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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 904/2014**of 20 August 2014****imposing a provisional anti-dumping duty on imports of monosodium glutamate originating in Indonesia**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 29 November 2013, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of monosodium glutamate originating in Indonesia ('the country concerned'). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) On the same date, the Commission announced the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 ('the basic Regulation') concerning definitive anti-dumping measures in force on imports of monosodium glutamate originating in the People's Republic of China ('China'), by a Notice published in the *Official Journal of the European Union* ⁽³⁾.
- (3) The Commission initiated the investigation following a complaint lodged on 16 October 2013 by Ajinomoto Foods Europe SAS ('the complainant') the sole Union producer of monosodium glutamate, thus representing 100 % of the total Union production of monosodium glutamate. The complaint contained prima facie evidence of dumping and of resulting material injury that was considered sufficient to justify the initiation of the investigation.

1.2. Interested parties

- (4) In the Notice of Initiation, the Commission invited all interested parties to contact it in order to participate in the investigation. In addition, the Commission officially advised the complainant, the known exporting producers and the Indonesian authorities, known importers, suppliers, users and traders known to be concerned about the initiation of the investigation and invited them to participate.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Notice of Initiation of an anti-dumping proceeding concerning imports of monosodium glutamate originating in Indonesia (OJ C 349, 29.11.2013, p. 5).

⁽³⁾ OJ C 349, 29.11.2013, p. 14.

- (5) Interested parties were given an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer for Directorate-General ('DG') for Trade.
- (6) Interested parties were also given the opportunity to make their views known in writing and request a hearing within the time limit set in the Notice of Initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(a) *Sampling*

- (7) In view of the large number of exporting producers in the country concerned and unrelated importers involved in the investigation and in order to complete the investigation in the statutory time limits, the Commission announced in the Notice of Initiation that it had decided to limit to a reasonable number the exporting producers and unrelated importers that would be investigated by selecting a sample in accordance with Article 17 of the basic Regulation (this process is also referred to as 'sampling').

(1) *Sampling of unrelated importers*

- (8) To decide whether sampling is necessary and, if so, to select a sample, the Commission requested all unrelated importers to make themselves known and to provide the information specified in the Notice of Initiation.
- (9) Fourteen unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three on the basis of the largest volume of imports into the Union and their geographic location in the Union. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were made.
- (10) Subsequently, only one of the three companies selected in the sample cooperated by submitting a questionnaire reply.

(2) *Sampling of exporting producers in Indonesia*

- (11) To decide whether sampling is necessary and, if so, to select a sample, the Commission requested all exporting producers in Indonesia to make themselves known to the Commission and to provide the information specified in the Notice of Initiation.
- (12) Four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of exporting producers, the Commission decided that sampling was not necessary.

(b) *Replies to the questionnaire and cooperation*

- (13) The Commission sent questionnaires to the sole Union producer, the four sampled exporting producers, the three sampled unrelated importers and thirty-three identified users in the Union.
- (14) Questionnaire replies were received from the sole Union producer, from one of the three sampled unrelated importers, from one trader, from three out of four known exporting producers and from five users.
- (15) The investigation revealed that the non-cooperating sampled exporting producer was related to another sampled exporting producer who was cooperating by submitting a questionnaire reply.
- (16) The cooperating exporting producer mentioned in recital 15 claimed that it should not be considered as related to the non-cooperating exporting producer as neither of the companies had any influence in the other's decision making. Moreover, the cooperating exporting producer claimed that it could not force the non-cooperating one to reply to the questionnaire. The investigation found that both companies were owned by the same shareholders. Therefore they were considered as related within the meaning of Article 143(1)(d) of Commission Regulation (EEC) No 2454/93 ⁽¹⁾ concerning the implementation of the Community Customs Code ('Customs Code').

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- (17) A third cooperating exporting producer claimed that there was another producer of the product concerned in Indonesia, who was part of the group mentioned in recital 16 but who did not make itself known. Although such a producer indeed exists, the investigation found no evidence based on Eurostat data and other available sources that this producer exported to the Union during the period considered. Therefore, this company was not requested to make itself known or to provide the information asked for in the questionnaires intended for exporting producers. Moreover, as described in recital 48, for all producers in the country concerned that did not cooperate a residual duty rate was established. This residual duty is based on Article 18 of the basic Regulation and is applicable to 'all other companies'.

(c) *Verification visits*

- (18) The Commission sought and verified all the information deemed necessary for the purpose of a provisional determination of dumping, resulting injury and Union interest.
- (19) Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

— Ajinomoto Foods Europe SAS, Mesnil-Saint-Nicaise, France

Importers

— Falken Trade, Olsztyn, Poland

Users

— AkzoNobel, Amersfoort, the Netherlands

— Unilever, Rotterdam, the Netherlands

Exporting producers in Indonesia

— PT. Miwon Indonesia, Jakarta, Indonesia

— PT. Cheil Jedang Indonesia, Jakarta, Indonesia

Related importers in the Union

— CJ Europe GmbH, Schwalbach, Germany

— Daesang Europe B.V. Amstelveen, the Netherlands

Related trader in Hong Kong

— CJ China Limited, Hong Kong

1.3. Investigation period and period considered

- (20) The investigation of dumping and injury covered the period from 1 October 2012 to 30 September 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 April 2010 to the end of the investigation period ('the period considered') ⁽¹⁾.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (21) The product concerned is monosodium glutamate ('MSG') originating in Indonesia, currently falling within CN code ex 2922 42 00 ('the product concerned'). MSG is a food additive and mainly used as a flavour enhancer in soups, broths, fish and meat dishes, spice blends and ready-made foods. It is produced in the form of white, odourless crystals of various sizes. MSG is also used in the chemical industry for non-food applications such as detergents.

⁽¹⁾ Coincided with the financial years — April to March — of the sole Union producer (FY2010/2011, FY2011/2012, FY2012/2013, IP).

- (22) It is mainly produced by fermentation of various sugar sources (corn starch, tapioca starch, sugar syrup, sugar cane molasses and sugar beet molasses).

2.2. Like product

- (23) The investigation showed that the product concerned, the product produced and sold on the domestic market of Indonesia and the product produced and sold in the Union by the Union industry have the same basic physical, chemical and technical characteristics as well as the same basic uses.
- (24) One interested party claimed that there was a significant difference in quality between the MSG produced in Indonesia and the MSG produced in the Union. It was claimed that due to this quality difference MSG produced and sold by the Union industry in the Union market and MSG imported from Indonesia were not interchangeable and should therefore not be considered as being alike. This claim remained unsubstantiated and was contrary to the findings of the investigation, which revealed no difference in quality between the MSG produced in Indonesia and the MSG produced in the Union. In fact, several users were buying MSG from both the Union industry and Indonesia and used it in same or similar applications. Consequently, this claim was rejected.
- (25) On the basis of the above, the product concerned, the product produced and sold on the domestic market of Indonesia and the product produced and sold in the Union by the Union industry are therefore at this stage considered as like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Normal value

- (26) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are considered representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represents at least 5 % of the total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by each cooperating exporting producer of the like product on the domestic market were representative.
- (27) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union.
- (28) The Commission then examined whether the domestic sales by each cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the sales of the cooperating exporting producers in Indonesia were sold in representative quantities in Indonesian market compared to the product concerned exported to the Union by the same exporting producers.
- (29) The Commission next examined whether the domestic sales of each exporting producer could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period.

