjustments to the underlying business plan (e.g. respectively a Cost Income ratio of [50-55%] and [40-50%]), the price to book multiple for the exit valuation (respectively [0.6-0.7]x and [0.7-0.8]x)[28] and the timing of the exit (respectively 2026 and 2024). Germany used a pre-recapitalisation value for NordLB of 1 EUR in both scenarios in line with the contractual agreements between the Parties.

(88) Germany argues that the outcome of the IRR calculation has to be compared with a relevant benchmark, namely the expected cost of equity ("CoE") of NordLB. This expected CoE is estimated by using the Capital Asset Pricing Model ("CAPM"). Based on this method, Germany asserts the relevant benchmark for NordLB to be in a range of between [8% and 10%].

(89) As estimated by Germany, an IRR that ranges between [9% and 14%] lies above the bandwidth of the estimated benchmark. The German authorities conclude that this further demonstrates that the direct capital injection is in line with market conditions and fulfils the MEIP test.

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[25] The second benchmark study which analyses the expected RoE in 2021 adjusts the expected RoE in function of the country risk premium. This implies that the expected RoE for a German bank is not adjusted as the country risk premium is zero while the RoE for other European banks is adjusted in function of their home country.

[26] In particular the Fundamental Review of the Trading Book (FRTB), SA-Counterparty Credit Risk, CVA Risk Charge, and the expected adjustments to Credit Risk and Output Floor.

[27] Mostly related to effects expected from the Fundamental Review of the Trading Book (FRTB) and Credit Risk Output Floor. See slide 25 of Geschäfts- und Umstrukturierungsplan der Nord/LB submitted by Germany.

[28] The price to book ratio used by Germany for the exit valuation is based on a regression analysis of RoRac and price to book multiples of a group of comparable banks. The price to book multiple of [0.6-0.7]x[0.7-0.8]x is based on respectively an RoRaC of [6.0-7.0]% and [8.0-9.0]%.

(90) A last element supporting the market conformity of Measure E, according to Germany, is the robustness of the business plan. The robustness of the business plan will offer comfort to a private investor that the return expectations will be met. Germany highlights the balance sheet reduction and the lower risk compared to other European banks. Germany also takes into account that three quarters of the future sales will be generated in Germany from 2024 onwards and that this is an economy with comparatively low risk as reflected in the country risk premium.

(91) On the basis of these elements, Germany submits that the direct capital increase by the current shareholders and the DSGV meets the expectations of a private investor and is therefore in line with State aid requirements.

4.4.2. Germany's position on the holding structure

(92) As described above, the shares to be acquired by the State of Lower Saxony will not be held directly by itself[29] but rather via two holding companies.

(93) Germany submits that NIG and HanBG are holding companies that are solely controlled by the Land and do not conduct any economic activity. Any decision making in relation to NordLB will be controlled by the Land which is the only owner of NIG. NIG will refinance its investment by issuing securities on the capital market which will be subject to a State guarantee. Germany explains that this is a pure technical financing mechanism and does not involve any State aid.

4.5. Measure F

(94) Germany explains that the State of Lower Saxony has agreed to invest additional amounts in NordLB at the end of each year in which it receives remuneration for the asset guarantees provided. The amounts to be invested equal the sum of the guarantee fees received in this given year. These additional investments will be made by HanBG. Measure F is the result of a negotiation process between the State of Lower Saxony and the DSGV.

(95) Germany has assessed Measures E and F together from the perspective of the State of Lower Saxony. As already explained above, Lower Saxony expects an overall IRR of between [9% and 14%] for the overall investment. Germany submits that this return is above the CoE of NordLB and therefore in line with the MEIP.

4.6. Measure G

(96) Germany explains that the planned measure to cover potential increases in the provisions for additional top-up cover for private health insurances is the result of negotiations between the parties involved. The main reason for its existence are differences in views between the current owners of the Bank and the DSGV on potential risks related to the current provisions and their planned annual increase.

(97) According to the German authorities, the guarantee on excess health-care liabilities is remunerated in line with market conditions on the basis of the information submitted that is described in more detail in recitals (98) to (103).

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[29] With the exception of a direct investment by the State of Lower Saxony of EUR 1 000 which Germany explains is required for regulatory purposes.

(98) Germany states that it is not expected that the guarantee will be triggered. Germany explains that the current level of provisions and the envisaged increases as testified by the auditor of the Bank is a conservative assumption. In so far as adjustments may be required due to low interest rates, these are expected to be only temporary.

(99) Germany explained that the Bank's actuary (Mercer) calculates the provisions for the estimated future expenditure as it does for a number of other companies. The average increase in the total health care cost underlying the actuary's projections is 3.5% per year which is reflected in the Bank's audited accounts of 2018.

(100) To assess the residual risk, Germany relies on the increase in health care cost as projected for Germany by the European Commission and the Member States jointly in the Economic Policy Committee "Ageing Working Group" ("AWG")[30]. Based on the underlying data for the report, Germany provides that the relevant benchmark for estimating the unlikely losses is the delta (+0.3%) between the so-called "AWG reference scenario" (3.4% annual increase) and the "AWG risk scenario" (3.7% annual increase) over the next 10 years.

(101) To this end, the actuary has estimated that if health care cost were to increase permanently by 0.1% per year above current projection over the period for which provisions are to apply, the provisions at end-2018 would have increased by EUR 6.3 million. Thus, if the delta of 0.3% between the AWG reference scenario and the AWG risk scenario were to fully materialise as a permanent shift in the long term cost trend, based on the 2018 accounts the provisions would increase by a one-off amount of EUR 18.9 million compared to the Bank's current planning.

(102) Germany considers the probability of the downside risk materialising to be in any case not more than 50% corresponding to the median of a normal probability distribution between the two scenarios. This would result in a guarantee fee of EUR 9.45 million.

(103) Germany explained that the measure and the maximum amount finally agreed is the result of complex negotiations between the parties involved. Germany submitted that the State of Lower Saxony has agreed on the guarantee based on its own knowledge of the Bank as an existing shareholder and the provisions as calculated by the external actuary and testified by the auditor, and that it would thus be confident that such a guarantee will not be required. Germany considers that the foreseen one-off remuneration of EUR 9.89 million is market conform in light of the underlying risks and would also be acceptable for a market economy operator.

5. ASSESSMENT

5.1. Existence of aid - Application of Article 107(1) TFEU

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

[30] https://ec.europa.eu/info/publications/economy-finance/2018-ageing-report-economic-and-budgetary-projections-eu-member-states-2016-2070_en.

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

(105) According to the established case law, the qualification as State aid in the sense of Article 107(1) TFEU requires that all conditions mentioned in that article are met[31]. Thus, for a state measure to be qualified as State aid in the sense of Article 107(1) TFEU, the latter would need to be a state intervention or deployed through state resources, be liable to affect trade between Member States, grant a selective advantage to its beneficiary and distort or threaten to distort competition[32].

(106) Given that the main argument put forward by Germany is that the notified measures comply with the MEOP, the Commission will first assess whether the notified measures result in an advantage in favour of any undertaking.

(107) As a preliminary remark, the Commission notes that the EU legal framework is neutral with regard to ownership, hence it does not prejudice the right of State to act as an economic operator[33].

(108) Under State aid rules, it is, however, necessary to assess whether economic transactions carried out by a public body (including public undertakings) are in line with market conditions, so as not to confer an advantage on its counterparts[34]. This principle has been developed with regard to different economic transactions and is embodied in the MEOP test. More precisely, when public bodies make injections in the capital of a given undertaking, i.e. as under Measures E and F, the Commission examines whether the State is acting in line with the MEIP[35]. According to established case law, it is necessary to assess for this legal test whether, in similar circumstances, a comparable private investor could have been prompted to make the investment in question[36].

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31 Ruling of the European Court of Justice (ECJ), 2 September 2010, Commission/Deutsche Post, C-399/08 P, ECLI:EU:C:2010:481, point 38 and quoted case law, ECJ's ruling of 21 December 2016, Commission/Hansestadt Lübeck, C-524/14 P, ECLI:EU:C:2016:971, point 40, ECJ's ruling of 21 December 2016, Commission/World Duty Free Group SA e.a., C-20/15 P et C-21/15 P ECLI:EU:C:2016:981, point 53, and ECJ's ruling of 20 September 2017, Commission/Frucona Kosice, C-300/16 P, ECLI:EU:C:2017:706, point 19.

32 ECJ's ruling of 2 September 2010, Commission/Deutsche Post, C-399/08 P, ECLI:EU:C:2010:481, point 39 and quoted case law, ECJ's ruling of 21 December 2016, Commission/Hansestadt Lübeck, C-524/14 P, ECLI:EU:C:2016:971, point 40, ECJ's ruling of 21 December 2016 Commission/World Duty Free Group SA e.a., C-20/15 P and C-21/15 P, ECLI:EU:C:2016:981, point 53, and ECJ's ruling of 20 September 2017, Commission/Frucona Kosice, C-300/16 P, ECLI:EU:C:2017:706, point 19.

33 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Function of the European Union, OJ C 262, 19.7.2016, p. 1, paragraph 73.

34 Guidance on the notion of aid, paragraph 74.

35 Ibid.

36 See, for instance, Judgment of the Court of Justice of 21 March 1990, *Belgium* v *Commission ('Tubemeuse')*, C-142/87, ECLI:EU:C:1990:125, paragraph 29; Judgment of the Court of Justice of 21 March 1991, *Italy* v *Commission ('ALFA Romeo')*, C-305/89, ECLI:EU:C:1991:142, paragraphs 18 and 19; Judgment of the General Court of 30 April 1998, *Cityflyer Express* v *Commission*, T-16/96, ECLI:EU:T:1998:78, paragraph 51; Judgment of the General Court of 21 January 1999, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke* v *Commission*, Joined Cases T-129/95, T-2/96 and T-97/96, ECLI:EU:T:1999:7, paragraph 104; Judgment of the General Court of 6 March 2003, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, Joined Cases T-228/99 and T-233/99, ECLI:EU:T:2003:57.

(109) Therefore, the Commission assesses whether a market economy investor would have provided the capital injection under the same conditions as proposed by Germany in this case.

(110) The Commission will also assess whether a market economy operator would have provided the financial guarantees under the same conditions as the State.

(111) The Commission notes that the Bank initiated a private sale process in 2018 that was put on hold in January 2019 in favour of the public sector solution. Given that this process took place prior to the elaboration of the business plan as notified, and in any event did not proceed to the stage of unconditionally binding offers, the Commission considers that it has no relevance for the assessment of the notified measures.

5.2. Assessment of the notified measures in the MEOP framework

(112) A private investor who considers an equity investment in NordLB would require that the capital needs of the Bank are correctly estimated and that the proposed recapitalisation plan to cover those needs is acceptable. Furthermore, a private investor would only invest if such an investment would yield acceptable returns.

(113) In the following, each of the measures is assessed individually to establish if any of them may provide NordLB with an advantage that it could not receive under normal market conditions. An individual assessment of each of the Measures is appropriate, even if they are provided as elements of the same wider transaction and by the same entities. However, the Commission notes the link between the different Measures, which needs to be reflected in the assessment. In particular, an assessment of the capital injections under the MEIP is only possible once the remuneration of any other measure has been concluded to be in line with MEOP and has been accounted for accordingly in the business plan.

5.2.1. Assessment of Measure A: Sale of assets

(114) The Commission has engaged external experts to assist in the determination of the current market value of the two assets to be divested as Measure A.

(115) The Commission takes note of the valuation of the two assets provided by Germany as well as the assessment provided by the external experts of this valuation based on different assumptions.

(116) On the one hand, Germany has proposed to value the assets using a discounted cash-flow method (DCF). The external experts have conducted an alternative valuation also using the DCF method but adjusting for slightly different parameters. In particular, the external experts have suggested to take more conservative assumptions about future growth rates and slightly different assumptions about the Weighted Average Cost of Capital ("WACC") factoring in the calculations.

(117) On the other hand, Germany proposed to estimate the value of the assets based on trading multiples. The external experts have conducted a parallel assessment using such a methodology but based on their own independent input parameters,

namely a slightly wider range of EBIT[37] multiples, based on a wider peer group basis.

(118) The external experts conclude that a sales price for the assets included in Measure A between EUR [100-150] million and EUR [150-200] million[38] would be in line with normal market practice. The Commission takes note that the proposed sales price of EUR [150-200] million is well within this range, resulting from these different methodologies.

(119) Based on the information above and considering that no indication exists that would suggest that the value of the assets to be sold by the Bank to the State of Lower Saxony would be lower than the price to be paid, the Commission concludes that the transfer of assets does not lead to an advantage for NordLB within the meaning of Article 107(1) TFEU.

5.2.2. Assessment of Measures B – D: Asset guarantees

(120) The Commission has engaged external experts to assist in the determination of the current market value of the guarantee contracts.