- (30) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (1) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (2) the weighted average sales price of that product type was equal to or higher than the unit cost of production.
- (31) In this case, the domestic sales of all exporting producers were profitable and the weighted average sales price was higher than the cost of production of all product types. Accordingly, for all cooperating exporting producers the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period.

3.2. Export price

- (32) The cooperating exporting producers exported to the Union either directly to independent customers or through related companies located in and outside the Union.
- (33) Where the exporting producers exported the product concerned directly to independent customers in the Union, the export price was established on the basis of export prices actually paid or payable, in accordance with Article 2(8) of the basic Regulation.
- (34) Where the exporting producers exported the product concerned to the Union through related companies the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments were made for profits accruing (see recital 35) and for all costs claimed between importation and resale, including selling, general and administrative ('SG&A') expenses.
- (35) In this respect the profit margin realised by the related companies could not be used as it was considered unreliable. One unrelated importer cooperated but its profitability was confidential and could not be disclosed to other third parties. Therefore and in the absence of any other information, a profit margin of 5 % was used for the determination of the export price. This margin was found to be reasonable as it was also used in a previous proceeding concerning another chemical product manufactured by a similar industry ⁽¹⁾.
- (36) The two cooperating exporting producers claimed that the export prices to their first related customers were at arms-length and that the determination of the export price should therefore be based on the sales price between the exporting producer in Indonesia and the first related customer, rather than on a constructed export price. They argued that their selling prices to the first related customers were at the same level as prices to unrelated customers in the Union.
- (37) The investigation found that despite similar price levels, the transfer prices between the related companies were not at a level that could allow the related importers to make a reasonable profit in the Union. Also, it cannot be excluded that certain cost incurred between the related companies and that there was cross-compensation via other products. On this basis, it was concluded that the internal transfer price did not reflect the appropriate market value of the product concerned when compared with the sales to independent customers.
- (38) On this basis the transfer price between the related companies cannot be considered to have been made on an arm's length basis and the respective claims were rejected. The export prices of both exporting producers via related parties were therefore constructed in accordance with Article 2(9) of the basic Regulation as described above in recitals 34 and 35.

3.3. Comparison

- (39) The Commission compared the normal value and the export price of the cooperating exporting producers on an ex-works basis.

⁽¹⁾ OJ L 97, 12.4.2007, p. 6.

- (40) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (41) Thus, adjustments were made for import charges, rebates, transport, insurance, handling, loading and ancillary costs, packing, credit, commissions and bank charges in all cases where demonstrated to affect price comparability.
- (42) One exporting producer exported MSG via a related trading company located outside the Union who sold the product further to a related importer in the Union which in turn sold the product to unrelated customers in the Union. For these sales an adjustment for the mark-up charged by the trader outside the Union was made in accordance with Article 2(10)(i) of the basic Regulation.
- (43) One exporting producer claimed an adjustment on the normal value for incentives and promotional costs in accordance with Article 2(10)(k) of the basic Regulation. However, the investigation found that these costs were not directly linked with individual domestic sales transactions and it could therefore not be demonstrated that the price comparability was affected by these costs. This claim was therefore rejected.
- (44) Two exporting producers claimed an adjustment on the normal value for the freight cost in accordance with Article 2(10)(e) of the basic Regulation. The domestic freight costs were calculated including costs incurred to move the goods from the factory to the warehouse. However, these costs were considered as internal logistics costs and therefore not eligible to qualify as an allowance to the normal value in accordance with Article 2(10)(e) of the basic Regulation.
- (45) One interested party claimed that MSG sold in the Union as food additive needs to fulfil certain purity thresholds ($\geq 99\%$) as defined by the Commission Directive 2008/84/EC⁽¹⁾. This interested party claimed that while the MSG exported to the Union should meet these requirements, no such requirements were applicable on the product sold on the domestic market in Indonesia. Therefore, an adjustment to the normal value for differences in physical and chemical characteristics in accordance with Article 2(10)(a) of the basic Regulation might be justified.
- (46) However, the interested party concerned did not quantify its claim as it did not provide any reasonable estimate of the market value of such alleged difference in line with Article 2(10)(a) of the basic Regulation. In addition, in the comparison, the Commission was able to take into account any potential differences concerning purity in the definition of product types. Therefore, the product types with the same or similar purity levels of those exported to the Union market on the one hand and those sold domestically in Indonesia on the other hand were compared to each other. Consequently, no adjustment was warranted and this claim had to be rejected.

3.4. Dumping margin

- (47) For the two cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (48) For all other exporting producers in Indonesia, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. It should be noted that one known exporting producer deliberately did not cooperate with the investigation as mentioned above in recital 15. Therefore the level of cooperation was considered low. In accordance with Article 18(6), the Commission decided to base the residual dumping margin at the level of the highest dumping margin related to a representative export volumes of one of the fully cooperating and verified exporting producers, taking also into account on a weighted average basis, the dumping margin established for the cooperating exporting producer which was related to a non-cooperating exporting producer.

⁽¹⁾ Commission Directive 2008/84/EC of 27 August 2008 laying down specific purity criteria on food additives other than colours and sweeteners (OJ L 253, 20.9.2008, p. 1).

- (49) On this basis the provisional dumping margins, expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin (%)
PT. Cheil Jedang Indonesia	7,0
PT. Miwon Indonesia	13,3
All other companies	28,4

4. INJURY

4.1. Definition of the Union industry and Union production

- (50) The like product was manufactured by one Union producer during the investigation period. It constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (51) As the Union industry is constituted of only one producer, all figures related to sensitive data had to be indexed or given in a range for reasons of confidentiality.

4.2. Union consumption

- (52) The Commission established the Union consumption by adding the Union industry's sales on the Union market to the imports from Indonesia and other third countries, based on Eurostat and questionnaire replies.
- (53) It was argued that the cooperating Union producer should be excluded from the Union industry as it was linked to a non-cooperating exporting producer in Indonesia and that the investigation should be terminated. However, in this case there is no need to exclude the cooperating Union producer from the Union industry despite its relationship with the non-cooperating exporting producer in Indonesia because this sole Union producer fully cooperated with the Commission during the investigation and was subject to a full verification. In addition, the non-cooperation of the Indonesian exporting producer did not have any impact on the reliability of the data collected from the Union producer. Therefore, the argument should be rejected.
- (54) Union consumption developed as follows:

Table 1

Union consumption for MSG (tonnes)

	FY2010/2011	FY2011/2012	FY2012/2013	IP
<i>Index (FY2010/FY2011 = 100)</i>	100	87	93	98

Source: questionnaire replies and Eurostat

- (55) Union consumption decreased between FY2010/2011 and FY2011/2012, and slightly increased again in FY2012/2013 and the investigation period. Overall, consumption decreased by 2 % during the period considered. The decrease in consumption between FY2010/2011 and FY2011/2012 is mainly due to a decrease in the sales of the Union industry on the Union market resulting from a decrease in production in the same period (see recital 68). Imports remained at similar levels in both years. The increase in consumption in FY2012/2013 is almost exclusively due to an increase in imports, as sales of the Union industry remained broadly at the same level. Finally, during the investigation period, while Union industry's sales decreased again, import volumes increased considerably, notably from Indonesia (see recital 57).