(121) The expert assessment was made under the assumption that a number of contract terms (such as Maximum Guaranteed Amounts, Adequate Trustee Terms & Conditions) as well as uncertainties regarding material changes between predictions offered by the Bank as regards portfolio composition on 30 November 2019[39] and the actual portfolio composition, risk position, provisioning, accounting practices and portfolio management policies would be addressed. The Commission’s assessment is therefore based on the assumption that no material risk developments since the 30 June 2019 snapshot date will be covered, as market conform remuneration is calculated and calibrated for the period following contract closing on 20 December 2019[40].

(122) The Commission notes that all three asset guarantee contracts provide for the role of a Trustee that will ensure that the State of Lower Saxony will act in its own economic interest as a guarantor. This structure avoids potential conflicts of interest that may arise from the fact that the guarantor is in this specific case also a shareholder of the Bank. The Commission also notes that the procurement process for the selection of this Trustee has already started in October 2019 and is currently on-going.

5.2.2.1. Assessment of Measure B: "Tower Bridge" portfolio

(123) For the Tower Bridge portfolio, the contractual terms provide for a remuneration of 7.15% per annum on the reference net book value of the assets respectively outstanding in the portfolio. According to the Bank’s advisors, the total

[37] Earnings Before Interest and Tax.

[38] This is a combined valuation of the value of TLN and PMF, which are transferred under the same holding firm NewCo.

[39] In the final notification, Germany changed the guarantee contract date to 20 December 2019 to avoid any uncertainties from asset substitutions that were allowed under previous versions.

[40] There is a placeholder in the guarantee contracts for the maximum guarantee based on the book values at the reference date. Because it is stated in the original currencies, foreign exchange fluctuations might influence the guarantor’s starting Euro-exposure.

cumulative compensation would correspond to a cumulative compensation of EUR 44 million if the wind down plan is followed.

(124) According to the Commission's external experts, the current market value quantification of the guarantee is EUR 39 million based on the assumption that a first loss buffer of at least EUR 95 million in recovered provisions from asset sales is present at initiation of the contract.

(125) According to the Commission’s external experts, a valuation of the NPLs included in the Tower Bridge portfolio should be assessed using an "illiquid asset purchase approach" because the underlying assets are non-performing. This implies that the underlying assets have no longer a contractual maturity and that no comparable market data exists. Therefore, the approach is based on the concept of replicating the transaction as if the portfolio was purchased by an independent third party. The method involves a valuation of the present value of the cashflows expected from the portfolio based on the specific assets included. The method further takes into account relevant funding costs and adequate return expectations.

(126) While the approach described above provides a fixed value for the portfolio, a relative pricing scheme as proposed by Germany would also not constitute an advantage for the Bank, as the wind down plan specifies minimum prices for sales which, coupled with the Trustee’s power to limit premature or excessive exposure reduction, would preclude an undermining of the guarantor's remuneration[41]. In this regard the Commission’s experts have also taken into account that the Bank may only deviate from its defined wind-down plan if an independent Trustee agrees that such a deviation is not detrimental to the economic interest of the guarantor. This arrangement assures that no conflict of interest arises between the State as guarantor and shareholder of the Bank.

(127) The Commission takes note that the first loss buffer as of 30 October 2019 resulting from asset sales above NBV stood at EUR 97 million with a positive outlook (additional EUR 9 million from sales for which a memorandum of agreement had already been signed). This indicates that the first loss buffer will be in line with the valuation assumptions when the guarantee comes into effect.

(128) The Commission further considers that the approach taken by the external expert to derive the market value of the guarantee proposed is valid. The Commission also notes that the proposed fees are in line with the valuation conducted on this basis.

(129) The Commission therefore concludes that Measure B is in line with the MEOP and thus constitutes no advantage to the Bank.

5.2.2.2. Assessment of Measure C: "Maritime Industries"

(130) The external experts assessed the Maritime portfolio which, although performing, carries significant risks due to the correlation between the ability to pay of the

[41] In addition, the role of the Trustee provides additional comfort that no conflict of interest arises between the State of Lower Saxony as both guarantor and shareholder. [...]This was taken into account by the Commission's external expert.

counterparty (which is linked to maritime charter rates) and the recovery value of the collateral.

(131) The experts therefore needed to carefully examine market parameters and portfolio characteristics and their sensitivities. In particular, they needed to consider existing delinquency within the portfolio, rating migration since the assets were last rated, heightening default risk at the maturity of bullet loans, and the absence of liquid benchmark Credit Default Swap ("CDS") spreads for CCC-rated exposures.

(132) According to the experts, a cumulative premium of EUR [200-250] million would be market conform. The experts have applied a "Traded Credit Protection" approach to validate the current market value of the proposed guarantee. This approach is based on the assumption that the credit risk transferred to the guarantor can be hedged. The current market value is therefore derived by comparing the specific portfolio with existing derivatives, namely CDS, for which market prices can be observed. The comparison takes into account the specific risk parameters of the underlying portfolio and applies sufficiently conservative adjustments in a way a market economy operator would also do in a comparable situation. Based on this assumption, the experts have calculated a value of the Measure which is in line with Germany's proposal.

(133) A split into 20 pre-defined instalments instead of a one-off payment would, in view of the low interest rate environment, not differ materially from an equivalent up front premium.

(134) In light of the assessment of the portfolio and the valuation approach taken, the Commission considers that the total remuneration as proposed by Germany is market conform. The Commission considers that the use of comparable traded credit derivatives is a valid methodology to derive the current market value of a guarantee, provided adequate consideration is given to a correct mapping of comparable properties and parameters, as the experts have done.

(135) The Commission considers that, although the Bank has the possibility to prolong the guarantee subject to certain conditions, it cannot be extended beyond the contractual maturities of the underlying assets. The Commission also notes that the experts have taken the possibility of a deviation from the currently proposed run-down plan into consideration for the assessment of the proposed fees. In addition, the risk of an adverse selection by selling certain loans while keeping others under the guarantee is fully addressed by the structure involving a total fee that is defined in advance.

(136) The Commission therefore concludes that Measure C is in line with the MEOP and thus constitutes no advantage for the Bank.

5.2.2.3. Assessment of Measure D: "Aviation"

(137) For the Aviation Portfolio, Germany has proposed a total cumulative compensation of EUR [50-100] million. This is consistent with the Commission's experts finding that the current market value of such a guarantee lies within a band of EUR [50-100] million.

(138) The experts have applied a "Traded Credit Protection" approach as they have also done for the valuation of Measure C to validate the current market value of the proposed guarantee. This approach is based on the assumption that the credit risk transferred to the guarantor can be hedged. The current market value is therefore derived by comparing the specific portfolio with existing derivatives, namely Credit Default Swaps ("CDS"), for which market prices can be observed. The comparison takes into account the specific risk parameters of the underlying portfolio and applies adjustments in a way a market economy operator would also do in a comparable situation. Based on this assumption, the experts have calculated a value of the Measure which is in line with Germany's proposal.

(139) A split into 16 pre-defined instalments instead of a one-off payment would, in view of the low interest rate environment, not differ materially from an equivalent up front premium.

(140) In light of the assessment of the portfolio and the valuation approach taken, the Commission considers that the total remuneration as proposed by Germany is market conform. The Commission endorses the use of comparable traded credit derivatives as a valid methodology to derive the current market value of a guarantee, provided adequate consideration is given to a correct mapping of comparable properties and parameters, as the experts have done.

(141) The experts pointed out that it is important that the Trustee in all circumstances should act in the State's economic interest as a market operator, and takes care to use market discount rates and considers only the cash flows related to the guarantee measure (as opposed to other cash flows related to the State as a public authority).

(142) The Commission considers that the Trustee's role is to ensure that the State will act as market operator, based on its economic interest as a guarantor […]. This consideration applies equally to all three asset guarantees.

(143) The Commission therefore concludes that Measure D is in line with the MEOP and thus constitutes no advantage to the Bank.

5.2.3. Assessment of Measure E: Direct capital injection

(144) The operational measures as presented in the business plan, is assessed in section 5.2.3.1. An assessment on the return on investment relating to Measure E is set out in section 5.2.3.2.

5.2.3.1. *Assessment of structural measures envisaged in the Business plan*

(145) The purpose of the measures contained in the business plan is to create a streamlined profitable bank with a regional orientation. The business plan assumes a significant reduction of the total assets of the Bank, mild revenue growth and significant cost reductions. Those three elements will be assessed separately in sections 5.2.3.1.1, 5.2.3.1.2 and 5.2.3.1.3.

(146) The business plan was first developed and presented to the Commission in May 2019. Germany has then provided several updates, including an adjustment in line with changed interest rate developments in August 2019. The final plan, including the effects of all measures as discussed in section 3.2 above, was submitted in November 2019.

5.2.3.1.1. Reduction of total assets

(147) NordLB envisages a reduction of its balance sheet from over EUR 154 billion in 2018 to EUR 95 billion in 2024. The Bank has already started to divest parts of its portfolio. This includes the sale of the non-performing shipping portfolio in the so-called "Big Ben" transaction to private investors but also a further reduction of the remaining shipping portfolio throughout 2019. The Commission notes positively the strategic decision of NordLB not only to run down the NPL portfolio but to fully exit the business of financing maritime industries given that the troubled shipping business was one of the major causes for the Bank’s losses in 2018.

(148) In addition to exiting the market for maritime industry financing, further balance sheet reduction will be generated across all business lines. As an illustration, the total assets in the business segment private and SME business will reduce from EUR 26.2 billion to EUR 12.4 billion by 2024. This will be achieved through the planned exit from [...] and [...]. The Bank is also considering further downsizing in the segment of [...] and [...]. Furthermore, the Bank is developing a plan to fully separate the development bank activities currently performed on behalf of and separately remunerated by the shareholding States. Together, these measures will result in a simpler business model and put focus on restoring the profitability of the core segments.

(149) The reduction of the balance sheet of NordLB has also to be seen in the context of previous reductions. The Bank has a proven track record of successfully reducing its total assets[42]. In addition, the Commission is taking into account that the Bank has publicly announced in its investor communications to reduce total assets to EUR 95 billion[43]. Furthermore, based on the 2019 half-year results[44] the total assets of the Bank stand at EUR 145.3 billion, which is in line with the projections in the business plan.

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[42] See the Commitments provided by Germany as annexed to Commission Decision in case SA.34381(2012/N) – Germany – Restructuring aid to Norddeutsche Landesbank AöR, in which Germany committed to reduce total assets of NordLB from EUR 228 billion to EUR 195 billion over 5 years.

[43] See NordLB Group presentation published in August 2019 (https://www.nordlb.com/fileadmin/redaktion_en/branchen/investorrelations/praesentationen/NORDLB_Group_Presentation.pdf) p. 14.

[44] See NordLB https://www.nordlb.com/fileadmin/redaktion_en/branchen/investorrelations/praesentationen/NORDLB_Group_Presentation.pdf.

(150) In light of the above, the Commission considers it realistic that NordLB will be able to deliver the intended reduction of its balance sheet by the end of 2024. The intended resizing of the Bank will also improve its risk profile as segments that had generated losses will be fully phased out.

5.2.3.1.2. Expected revenue growth

(151) On the revenue side, the plan assumes a slight reduction of net interest income, which is in line with a reduction of total assets. At the same time, additional revenue is to be generated from provisions and fees. The Commission notes that to compensate for reductions in the income generating assets, NordLB plans to focus on more profitable clients, thereby increasing balance sheet and RWA productivity (see description in section 3.3.2 above).

(152) A more detailed assessment of the development of the net fee income can be done by a break down per segment. Compound annual growth rates (CAGR) of the non-interest based revenues[45] generated between 2018 and 2023 are expected as follows: [...]% for the retail segment, [...]% for corporates, [...]% for markets, and [...]% for special financing[46]. The most important change in the net position relates to securitisation costs and guarantees that are expected to be phased out over the planning period.

(153) The Commission does not consider any of these growth rates to be overly aggressive, especially when taking into account the Bank's strategy to move progressively from interest to fee based revenues which is in line with more general trends in the financial sector in light of the current low interest rate environment.

(154) As regards the projected revenue increase in the corporates segment, the Commission notes that the Bank has already conducted a detailed assessment of all client relationships based on a scoring model taking into account financial and risk data, including RWA and balance sheet productivity, as well as the value of existing and potential future business relationships. This assessment enables the Bank to identify clients with whom business activities should be discontinued in order to increase profitability of the segment. Such an approach enables the Bank to free resources to focus on more profitable clients, contributing accordingly to the overall revenue projection of this segment.

(155) The Bank has also conducted a comparable, although less detailed exercise in the retail segment. This exercise provides the Bank with a solid foundation to understand which clients, or types of clients, have proven to be most profitable in the past and will help to efficiently allocate resources in the future.

(156) As regards the projected revenue increase in the markets segment, where total profits before taxes are expected to grow from EUR 54 million in 2018 to EUR [75-125] million in 2024, the Commission takes note of Germany's explanation which can be summarised as follows: According to the plans as presented,

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45 "Dienstleistungsergebnis" before tax includes revenues generated from fees, provisions and other related non-interest incomes but as a net position also takes into account costs for securitisation and guarantees.