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

- (56) The Commission established the volume of imports on the basis of Eurostat and questionnaire replies. The market share of the imports was established on the basis of Union consumption as established in recital 52.
- (57) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume (tonnes)

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Volume of imports from Indonesia tonnes	8 638	9 478	18 317	24 385
Index	100	110	212	282
Market share Index	100	126	227	287

Source: questionnaire replies and Eurostat.

- (58) Import volumes from Indonesia almost tripled over the period considered. They increased continuously and significantly by 182 % from 8 638 tonnes in FY2010/2011 to 24 385 tonnes in the investigation period.
- (59) The corresponding market share almost tripled over the period considered. It increased by 187 %, despite the overall decrease in consumption (– 2 %).

4.3.2. Prices of the imports from the country concerned and price undercutting

- (60) The Commission established the prices of imports on the basis of Eurostat and questionnaire replies.
- (61) The average price of imports into the Union from Indonesia developed as follows:

Table 3

Import prices (EUR/tonne)

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Indonesia	1 266	1 279	1 226	1 162
Index	100	101	97	92

Source: questionnaire replies and Eurostat.

- (62) The average import price of MSG from Indonesia slightly increased between FY2010/2011 and FY2011/2012 before decreasing in FY2012/2013 and even further in the investigation period. The average import prices of MSG from Indonesia overall decreased by 6 % during the period considered.

- (63) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the Union industry charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the cooperating Indonesian producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.
- (64) As mentioned above in recital 46, one exporting producer claimed that MSG sold in the Union as food additive needs to fulfil certain purity thresholds required by Union legislation. This exporting producer claimed that no such requirements were applicable to products imported from Indonesia and used in the non-food sector and that therefore an adjustment for chemical or physical characteristics may be warranted if compared to the product sold on the Union market. However, the exporting producer concerned did not quantify this claim. In addition, in the comparison, the Commission was able to take into account any potential differences concerning purity in the definition of product types. Therefore, the product types with the same or similar purity levels of those exported to the Union market on the one hand and those sold by the Union industry in the Union market on the other hand were compared to each other. Consequently no adjustment was warranted and this claim was rejected.
- (65) One interested party claimed that the effect of currency fluctuations should be taken into account when calculating undercutting for imports from Indonesia. Indeed, the likely effect of the dumped imports on the Union industry's prices is essentially examined by establishing among others price undercutting. In the present case, the dumped export prices, and the Union industry's sales prices were compared. However, export prices used for the injury calculations were converted into EUR in order to have a comparable basis. Consequently, the use of exchange rates in the case at hand ensures that the price difference is established on a comparable basis. Therefore, this claim was rejected.
- (66) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the Union industry's turnover during the investigation period. It showed a weighted average undercutting margin between 0 % and 5 % by the imports from Indonesia on the Union market.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (67) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

4.4.2. Production, production capacity and capacity utilisation

- (68) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Production volume Index	100	95	107	91

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Production capacity Index	100	100	100	100
Capacity utilisation Index	100	95	107	91

Source: questionnaire reply.

- (69) Production fluctuated during the period considered. While it decreased between FY2010/2011 and FY2011/2012, it increased between FY2011/2012 and FY2012/2013 and reached the lowest levels during the investigation period. The investigation showed that the fluctuations were mainly caused by the maintenance shut-downs that the Union industry undertook every 15 months and by the poor weather conditions during the winter of 2010/2011, disrupting the supply of one of the main raw materials (ammonia). During the investigation period, the maintenance shutdown was prolonged in an attempt to lower the high inventories. Overall, the production volume decreased by 9 % during the period considered.
- (70) The production capacity remained overall stable in the period considered.
- (71) As a result of the decrease in production volume and stable production capacity, the capacity utilisation developed in line with the production volume, i.e. it first decreased in FY2011/2012, then increased in FY2012/13 and decreased again in the investigation period. Overall, capacity utilisation decreased by 9 % over the period considered, in line with the decrease in production volume.

4.4.3. Sales volume and market share

- (72) The Union industry's sales volume and market share developed over the period considered as follows:

Table 5

Sales volume and market share

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Sales volume on the Union market Index	100	84	85	83
Market share Index	100	96	91	85

Source: questionnaire replies, Eurostat

- (73) Sales volume of MSG by the Union industry decreased by 17 % over the period considered. Sales volume dropped mostly between FY2010/2011 and FY2011/2012, while in the following years it remained relatively stable. The drop in sales volumes, together with the parallel decrease in consumption and increase in imports from Indonesia, led to a decrease in market share of the Union industry by overall around 15 % during the period considered. The market share of the Union industry decreased by 4 % between FY2010/2011 and FY2011/2012, coinciding with an increase in market shares of Indonesian imports in the same period. Between FY2012/2013 and the investigation period the market shares of the Union industry continued to steadily decrease, while import volumes and market shares from Indonesia substantially increased.

4.4.4. Growth

- (74) While Union consumption decreased by 2 % over the period considered, the sales volume of the Union industry decreased by 17 % which translated in a loss of market share of 15 %.

4.4.5. Employment and productivity

- (75) Employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Number of employees Index	100	103	107	108
Productivity (unit/employee) Index	100	92	100	85

Source: questionnaire reply.

- (76) Employment of the Union industry continuously increased and overall by 8 % in the period considered. This increase is mainly due to the integration of a former affiliated company in 2011 and the expansion of the Union industry's maintenance department.
- (77) Productivity decreased due to the combination of an increase in employment and the decrease in production as shown in table 4 in recital 68.

4.4.6. Magnitude of the dumping margin and recovery from past dumping

- (78) All dumping margins are well above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry is substantial, given the volume and prices of imports from the country concerned.
- (79) The Union industry was still in a recovery process from the effects of past injurious dumping by imports of the same product originating in China. These measures are currently subject to a parallel on-going review investigation in accordance with Article 11(2) of the basic Regulation, as mentioned in recital 2.

4.4.7. Prices and factors affecting prices

- (80) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 7

Average sales prices

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Average unit selling price in the Union (EUR/tonne) Index	100	107	101	97
Unit cost of production (EUR/tonne) Index	100	120	124	130

Source: questionnaire reply.

- (81) The Union industry's average unit selling price to unrelated customers in the Union decreased by 3 % over the period considered. It first increased by 7 % between FY2010/2011 and FY2011/2012, but continuously decreased since then until the investigation period. The increase in price between FY2010/2011 and FY2011/2012 can be seen as a consequence of the cost increases during the same period, albeit the cost increase was more pronounced than the increase in prices. At the same time Indonesian imports increased and exercised significant price pressure on the Union industry. As a consequence, prices of the Union industry decreased by 6 % between FY2011/2012 and FY2012/2013 and further 4 % between FY2012/2013 and the investigation period.
- (82) Unit cost of production increased over the period considered by 30 %. There was a continuous increase starting FY2011/2012 which was mainly due to an increase in the raw material and labour costs. As mentioned above, this cost increase could not be captured by an equivalent price increase due to the price pressure of the dumped imports from Indonesia.