46 Fee income from the real estate business is incorporated by the Bank's accounting standards into the overall net interest income for this segment.

additional revenues are to be generated from a particular focus on a comprehensive servicing of [...], an increase in [...] and a further expansion of [...]. NordLB has a track record of being active in these areas and does not intend to enter completely new business activities in which it does not have relevant experience. The Commission considers that the planned expansion has the potential to increase the profitability while staying within the Bank's area of expertise.

(157) Based on the information provided, the Commission sees no reasons to doubt that the planned revenue developments are generally achievable. In any case, growth expectations on the revenue side remain modest, while the more important driver for the profitability increase is the focus on cost reduction, further discussed below.

5.2.3.1.3. Planned cost reductions

(158) The planned structural measures of the Bank entail a significant cost cutting, as the Bank intends to reduce its CIR from close to 100% to below 50%. While the size of the reduction of the CIR seems ambitious at first glance, it has to be seen in the relevant context. First, the CIR of 2018 is not representative for the Bank but was heavily impacted by one-off events, namely the required additional provisioning for the NPL portfolio. Second, NordLB has shown in the past that it can achieve CIRs close to the target. The ratio stood at 50.7% in 2016 and 51.4% in 2017. While the target of 46% in 2024 is lower than these historical data, it seems reasonable to expect that NordLB can repeat its historic achievements and even improve on this metric, especially in light of the significant structural measures planned. Third, NordLB, in spite of being active in the retail segment (via the BLSK), is not a retail bank. BLSK represents only a small part of the overall size of the Bank, even after restructuring (with less 5% of total assets in 2024).

(159) As regards the individual measures, the Commission takes note of the breakdown of cost reduction measures provided by Germany. In particular, it notes that out of the total planned reduction of EUR [350-400] million, almost half are to be delivered by the "One Bank" program. These measures are already planned in detail and either already in implementation or close to be implemented. This is particularly true for FTE reductions, where Germany has explained that individual posts for reduction have already been identified and negotiations with 1 250 FTEs have already started. As of June 2019, 384 posts have already been reduced. The number of identified FTEs to be reduced is almost half of the total target group identified for reduction given that the business plan foresees a decline by 2 824 FTEs. These measures have already been included in the plan as presented in May 2019, and the Commission takes further comfort in the fact that the total size of FTE reductions has meanwhile been communicated to investors and are already publically expected[47].

[47] See NordLB Group presentation published in August 2019 (https://www.nordlb.com/fileadmin/redaktion_en/branchen/investorrelations/praesentationen/NORDLB_Group_Presentation.pdf), p.26-27.

(160) The on-going "One Bank" program is one important means of achieving the savings. In addition, it provides the Bank with relevant expertise in managing a comprehensive cost saving program of significant size. This includes also the assumptions on required costs to achieve savings as planned and the relevant expertise in change management. Based on the information provided, the Commission sees the budget as sufficient to achieve the cost reductions as planned.

(161) The experience with the "One Bank" program also provides an important basis for the further development of additional measures. The Commission takes note that the level of detail for these additional measures is not yet comparable to a program that is already in implementation. However, Germany provided a detailed breakdown of additional staff reductions for each individual function of the bank that has already been decided by the Board of NordLB. This breakdown of FTE reduction targets has been allocated top-down, based on a benchmarking exercise, relating NordLB's figures to an average of comparable peers across Europe. For each of the business functions identified, NordLB targets staff numbers well within the benchmark as provided.

(162) The Commission sees the planned cutting as re-aligning NordLB with an average of comparable banks. This is particularly true taking into account the phase out of certain business areas and the planned reduction of total assets.

(163) The second major driver identified by NordLB to achieve cost reductions is a significant simplification and streamlining of IT systems. Germany has explained that the assumed investment costs of EUR [350-450] million are sufficient to achieve a reduction of annual running costs of approximately EUR [75-150] million. The current IT intensity[48] of NordLB is [30-40]%. The target for 2024 is to reduce this metric to [20-30]%, which is even slightly above the average of other Landesbanken (between 26% and 28%).[49] It is important to note that a significant part of savings is expected to be generated by changing from a number of independent IT solutions to a more comprehensive architecture […].

(164) The Commission considers the cost reductions credible as they are in line with benchmarks observable from other comparable institutions. The Commission also notes that the IT changes will be implemented by the specialised IT provider […] which has the required expertise to minimise implementation risks. Therefore, based on the information provided, the Commission considers that the planned IT cost savings are realistic and their achievement credible.

(165) The Commission has also assessed the cost of risk foreseen in the business plan. The business plan includes a cost of risk of [0.40-0.50]%. The Commission takes comfort in the fact that the through the cycle cost of risk for a peer group of German banks was on average 0.39% over the period 2006-2018, which includes the years of the financial crisis[50]. The cost of risk of the Bank excluding shipping over the same period was [0.20-0.30]%. In addition, the Bank is exiting the shipping business being the source of most of its loan loss provisions over the last

48 Defined as IT costs / total administrative costs.

49 Based on BCG European IT in Banking Benchmarking (EITBB) 2018, provided by Germany.

50 Presentation update business plan submitted by Germany on 13 September 2019 p 13. The peer group of German banks consists out of Bayerische Landesbank, Commerzbank, Deka, Deutsche Bank, DZ Bank, Helaba, LBBW and SaarLB).

years. On the basis of these elements, the Commission considers the cost of risk in the business plan as a realistic approach that would be acceptable for a market economy investor.

(166) The Commission has also assessed the funding cost in the business plan. The starting point for the funding costs in the business plan are the credit spreads expected for senior preferred bonds. The Commission considers these spreads to be realistic as they are in line with observable CDS spreads for the Bank. The further reduction in funding costs is driven by the improvement in credit rating from Baa2 (Moody's) in 2018 to [...] in 2024, with the first [...] rating upgrades to be obtained soon after the planned recapitalisation. The last rating upgrade to [...] is only obtained in 2024 and has hence a limited impact on the funding costs in the business plan. The Commission notes the example of Hamburg Commercial Bank, which was upgraded quickly by one notch following the ownership change despite also losing one notch due to leaving the SFG[51]. Given that NordLB will not leave the SFG, and will continue to be part of the IPS managed by the DSGV, the Commission considers it reasonable to expect that NordLB will quickly receive the expected rating upgrade.

(167) In conclusion, the structural measures in the business plan address the current weakness of the Bank and are based on realistic assumptions. Furthermore, the Commission believes that the Bank will most likely be able to implement these measures. The business plan assures the future profitability of the Bank. In particular, the Commission has no reasons to doubt that the Bank would be able to pay dividends, which are crucial as an element of return for investors as planned. On the basis of these elements, the Commission concludes that the structural measures of the Bank as envisaged in the business plan appear to be in line with what would be required by a private investor.