4.4.8. Labour costs

- (83) The average labour costs of the Union industry developed over the period considered as follows:

Table 8

Average labour costs per employee

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Average labour costs per employee (EUR) Index	100	117	125	124

Source: questionnaire reply.

- (84) The average labour costs per employee increased by 24 %. This can be mainly explained by increasing effort of the Union industry to improve the performance of its workers and staff in order to optimize the production process.

4.4.9. Inventories

- (85) Stock levels of the Union producer developed over the period considered as follows:

Table 9

Inventories

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Closing stocks Index	100	82	164	143
Closing stocks as a percentage of production Index	100	86	153	156

Source: questionnaire reply.

- (86) Overall closing stocks increased by 43 % over the period considered. From FY2010/2011 to FY 2011/2012 the closing stocks decreased following a decrease in production volume and an increase in export sales volume. From FY2011/2012 to FY2012/2013 stocks increased due to an increase in production while sales of the Union industry on the Union market remained almost stable. From FY2012/2013 to the investigation period closing stocks decreased again mainly because of a decision to decrease production in an attempt to reduce the high stocks levels.

- (87) Closing stocks as a percentage of production decreased between FY2010/2011 and FY2011/2012 but almost doubled between FY2011/2012 and FY2012/2013. They further increased between FY2012/2013 and the investigation period. Overall they increased by 56 % during the period considered. The increase in FY2012/2013 and in the investigation period has to be seen in the light of increasing volumes of dumped imports from Indonesia, while Union sales remained almost stable during the same period.

4.4.10. Profitability, cash flow, investments, return on investments and ability to raise capital

- (88) Profitability, cash flow, investments and return on investments of the Union producer developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover) Index	100	30	– 31	– 80
Cash flow (EUR) Index	100	39	– 48	– 19
Investments (EUR) Index	100	182	143	197
Return on investments Index	100	14	– 61	– 110

Source: questionnaire reply.

- (89) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. In FY2010/2011 and FY2011/2012 profitability decreased significantly, but still remained positive. As of FY2012/2013 profitability turned negative. It decreased even further in the investigation period. Overall the profitability decreased by 180 % during the period considered. This development was mainly due to the price pressure of the Indonesian imports which entered into the Union at dumped prices and did not allow the Union industry to set their prices in line with the cost increase.
- (90) The net cash flow is the Union industry's ability to self-finance their activities. The net cash flow showed the same trend as profitability that is a continuous decrease over the period considered with negative results as from FY2012/2013. This trend was accentuated in the investigation period. Overall net cash flow decreased by 119 % over the period considered.
- (91) The investments increased by 97 % over the period considered. They mainly represented investments necessary for maintenance and compliance with legal safety requirements. While the Union industry was still recovering from past dumping by Chinese exporting producers prior to the period considered, it started to improve its situation and was profitable at the beginning of the period considered until FY2011/2012. Under these circumstances a number of investments that could no longer be postponed were made which explains the significant increase of investment levels in the FY2011/2012 and the subsequent years.
- (92) The return on investments is the profit in percentage of the net book value of investments. As with the other financial indicators, the return on investment from the production and sale of the like product was negative as from FY2012/2013, reflecting the negative trend in profitability. Overall, return on investments decreased by 210 % over the period considered.

- (93) Taking into account the decreasing profitability and decreasing cash flow, the company's ability to raise capital was also negatively affected.

4.4.11. Conclusion on injury

- (94) Almost all main injury indicators showed a negative trend. Thus, production volume and capacity utilisation decreased by around 9 % and sales volume by 17 % during the period considered. In an attempt to offset the losses in sales volume and market share, the Union industry average prices decreased by 3 % during the period considered, while costs of production increased by 30 % in parallel. As a consequence profitability, which was positive at the beginning of the period considered, decreased and became negative in FY2012/2013 and continued to decrease in the investigation period. Similar negative trends could be observed for net cash flow as well as for return on investments.
- (95) Employment increased by 8 % over the period considered. The increase over the period considered can be explained by the integration of a former affiliated company in 2011 and the expansion of the Union industry's maintenance department. Investments also showed a positive trend. They were mainly linked to prevention measures and security requirements, but not to any capacity increase. These positive trends do not therefore preclude the existence of injury.
- (96) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (97) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are:
- (a) Effect of imports from China
 - (b) Imports from other third countries
 - (c) Development of Union consumption
 - (d) Export performance of the Union industry
 - (e) Inefficiencies of the Union industry
 - (f) Financial crisis
 - (g) Investment and EU regulatory safety requirements
 - (h) Cost of raw materials and other costs.

5.1. Effects of the dumped imports

- (98) To establish the existence of a causal link between the dumped imports of MSG originating in Indonesia and the injury suffered by the Union industry, the Commission analysed the volume and price levels of the imports under investigation and the extent to which these have contributed to the material injury suffered by the Union industry.
- (99) The investigation has shown that over the period considered the volume of low-priced dumped imports from Indonesia increased by 182 %, which led to an increase in market share of around 187 % in the same period. This coincided with a loss of sales volume of 17 % and a loss of market share of 15 % by the Union industry. This also led to a 71 % loss in market share of total imports from other third countries.

- (100) At the same time, Indonesian import prices decreased by 8 %. Imports from Indonesia exerted a price pressure on the Union market so that the Union industry could not raise its prices in line with the increase in its cost, but, to the contrary had to decrease its prices over the period considered. This led to a significant decrease in profitability, turning into losses from FY2012/2013 onwards which was accentuated during the investigation period.
- (101) On the basis of the above, the Commission concluded at this stage that the Union industry's deteriorating state coincided with the substantial increase in imports at dumped prices originating in Indonesia and that imports from Indonesia had a determining role in the material injury suffered by the Union industry.

5.2. Effects of other factors

5.2.1. Effects of imports from China

- (102) Imports from China are currently subject to anti-dumping duties. Import volumes went up by 65 %, with a corresponding increase in market share of 68 % during the period considered. However, both volumes and market share remained at low levels during the period considered. Chinese prices decreased significantly over the period considered by 20 %. When taking into consideration the anti-dumping duties in place, they did not undercut the Union industry prices.
- (103) Under these conditions, imports from China cannot be considered to have contributed to the material injury suffered by the Union industry during the investigation period.

Table 11

Imports from China

Country		FY2010/2011	FY2011/2012	FY2012/2013	IP
China	Volume (tonnes)	1 518	758	1 923	2 509
	Index	100	50	127	165
	Market share Index	100	57	136	168
	Average price (EUR/tonne) (*)	1 234	1 199	1 143	992
	Index	100	97	93	80

Source: Eurostat and questionnaire replies.

(*) Average prices do not include anti-dumping duties in place.