(168) Finally, and with due regard to the prudential focus of the ECB, the Commission takes additional comfort from the fact that the ECB as competent supervisor has approved the Bank's capital conservation plan on 29 November 2019. The ECB as competent supervisor has closely followed and supervised the process of developing this plan and, having assessed the capital conservation plan and the underlying business plan, concluded that sufficient evidence was provided to substantiate the projections set out therein.

(169) Overall, therefore, the Commission has no reason to doubt that the targets as defined in the business plan can be achieved.

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[51] https://www.hcob-bank.de/media/pdf_3/investorrelations/ratings/moodys/pressemitteilungen_3/20181128_moodys_hsh_upgrade_following_ownership_change.pdf?lang=en&fsId=12806400.

5.2.3.2. Assessment of the return on investment for Measure E

(170) In the following, the question as to whether the direct capital injection provided by the stakeholders at the end of 2019 can be considered market conform is assessed.[52] As a preliminary remark, the Commission notes that the capital investment of EUR 2 835(*) billion leads to share participations in a fixed proportion based on the initial reduction of share capital to EUR 1 ("Kapitalerhöhungsverhältnis"). Therefore, a distinction between the shareholders, including the IPS, is not necessary[53] and the Commission can simplify its assessment by considering the capital injection as if it was a single investment by one investor.

(171) A private investor would make a capital injection only if it is sufficiently remunerated. As described in recital (91), the German authorities claim that the direct capital injection is market conform.

(172) The Commission will assess the market conformity of the direct capital injection on the basis of the RoE and the IRR. The RoE and the IRR will be compared with a relevant benchmark, the CoE.

(173) The Commission considers the CoE ranging between [8% and 10%] as submitted by Germany to be reasonable. In particular, the Commission considers that the use of the CAPM is appropriate to determine the benchmark for NordLB. The CAPM takes into account the risk free rate, an equity market risk premium, a country risk premium and the risk profile of the Bank. Furthermore, the Commission considers the level of the benchmark to be adequate taking into account that returns on markets are currently very low with a risk-free rate around 0%[54] and a country risk premium of 0% for Germany (NordLB is mainly active in Germany). The Commission also positively notes that an independent expert contracted by the Bank empirically determined the relevant parameters to be used in the CAPM model[55]. The Commission finds additional comfort in the fact that, based on the most recent Risk Assessment Questionnaire published by the EBA, the CoE for European banks is estimated to be in the range of 8%-10%[56].

(174) On the basis of the arguments above, the Commission concludes that the CoE between [8% and 10%] is an appropriate benchmark that reflects the opportunity cost of investing in the Bank's equity.

(*) [read: 2.835]

52 All existing shareholders and the IPS participate equally in Measure F(*) [*read: E]. While the Commission takes note of Germany's argument that the DSGV may have other considerations besides a market conform remuneration of its investment, such considerations are irrelevant from the perspective of an MEIP assessment. As long as no advantage is granted to any undertaking, the Commission does not need to take a position on possible additional motivations of investors.

53 Every EUR 1 invested of the EUR 2 835 billion will yield the same return.

54 On 4 December 2019, the 10-year mid-swaps interest rate was 0.05% and the 10-year German government bond yield was -0.36%.

55 Using *inter alia* a benchmark of 48 publically traded peers to validate relevant parameters.

56 The EBA conducts a semi-annual Risk Assessment Questionnaires among banks and market analysts. The results of the most recent survey published in June 2019 can be found on the following link: https://eba.europa.eu/sites/default/documents/files/documents/10180/2854739/916f8c4b-7099-4aba-ac1f-882cfd4c3583/RAQ%20Booklet%20Spring%202019.pdf?retry=1

(175) The Commission takes note that the Bank is reaching an RoE after tax of 7% at the end of the planning period. In recital (167) above, the Commission concluded that the business plan is credible and it ensures the profitability of the Bank in the long term.

(176) The Commission observes that the RoE in 2024 is below the CoE as established in recital (173) above but that the difference is limited.

(177) The Commission considers that the business plan contains a degree of conservatism with regards to its regulatory capital which it will take into consideration. The Commission observes that the Bank exhibits a high CET-1 ratio in 2024 of 15%. This exceeds the current regulatory requirement of [10-11]%[57] based on the current state of NordLB. In addition, it also exceeds a regulatory requirement of [10-12]% which NordLB is expecting for the period 2020-2024[58]. The expected capital requirement for the Bank is prudent given that the risk profile of the Bank will improve as its business plan is successfully implemented. Given that the capital and business plan was closely accompanied in its development and then approved by the competent supervisor, the Commission has no reason to question this expectation.

(178) For this reason, the Commission finds additional reassurance by simulating the Bank's profitability in a scenario where the Bank's equity would be consistent with a CET-1 ratio of 12%. A CET-1 ratio of 12% would still have a sufficient buffer over the current regulatory requirement of [10-11]% and the expected regulatory requirement of [10-12]%.[59] The Commission calculates that under such a scenario, the Bank's RoE would increase to 8.56%.[60]

(179) In this context, it is worth noting that, in the negotiations, the Parties adopted a dividend policy, reflected in the plan, which is deliberately conservative. In particular, dividend policy decisions require a specific quorum of 80% of shareholders of the Bank based on the proposed updated statutes of the Bank. Germany has explained that this reflects the negotiation between the parties, notably as the DSGV's objective is more focused on strong conservative capitalisation than exclusively on return on its investment.

(180) The Commission also takes into account the overall profitability of the European banking sector. Based on the Risk Dashboard published by the European Banking Authority[61], the average RoE for European banks is 6.3% in the second quarter of

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57 See slide 42 of Restrukturierings- und Sanierungskonzept gemäß § 55 Rahmensatzung submitted by Germany.

58 Ibid.

59 See also the approach taken by the Commission in case SA. SA.29338, SA.44910 and SA.52288 (2018/N) – Germany – Sale of HSH Nordbank AG, recitals (214) – (215).

60 This calculation includes the expected regulatory changes as presented by the Bank. Although Germany's argument that these requirements have a negative effect on RoE is technically correct, it should not be taken into account for the MEIP assessment. While the Bank's owners may choose to reduce the CET-1 requirements closer to regulatory minimums, they have no choice as regards the implementation of the regulatory changes already foreseeable.

61 The EBA conducts a quarterly Risk Dashboard which summarises the main risks and vulnerabilities in the EUR banking sector. The risk dashboard is based on a sample of risk indicators from 183 European banks. The most recent report has been published in October 2019 and can be found under the following link: https://eba.europa.eu/sites/default/documents/files/Risk%20Analysis%20and%20Data/Risk%20dashboard/Q2%202019//EBA%20Dashboard%20-%20Q2%202019.pdf.