5.2.2. Imports from other third countries

- (104) The volume of imports from other third countries developed over the period considered as follows:

Table 12

Imports from other third countries

Country		FY2010/2011	FY2011/2012	FY2012/2013	IP
Brazil	Volume (tonnes)	2 321	969	1 070	889
	Index	100	42	46	38
	Market share Index	100	48	49	39

Country		FY2010/2011	FY2011/2012	FY2012/2013	IP
	Average price (EUR/tonne)	1 218	1 306	1 402	1 365
	Index	100	107	115	112
Korea, Republic of	Volume (tonnes)	1 248	2 157	923	802
	Index	100	173	74	64
	Market share Index	100	198	79	65
	Average price (EUR/tonne)	1 231	1 296	1 293	1 277
	Index	100	105	105	104
Vietnam	Volume (tonnes)	5 707	6 042	1 820	769
	Index	100	106	32	13
	Market share Index	100	121	34	14
	Average price (EUR/tonne)	1 284	1 291	1 361	1 318
	Index	100	101	106	103
Other third countries	Volume (tonnes)	993	681	478	434
	Index	100	69	48	44
	Market share Index	100	79	52	45
	Average price (EUR/tonne)	1 594	1 718	2 044	2 001
	Index	100	108	128	126
Total other third countries	Volume (tonnes)	10 268	9 848	4 291	2 894
	Index	100	96	42	28
	Market share Index	100	110	45	29
	Average price (EUR/tonne)	1 293	1 323	1 433	1 424
	Index	100	102	111	110

Source: Questionnaire replies and Eurostat.

- (105) Import volumes from other third countries overall decreased from 10 268 tonnes in FY2010/2011 to 2 894 tonnes in the investigation period, that is by 72 % over the period considered. The corresponding market share decreased by 71 % in the same period. In the investigation period, the market share of other third countries' imports represented only around one fourth of its level in FY2010/2011. Overall, the prices of third countries' imports increased by 10 % during the period considered.

- (106) An interested party claimed that total imports including Indonesia have remained stable over the period considered.
- (107) This allegation was in contradiction to the available statistics on which the findings of the investigation are based as shown in table 13 below. Indeed, total imports in the Union increased by 46 % during the period considered. The claim was therefore rejected.

Table 13

Total Imports

		FY2010/2011	FY2011/2012	FY2012/2013	IP
Total imports	Volume (tonnes)	20 424	20 084	24 531	29 788
	Index	100	98	120	146

Source: Questionnaire replies and Eurostat.

- (108) On the basis of the above, it was provisionally concluded that imports from other third countries did not break the causal link between the dumped imports from Indonesia and the material injury suffered by the Union industry.

5.2.3. Development of Union consumption

- (109) Union consumption only showed a slight decrease of 2 % during the period considered which cannot explain the 17 % decrease in the Union industry's sales volumes and decrease of market share of 15 %. Thus, it was provisionally concluded that the development of consumption did not contribute to the material injury suffered by the Union industry.

5.2.4. Export performance of the Union industry

- (110) The volume of exports of the Union industry developed over the period considered as follows:

Table 14

Export performance of the Union industry

	FY2010/2011	FY2011/2012	FY2012/2013	IP
Export volume Index	100	249	234	222
Average unit price Index	100	107	101	95

Source: questionnaire reply.

- (111) The volume of exports made by the Union industry increased in FY2011/2012 and then slightly decreased in the following years until the investigation period. It almost doubled during the period considered. Prices of exports slightly decreased (by 5 %) at the same time. The increase in export sales partly compensated for the loss of sales volume and market share in the Union. In fact, in a situation characterised by a strong price pressure exerted by

the dumped imports had the export sales not increased the loss of economies of scale and the impact on the unit cost of the Union industry's production would have been even higher. Therefore the Union industry's export performance could not have had a negative impact on the injurious situation.

- (112) Some interested parties claimed that the reduction in the Union industry's sales on the Union market is the consequence of its export sales of MSG to a recently acquired related food processing company in Turkey. This claim was not substantiated. Moreover, the investigation has shown that the Union industry acquired the food processing company only after the investigation period. It could not have had any impact on the Union industry's situation during the investigation period. On this basis it was concluded that the Union industry's sales to its related company in Turkey did not break the causal link.

5.2.5. Alleged inefficiencies of the Union industry

- (113) One interested party claimed that the material injury suffered by the Union industry was caused by inefficiencies inherent to the Union industry's production process. However, this interested party did not refer to any specific inefficiency and its allegation remained unsubstantiated. The investigation also did not bring into light any potential inefficiency of the Union industry. This claim was therefore rejected. On this basis it was concluded that the alleged inefficiencies of the Union industry did not break the causal link.

5.2.6. The financial crisis

- (114) One party alleged that the financial crisis is at the origin of the material injury suffered by the Union industry. However, the Union market for MSG was not volatile being affected only marginally by the global financial crisis. Had this not been the case, and had the Union industry's losses indeed been caused by the global financial crisis, the same should have held true for all other competitors on the MSG market. As it appears, Indonesian MSG producers were able to increase their sales volumes on the Union market, despite the global financial crisis. There is thus no reason to assume that the Union industry should have been more severely affected by the global financial crisis than its Asian counterparts. The argument must therefore be rejected. On this basis it was concluded that the effects of the financial crisis did not break the causal link.

5.2.7. Investments and EU regulatory safety requirements

- (115) One interested party claimed that the injury suffered by the Union industry was caused by the significant investments necessary to comply with the safety regulations applicable in the Union.
- (116) However, the investigation showed that the investments related to EU safety requirements remained low as compared to other investments throughout the period considered. A significant part of the investments made by the Union industry were preventive maintenance investments. The major increase in investments occurred between FY2010/2011 and FY2011/2012. This increase is explained by the fact that the Union industry, still recovering from the past dumping by Chinese imports, had to defer investments destined for preventive maintenance until after loss-making periods. Once the duties on Chinese imports started to produce effects on the market, the Union industry was able to realise profits again and could return to normal levels of investment. In the following periods investments remained at a similar level and continued to cover mainly maintenance. No investments were made to increase capacity, which remained stable over the period considered. On this basis it was concluded that the investments of the Union industry did not break the causal link.

5.2.8. Costs of raw materials and other costs

- (117) Several interested parties claimed that the injury suffered by the Union industry was caused by the significant increase in the price of the main raw materials, namely industrial sugar, ammonia, caustic soda and sulphuric acid.

Industrial sugar

- (118) Industrial sugar is one of the main cost factors of the Union industry's total cost of production. Indeed, as described in recital 81, the unit cost of production of the Union industry increased during the period considered,

including the cost of industrial sugar. According to publicly available statistics ⁽¹⁾ the average price for industrial sugar in the Union, while slightly increasing from FY2010/2011 to mid-2012, remained below the world market price. Subsequently, both the price of industrial sugar in the Union and the world market price of industrial sugar decreased and settled at a similar level. Therefore, the argument according to which the increase in sugar prices was a cause of injury is unfounded and should be rejected.

Chemicals

- (119) The Union industry's cost of ammonia, caustic soda and sulphuric acid increased during the period considered in line with the international price of these products. This price increase was therefore not limited to the Union industry, but also affected operators in third countries. On these grounds, the increase in the prices of ammonia, caustic soda and sulphuric acid cannot be considered as such to be a cause of the material injury suffered by the Union industry.

Other

- (120) Another interested party claimed that higher energy costs, higher labour costs and higher packaging costs had caused the injury suffered by the Union industry. While the investigation showed that these cost factors indeed increased during the period considered (see recitals 81 and 83), the Commission also established that the Union industry was unable to reflect, not even partially, this cost increase in their selling price due to the price pressure exerted by the Indonesian imports. The cost increase of these factors could not therefore be considered as such as the cause of the material injury suffered by the Union industry.