2019. This places the RoE NordLB plans to achieve in 5 years slightly above the average of what European banks have realised in the second quarter of 2019.

(181) Considering RoE alone would not sufficiently take into account the specificities of an investment, namely the future development of the value of the Bank, which is a key driver for a new shareholder injecting new capital. Therefore, a market economy investor will also consider the IRR. The IRR takes into account all future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the net present value of the future stream of cash flows equals zero. The Commission Notice on the Notion of State aid explicitly refers to the IRR as a possibility to establish whether an investment is market conform.[62] Based on this assessment, the direct capital injection would be considered profitable enough for a private investor if the IRR is above the benchmark, that is the bank-specific CoE as discussed above.

(182) Germany estimated the IRR in a range between [9% and 14%] as described in recitals (81) to (91) above. The IRR calculations were made by EY as expert appointed by Lower Saxony. The Commission notes that these IRR calculations include both, Measures E and F, which represent all direct capital investments of Lower-Saxony.

(183) In addition, the Commission also observes that the expert appointed by Germany estimates the IRR by making several adjustments to the business plan, extending the projected cash-flows beyond the end of the planning period (notably for the lower band scenario) and by assuming a standardised CET-1 ratio of 14.5% at the end of the planning period.

(184) The Commission considers it more prudent to calculate the IRR on the basis of the 5-year planning period (2020-2024) and hence take into account 2024 as the year to calculate the exit valuation of the Bank. A market economy investor would assess the IRR of an investment based on the cash flows occurring over the course of the planning period as well as the terminal value as of that date. The Commission also considers it more prudent to calculate the IRR on the basis of the business plan and hence not to include any other adjustments.

(185) With these considerations, the Commission has performed its own IRR calculations specifically for Measure E, in order to establish whether the IRR is sufficiently high for the capital injection to be considered market conform. This calculation provides an IRR that is the same for all investors participating under Measure E and accounts for the expected dilution effect of the subsequent investments to be made under Measure F that affects all initial investors equally.

(186) The Commission has calculated the IRR assuming a capital injection at the end of 2019 and an exit at the end of the business plan, namely in 2024. The (market-conform) guarantee fees are included in the business plan and that cost therefore weighs into the calculation. The IRR calculation also takes into account the dividend distributions foreseen in the business plan, the dilution effect of Measure F and an exit valuation.

[62] Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Function of the European Union, OJ C 262, 19.7.2016, p. 1, paragraph 102.

(187) The entry valuation of the Bank is assumed to be EUR 1. This is reasonable because the Bank is currently in breach of its capital requirements with a CET-1 ratio of 6.8%. This capital shortfall of the Bank will only be tolerated by the ECB on a temporary basis. As a consequence, the Bank is legally barred from distributing payments to its shareholders and will be expected to restore its capital position. As long as this has not happened, the shareholders may not extract and do not seem to expect that they could extract any value from the Bank in the absence of a new investment. The savings banks that already held shares in NordLB in 2018 have already written down the value of their participation to zero in their 2018 annual accounts. Under these factual circumstances, a MEO in the position of the existing shareholders would behave in a realistic manner by accepting to reduce the nominal value of its existing shareholding to 1 EUR, in order to attract fresh investment from another MEO who would not be expected to inject fresh capital into the Bank without the prior adjustment of the existing shareholdings to their actual value. On this basis, the Commission concludes that the reduction of the nominal value of the existing shareholdings to 1 EUR is in line with the conduct that an MEO would have followed under such circumstances.

(188) The exit valuation of the Bank in 2024 is estimated using a price to book multiple of 0.6x. This price to book multiple seems appropriate on the basis of the expected RoE of NordLB in 2024 and the forward looking price to book multiples for a selection of European banks estimated by an international investment bank.[63] In addition, the exit valuation is calculated on the basis of a price to book multiple below 1, which is a conservative price to book multiple.

(189) On the basis of the above methodology, the Commission estimates the IRR on the cash investment to be 8.9%. The IRR of 8.9% is near the mid-point of the CoE range as submitted by Germany and considered appropriate by the Commission.

(190) The Commission takes also into account that the IRR is calculated on the basis of a conservative dividend policy. Given the large capital buffer over the regulatory requirement, the business plan could have assumed a higher dividend pay-out. An increase in dividend pay-outs would have led to a higher IRR.

(191) Therefore, an IRR of 8.9% would be sufficient for a market economy investor that seeks to achieve returns that are within the required range given by the CoE.

(192) Based on the above, the Commission concludes that the direct capital injection can be considered market conform. While the RoE of 7% as presented in the plan is below the CoE, the Commission also takes into account the profitability of European banks in general and the conservative CET-1 buffer over the current and future regulatory requirement. Furthermore, the IRR of 8.9% – which is more relevant for the required assessment – is near the mid-point of the CoE range.

[63] A 0.6x price-to-book multiple is based on the forward looking price to book multiples of a sample of 70 European banks published by an international investment bank. The Commission applied a simple linear regression on the dataset. Based on that analysis, the Commission concluded that a RoE of 7.0% justifies the use of a price to book multiple of 0.6x. In addition, the expert appointed by Germany estimated the price to book multiple on the basis of a regression of RoRaC and price to book multiples to be in a range of [0.6-0.7]x to [0.7-0.8]x. The universe used by the expert is the STOXX Europe 600 Banks index. Applying this regression for a RoE of 7% (or RoRaC equivalent of 7.4%) leads to a price to book multiple of 0.70x.

These elements provide the Commission with sufficient comfort that a market economy investor would come to the same decision as the investing parties.

5.2.3.3. Assessment of holding structure for implementation of Measure E

(193) In its notification, Germany has asked specifically to confirm that the holding structure in as far as it relates to the investment of Lower Saxony to be made via NIG is also free of State aid. In particular, this also extends to the intended refinancing of NIG which will profit from a State guarantee to refinance the investment in NordLB on the capital markets.

(194) Article 107(1) TFEU applies to situations in which aid is granted by a Member State or through State resources in any form whatsoever, favouring certain undertakings or the production of certain goods. According to settled case-law, the concept of 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed[64].

(195) The Commission notes that the holding of shares in itself is not an economic activity, when it gives rise only to the exercise of the rights attached to the status of shareholder including the right to receipt dividends[65].

(196) NIG will not be active on any market and any decision making of NIG will ultimately be controlled by the State of Lower Saxony as the only shareholder in NIG. While it will receive dividends from NordLB and while these dividends will be used in the context of the refinancing of the holding company, none of the relevant decisions for these transactions will be taken by NIG itself, as it will function merely as a financial holding company to implement decisions taken by the State of Lower Saxony as its owner.