5.3. Conclusion on causation

- (121) The analysis above shows a substantial increase in volume and market share of the dumped imports originating in Indonesia between FY2010/2011 and the investigation period and a decrease of import prices over the period considered.
- (122) This increase in market share of the low-priced imports from Indonesia coincided with a significant drop in market share of the Union industry and triggered, together with the downward pressure on prices, substantial losses by the Union industry.
- (123) On the other hand, the examination of the other factors which could have injured the Union industry has revealed that none of these could have had a significant negative impact.
- (124) On the basis of the above, the Commission concluded at this stage that the material injury to the Union industry was caused by the dumped imports from the country concerned and the other factors did not break the causal link.
- (125) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of imports from China and from other third countries, of development of consumption, of export performance of the Union industry, of alleged inefficiencies of the Union industry, of the financial crisis, of investments and EU regulatory safety requirements and of cost of raw materials and other costs on the Union industry's negative developments was limited.

6. UNION INTEREST

6.1. Preliminary remark

- (126) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, traders, importers, users and suppliers of raw materials.

⁽¹⁾ http://ec.europa.eu/agriculture/sugar/presentations/price-reporting_en.pdf

6.2. Interest of the Union industry

- (127) The investigation established that the Union industry suffered material injury caused by the dumped imports from Indonesia. Almost all injury indicators showed negative trends, in particular production volume, sales volume, market share and profitability deteriorated over the period considered. The downward trend was also established for other indicators related to the financial performance such as cash flow and return on investments. During the same period stocks increased.
- (128) Following the imposition of measures, it is expected that import prices will increase and the Union industry will be relieved from the price pressure currently exerted by the dumped imports. The Union industry should thus be able to raise its prices in order to reflect cost increases and gradually reach profitable levels. This will also have a positive impact on production and sales volume. In the absence of measures the situation of the Union industry is very likely to further deteriorate. Further losses of sales volume and market share are very likely as the price pressure from the dumped imports will continue and the Union industry will be forced to match the low prices levels in the Union. Under such scenario the Union industry will continue to realise significant losses. It is not excluded that due to the reduction in sales and production volume and the high losses the Union industry will be forced to cease production altogether in the medium term, with the consequent loss of employment in the Union. This would also render the Union dependent on imports from third countries.
- (129) It was therefore concluded at this stage that the imposition of anti-dumping duties would be in the interest of the Union industry.

6.3. Interest of importers/traders

- (130) Fourteen companies came forward following the publication of the Notice of Initiation. Three unrelated importers were sampled and received questionnaires whereas only one replied. This company was subject to an on-the-spot verification.
- (131) MSG imports from Indonesia accounted for less than 15 % of the importer's turnover. The Commission considered that, while the MSG-related activity may be negatively affected by the imposition of duties, the company would remain overall profitable.
- (132) One trader in the Union involved in the resale of MSG inside and outside the Union market made itself known during the investigation. This trader purchased MSG mainly from the Union industry, but also from importers of MSG from Indonesia and other third countries. The trader's MSG-related activity was marginal as compared to its total activity. On these grounds it is considered that any impact of anti-dumping measures on its situation would be negligible.

6.4. Interest of users

- (133) Users are mainly active in the 'food and beverage' sector, using MSG in the production of spice mixes, soups and ready-made foods. MSG is also used in specific 'non-food' applications, for instance in the production of detergents.
- (134) Thirty-three companies came forward and received a questionnaire. Five companies cooperated in the investigation by submitting a questionnaire reply. Four of them were active in the food and beverage sector and one in the non-food sector. Two of the cooperating companies, one operating in the 'food and beverage' sector and the second producing detergents, were verified on-the-spot.

Food and beverage sector

- (135) The investigation showed that, on average, MSG represented around 5 % of the total cost of the products incorporating MSG manufactured by the cooperating companies which provided the necessary data.

- (136) Two of the cooperating companies purchased MSG mainly from the Union industry and imported no or only small quantities from Indonesia. In the case of these two companies, the activity linked to the products incorporating MSG represented around one third of their total activity. During the investigation period the companies were found to be profitable. In view of these findings, the proposed measures against Indonesia are likely to have a limited impact on these companies.
- (137) The other two companies purchased higher quantities of MSG from Indonesia, but their MSG-related activity was relatively insignificant as compared to their overall activity. In addition, on the basis of the information provided, these two companies were profitable during the investigation period. Any measure against MSG from Indonesia is thus unlikely to have a significant impact on these companies.

Non-food sector

- (138) One of the cooperating companies used MSG to produce detergents. MSG represented between 15 % and 20 % of the cost of production of these products. During the investigation period the company purchased MSG mainly from the Union industry but imported MSG also from Indonesia and to a lesser extent from Korea. Only a minor part of its activity was devoted to the products incorporating MSG as compared to its total activity which was in addition found to realise positive profit margins between 5 % and 10 % in the investigation period.
- (139) On this basis, while it is not excluded that this company might be negatively affected by the imposition of measures against Indonesia, the availability of other sources of supply and the profitable situation of the activity incorporating MSG would indicate that the possible impact of the measures on this company would be limited.
- (140) This interested party alleged that, given the EU regulatory framework which bans the use of phosphates and other phosphorous compounds ⁽¹⁾, MSG is likely to be used in increased quantities to replace phosphates and other phosphorus compounds in the production of detergents. Therefore, it is expected that the demand of MSG in the Union will increase substantially and any anti-dumping duties on imports of MSG would have a detrimental effect on the development of this new market.
- (141) However, at this stage it is difficult to predict how the new legal framework will impact the Union market and whether or to what extent it will boost the production of MSG-based detergents and thus have an effect on the MSG demand in the Union. The interested party also did not provide any evidence as to the extent to which an anti-dumping duty could have a detrimental effect. In this respect it is noted that the aim of the anti-dumping duty is to restore a level playing field on the Union market. Thus, the Indonesian imports should continue to supply the Union market, but at fair prices. The investigation also revealed a number of alternative sources of supply, such as Brazil, Vietnam and Korea.
- (142) In any event, in view of the findings of the investigation, even if the entire MSG demand of the company in question were to be imported from Indonesia, the company's profitability on the activity incorporating MSG would remain positive. This worst case scenario does not take into account the possibility that part of the duty could be, at least partly, passed on to their final customers.

6.5. Interest of suppliers

- (143) Four Union suppliers of raw materials came forward and replied to the questionnaire. Their sales of raw materials to the Union industry represented only a small part of their total turnover. Therefore, the absence of measures would not affect the situation of the suppliers.

6.6. Other arguments

- (144) Several interested parties alleged that the Union industry held a dominant position in the Union market and claimed that anti-dumping measures on imports from Indonesia would reinforce its position, which would not be in the interest of the Union.

⁽¹⁾ Regulation (EU) No 259/2012 of the European Parliament and of the Council of 14 March 2012 amending the Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents (OJ L 94, 30.3.2012, p. 16).

- (145) The investigation clearly showed that the sole Union producer was unable to maintain its sales volume in the Union as it lost market share to Indonesian imports. Furthermore, the Union industry was not able to increase its price levels in line with the increase in raw material costs, given the price pressure from the dumped imports from Indonesia and suffered significant losses in the investigation period. The Commission also noted that there is competition from imports originating in a number of other third countries, benefitting from free access to the Union market. On these grounds, there was insufficient evidence on any allegedly dominant position of the Union industry and the argument had to be rejected.
- (146) Some interested parties also alleged that there would be no alternative to imports from Indonesia as price levels of other third countries' imports are too high.
- (147) It is recalled that in FY2010/2011 the market share of imports from other third countries was substantial. Imports from third countries also suffered from the price pressure of the dumped imports from Indonesia and lost significant sales volume and market shares to Indonesian imports. The imposition of duties against imports of MSG from Indonesia, should enable other third countries like Brazil, Korea and Vietnam to recapture lost market shares in the Union. Concerning prices, the aim of anti-dumping measures should be to establish a level playing field in the Union, thus letting imports enter the Union at fair price levels. The investigation indicated that the imposition of duties is not expected to have a significant effect on the situation of the downstream industry. The claim that no alternative sources of supply existed was therefore rejected.

6.7. Conclusion on Union interest

- (148) On the basis of the above, the Commission established that there were no compelling reasons to conclude that it was not in the Union interest to impose provisional measures on imports of MSG originating in Indonesia at this stage of the investigation.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (149) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

7.1. Injury elimination level (Injury margin)

- (150) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (151) The injury would be eliminated if the Union industry were able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports. As the Commission found that the dumped imports only started producing effects during the third year of the period considered, the profit margin was established by reference to the first two years of that period, in the absence of dumped imports. The Commission considered appropriate to use the weighted average profit margin as established under recital 89. A profit margin between 5 % and 15 % was established. A more precise profit margin cannot be disclosed for reasons of confidentiality. On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by adding the profit margin thus calculated to the cost of production of the Union industry during the investigation period. The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in Indonesia, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the Union industry on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The injury margins calculated with profits of 5 % and 15 % respectively are reported in the table in recital 154.

- (152) As mentioned above in recital 64 one exporting producer claimed that the purity levels of MSG imported to the Union and the one produced and sold by the Union industry on the Union market may be different and an appropriate adjustment should therefore be made. For reasons set out in the same recital no adjustment was warranted and this claim had to be rejected.

7.2. Provisional measures

- (153) Provisional anti-dumping measures should be imposed on imports of MSG originating in Indonesia, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins.
- (154) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

(%)

Country	Company	Dumping margin	Injury margin	Provisional anti-dumping duty
Indonesia	PT. Cheil Jedang Indonesia	7,0	[24,6-39,8]	7,0
Indonesia	PT. Miwon Indonesia	13,3	[27,9-43,6]	13,3
Indonesia	All other companies	28,4	[31,4-47,0]	28,4

- (155) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imported product concerned produced by any other company not specifically mentioned with its name and address in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (156) A company may request the application of these individual anti-dumping duty rates if it changes the name of its entity or sets up a new production or sales entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information, including: modification in the company's activities linked to production; domestic and export sales associated with, for example, the name change or the change in the production and sales entities. The Commission will update the list of companies with individual anti-dumping duties, if justified.
- (157) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in the Annex. Imports not accompanied by that invoice will be subject to the anti-dumping duty applicable to 'all other companies'.
- (158) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies will apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H 1049 Brussels, Belgium.

8. FINAL PROVISIONS

- (159) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer for DG Trade within a fixed deadline.
- (160) The findings concerning the imposition of duties made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of monosodium glutamate, currently falling within CN code ex 2922 42 00 (TARIC code 2922 42 00 10) and originating in Indonesia.
2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional anti-dumping duty (%)	TARIC additional code
PT. Cheil Jedang Indonesia	7,0	B961
PT. Miwon Indonesia	13,3	B962
All other companies	28,4	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty applicable to 'all other companies' shall apply.
4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Within 25 days of the date of entry into force of this Regulation, interested parties may:
 - (a) Request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
 - (b) Submit their written comments to the Commission; and
 - (c) Request a hearing with the Commission and/or the Hearing Officer for DG Trade.
2. Within 25 days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EC) No 1225/2009 may comment on the application of the provisional measures.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 August 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- The name and function of the official of the entity issuing the commercial invoice.
- The following declaration: 'I, the undersigned, certify that the (volume) of monosodium glutamate sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in Indonesia. I declare that the information provided in this invoice is complete and correct.'

Date and signature

COMMISSION IMPLEMENTING REGULATION (EU) No 905/2014
of 20 August 2014
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 August 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	TR	81,4
	ZZ	81,4
0709 93 10	TR	100,7
	ZZ	100,7
0805 50 10	AR	179,3
	TR	82,0
	UY	126,7
	ZA	158,1
0806 10 10	ZZ	136,5
	BR	182,9
	EG	206,5
	MA	170,3
	TR	141,2
	ZZ	175,2
0808 10 80	AR	62,2
	BR	85,7
	CL	90,7
	CN	120,3
	NZ	123,8
	PE	21,0
	US	131,0
	ZA	100,7
	ZZ	91,9
0808 30 90	AR	35,0
	CL	88,7
	TR	132,4
	ZA	99,6
	ZZ	88,9
0809 30	MK	60,4
	TR	125,7
	ZZ	93,1
0809 40 05	BA	41,0
	ZA	207,0
	ZZ	124,0

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 18 December 2013

on State aid SA.33229 (2012/C) — (ex 2011/N) — Restructuring of NLB — Slovenia which Slovenia is planning to implement for Nova Ljubljanska banka d.d.

(notified under document C(2013) 9632)

(Only the English text is authentic)

(Text with EEA relevance)

(2014/535/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

- (1) On 14 January 2011, the Slovenian authorities notified a EUR 250 million State recapitalisation of Nova Ljubljanska banka d.d. (hereinafter 'NLB d.d.').
- (2) By decision of 7 March 2011 ⁽²⁾ (hereinafter 'first rescue decision'), the European Commission authorised a first recapitalisation aid in favour of NLB d.d. for a period of six months and upon the submission of a restructuring plan.
- (3) The Slovenian authorities notified a restructuring plan on 22 July 2011. They submitted further updates to it on 6 September 2011 and on 26 March 2012.
- (4) On 16 May 2012 the Slovenian authorities informed the Commission of their intention to provide a second recapitalisation to NLB d.d.. The measure was notified on 6 June 2012.
- (5) By decision of 2 July 2012 (hereinafter 'the second rescue and opening decision'), the Commission approved the second recapitalisation of NLB d.d. and at the same time opened an in-depth investigation raising doubts regarding the ability of NLB d.d. to return to viability and the provision of sufficient burden-sharing and measures limiting distortions of competition based on the restructuring plan which had been submitted to it.
- (6) On 22 November 2012 the second rescue and opening decision was published in the *Official Journal of the European Union* and interested parties were requested to submit their comments ⁽³⁾. The Commission did not receive any comments.

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

⁽²⁾ Commission Decision in Case SA.32261 (11/N) Rescue recapitalisation in favour of NLB (OJ C 189, 29.6.2011, p. 2).

⁽³⁾ See footnote 1.