(197) In as far as NIG receives a guarantee required as part of the refinancing of the proposed transactions by the State of Lower Saxony, the Commission understands that this is merely a question of the implementation of parts of Measure E and cannot be seen in isolation from it.

(198) In light of the above, the Commission concludes that the holding structure proposed to be used by the State of Lower Saxony for the implementation of Measure E is not separate from the overall transaction. In any case, as long as NIG does not take up any other activities, it cannot be characterised as an undertaking within the meaning of Article 107(1) TFEU.

5.2.4. Assessment of Measure F: Subsequent capital investments

(199) The capital injection equivalent to the amount of the guarantee fees represents an additional investment into the Bank. This additional investment is taking place during the period covered by the business plan.

(200) The subsequent investments are to be made in the future based on the same EUR per share investment as for the other investors under Measure F (fixed "Kapitalerhöhungsverhältnis"). However, given that the investments will equal the (market-conform) amounts received by the State of Lower Saxony for the

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64 ECJ Judgment of 10 January 2006, C-222/04 - Ministero dell'Economia e delle Finanze, recital 107.

65 Ibid. recital 111.

provision of the guarantees in any given year, total amounts are not fully fixed *ex ante*. While the remuneration for Measures B and C are fixed in advance, Measure D leaves a possibility for slight variations of total fees, in order to ensure market conform remuneration in line with the development of the winding down of the NPL portfolio (see 3.1.4 above).

(201) In any case, given that the investments are to be taken at a later stage than those under Measure E but will be based on the same share per investment, the resulting IRR of Measure F is clearly above the IRR of Measure E[66]. On that basis the Commission concludes that Measure F can also be considered market conform.

5.2.5. Assessment of Measure G: Coverage of health-care cost above plan

(202) The Commission notes that the calculation of the provisions on this specific expenditure item is carried out by an actuary as normal business practice based on long-term trends, its actuarial model and experience from other companies. The Commission further takes note that the projected increase in health care cost of 3.5% annually over the long term as reflected in the provisions in the Bank's audited accounts of 2018 is even slightly above the 3.4% per annum health care spending increases projected by the Ageing Working Group ("AWG") in the "AWG reference scenario" for Germany. The AWG results are agreed in the Economic Policy Committee between the Commission and the Member States.

(203) The parties have agreed in their negotiations that the State of Lower Saxony covers potential additional costs beyond current plans which would only become relevant if any of the factors on which the calculations are based would change in an unexpected way in the future. Germany explained that on IFRS principles the cost trend in the provisions reflect continuous long-term trends.

(204) The Commission notes that the AWG has also provided an "AWG risk scenario" which gives a relevant indication how health care costs in Germany may evolve under more adverse conditions. This scenario is a valid basis for the calculation of the relevant risk. The difference between the reference and the risk scenario is 0.3%. Based on a model simulation by the actuary, Germany explained that such an additional increase (i.e., leading to total annual increases of 3.8% instead of 3.5%) would amount to costs to be covered under the guarantee of EUR 18.9 million in total. The Commission considers that the likelihood for this scenario to materialise is less likely than the reference scenario. The value of such a guarantee should therefore not be more than half of the amount referred to above, i.e. EUR 9.45 million.[67]

(205) The Commission notes that the proposed remuneration of EUR 9.89 million is greater than the market price estimated above. Furthermore, potential differences between the testified plan and future developments, if any, are calculated annually and netted at the end of the duration of the guarantee until the IPS exits as

[66] EUR 1 invested during the course of the business plan and EUR 1 invested in 2019 result in exactly the same ownership percentage of the bank in 2024 for both EUR 1. Additionally, most of the value is realised at the end of the business plan. Given this, the IRR for the EUR 1 invested at a later point in the business plan will be higher given that the same (approximately) absolute return is realised in a shorter time period.

[67] The maximum amounts agreed as part of the overall negotiation package is therefore not relevant for calculating a market conform remuneration of the actual risk to be transferred.

shareholder (but at the earliest in 2025). A settlement would only happen in case a net increase remains at that date.

(206) In light of the above, the Commission considers that the one-off remuneration fee of EUR 9.89 million would be acceptable for a market economy operator because it covers the relevant risks and allows for an extra margin[68]. Therefore, the Commission concludes that Measure G is in line with the MEOP and thus constitutes no advantage to the Bank.

5.3. Concluding assessment of the notified Measures

(207) As demonstrated in Section 5.2 above, none of the notified Measures result in an advantage being granted to any undertaking.

(208) Even where the proposed Measures, which – as already outlined in Recital (113) above – are linked, were to be regarded as one single intervention, the Commission considers that a global assessment[69] of the Measures as one transaction does not alter the conclusion that they are in line with the MEOP and therefore does not result in any different outcome than their individual examination in Section 5.2 above.

(209) In the assessment conducted above, the market conformity of the guarantee fees as assessed under Measures B-D as well as the fees to be paid for the guarantee provided as Measure G are taken into consideration for the assessment of the business plan and the corresponding MEIP assessment of Measures E and F.[70]

(210) The Commission has further considered that the different roles of the State being active as an investor and a guarantor at the same time have been taken into account. On the one hand, the payment structure of the asset guarantees that are remunerated in predefined fixed amounts ensures that an early repayment of loans could not lead to an adverse selection to the detriment of the guarantor.[71] On the other hand, the Commission also takes comfort from the contractually defined role of the Trustee that provides additional reassurance that the State acts in its economic interest as a prudent guarantor monitoring carefully its exposure under the guarantee.

(211) Given that the conditions for the existence of State aid under Article 107(1) TFEU are cumulative, the Commission can conclude from the absence of one of these conditions that the notified Measures would not result in the granting of State aid. Accordingly, it is not necessary to assess any of the other conditions.

6. CONCLUSION

The Commission has accordingly decided that the notified Measures do not constitute State aid under Article 107(1) TFEU.

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68 Extra remuneration for unexpected losses i.e. remuneration for the risk that total health cost will increase between the 3.65% and 3.8% (worst scenario): (9.89-(18.9/2))/(18.9/2)

69 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Function of the European Union, OJ C 262, 19.7.2016, p.1, paragraph 80-82.

70 See also Recitals (51) and (113) above.

71 Measure B is remunerated based on a fee relative to the development of the NBV. However, the structure as proposed by Germany and as evaluated by the external experts also prevents any possible conflict of interest as explained in recital (126) above.

Germany exceptionally accepts that the present decision be adopted and notified in the English language.

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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

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
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