- (7) Following the second rescue and opening decision, on 7 January 2013 the Slovenian authorities notified a revised restructuring plan, an amended version of which was submitted on 25 March 2013. The Slovenian authorities subsequently presented a further amended version of the plan in December 2013. The version of the plan provided to the Commission in December 2013 is referred to in the present decision as the 'Restructuring Plan'.
- (8) Following Commission requests, the Slovenian authorities submitted additional information during the period between 2 July 2012 and 9 December 2013.
- (9) On 10 April 2013, the Commission concluded under the Macroeconomic Imbalances Procedure ('MIP') that Slovenia was facing excessive economic imbalances. In the context of the MIP, Slovenia had to carry out an bottom-up and top-down stress test and asset quality review of the Slovenian banking sector (hereinafter 'AQR/ST') which was conducted by independent consultants. The Restructuring Plan incorporates the results of the AQR/ST.
- (10) For reasons of urgency, the Republic of Slovenia accepts that exceptionally the present decision be adopted in the English language.

2. DESCRIPTION OF THE BENEFICIARY AND SOURCE OF ITS PROBLEMS

- (11) NLB d.d. together with its affiliates (hereinafter 'NLB' or 'the bank') is the largest Slovenian banking and financial group. As of 30 September 2012, it comprised NLB d.d. and 47 banks, companies, branches, and representative offices abroad. NLB is a major banking player in Slovenia and in South Eastern Europe. As of 30 September 2012, NLB represented approximately 30 % of the Slovenian banking sector in terms of total assets and was ranked among the top three banks in the Former Yugoslav Republic of Macedonia, Montenegro, Kosovo and Republika Srpska and ranked sixth in Bosnia and Herzegovina. Banking is NLB's most important business, though NLB provides also other financial services, such as insurance, asset management, leasing, factoring, and forfeiting.
- (12) NLB is rated Caa2, negative by Moody's and BB-, negative by Fitch. Both ratings were downgraded in 2013. The downgrade was due primarily to the concentration and further deterioration of the credit portfolio and the modest financial and capital position of the bank in the current market environment.
- (13) In Slovenia, NLB offers a full range of personal and corporate banking services with an emphasis on the retail banking market. It is also active in the areas of private, corporate and investment banking.
- (14) As of 30 June 2013 NLB had the following capital structure: the Republic of Slovenia held 77,51 % of the shares of NLB, Kapitalska družba, d.d. 6,23 %, Slovenska Odškodninska Družba 5,58 % and Poteza borzno posredniška družba, d.d. (in bankruptcy proceedings) 2,24 %.
- (15) As of 31 December 2012, NLB had total assets of EUR 14,3 billion and total deposits of approximately EUR 9,1 billion, which consisted of household deposits (EUR 6,5 billion), corporate deposits (EUR 2 billion) and State deposits (EUR 0,6 billion). Furthermore, it had EUR 112 million of debt securities in issue. As of the same date, NLB's total loan book to the non-banking sector was approximately EUR 9,5 billion. The loan-to-deposit ratio was 104 % (compared to 105 % in 2011 and 127 % in 2010).
- (16) The main source of the problems of NLB is the increase of non-performing loans, which rose from EUR 0,6 billion in 2008 (3,8 % of the total volume of loans) to EUR 3,7 billion in December 2012 (28,2 % of the total volume of loans). That poor performance occurred in the context of considerable pressure on NLB's capital adequacy due to the deterioration of its asset portfolio quality, higher capital ratios required by the regulator and expected by investors, and reduced availability of capital and of debt financing, and in particular of wholesale funding.
- (17) Before the onset of the financial crisis in 2008, NLB's growth strategy was fuelled by favourable economic conditions. Between 2002 and 2009 NLB's loan book (net loans) increased by 15 % p.a. and deposits by 8 %. Lending to the corporate sector in particular was responsible for the high growth.
- (18) In addition to that organic growth, NLB grew through the acquisition of several banking subsidiaries in South Eastern Europe as well as by organic growth and the establishment of new entities in the leasing, factoring/forfeiting, life insurance/pension funds and asset management segments.

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

Table 1

Total assets market shares of NLB

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

- (20) NLB was profitable in the period 2003-2008. However, it has generated losses after tax since 2009. Losses amounted to EUR 87 million in 2009, EUR 202 million in 2010, EUR 239 million in 2011 and EUR 273,5 million in 2012. In the first semester of 2013, NLB recorded losses after tax of EUR 91,2 million. The loan portfolio of NLB started to deteriorate in 2009. Non-performing loans increased from 3,8 % in 2008 to 28,2 % in December 2012.
- (21) As of 30 June 2013 the regulatory capital of NLB amounted to EUR 1 074,3 million. Its Core Tier 1 ratio under the EU Capital Requirements Regulation ⁽⁴⁾ (hereinafter 'CRR') was 8,5 %.
- (22) On 4 December 2013, the results of the AQR/ST revealed that NLB had a capital shortfall of EUR 1,8 billion ⁽⁵⁾ under the adverse scenario.

3. THE AID MEASURES

- (23) So far NLB has received the following State aid measures:
- (i) the first recapitalisation of EUR 250 million, temporarily approved in the first rescue decision of 7 March 2011;
 - (ii) the second recapitalisation of EUR 382,9 million, temporarily approved in the second rescue and opening decision of 2 July 2012.
- (24) In addition to those two recapitalisations Slovenia intends to implement two further measures in favour of NLB:
- (iii) a third recapitalisation of EUR 1,558 billion and
 - (iv) a transfer to the BAMC of a pool of impaired assets composed of non-performing loans (for a nominal amount of EUR 2,3 billion) and a list of equities (having a market value of EUR 94 million).

⁽⁴⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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

3.1. FIRST RECAPITALISATION OF NLB

- (25) In 2009 and 2010, NLB registered losses after several years of profits mainly due to a deteriorating economic climate. Weak economic growth and rising unemployment reduced demand for loans and caused significant rises in loan impairments. NLB's Core Tier 1 ratio under the CRR decreased from 6,9 % in 2009 to 6 % in 2010. In July 2010 the Bank of Slovenia asked NLB to strengthen its capital position. As a result NLB decided to raise more capital.
- (26) NLB was set to raise EUR 250 million of equity capital, equivalent to 1,6 % of its risk weighted assets (hereinafter 'RWA'), through a public offering of its shares. The capital increase took place in two tranches. In the first stage shares were offered for subscription to existing shareholders (the total amount subscribed was EUR 89,2 million and the State fully exercised its pre-emption rights). In the second stage the remaining shares were offered to the public. However, due to a lack of interest by the public, the shares were ultimately fully subscribed by Slovenia.
- (27) That first recapitalisation was approved by the Commission on 7 March 2011 as temporary rescue aid in the first rescue decision. The Commission indicated that it would assess the aspect of burden-sharing in further detail during its assessment of the restructuring plan which Slovenia had committed to supply ⁽⁶⁾.

3.2. SECOND RECAPITALISATION OF NLB

- (28) In May 2011, the Bank of Slovenia demanded a further strengthening of NLB's capital position.
- (29) In the absence of a private investor solution, Slovenia provided EUR 382,9 million to NLB in the form of contingent convertible instruments (hereinafter 'CoCos') qualifying as Core Tier 1 capital instruments under the applicable regulations. NLB converted the CoCos into its own ordinary shares in March 2013 in accordance with the term of the agreement governing the CoCos.
- (30) That second recapitalisation was approved by the Commission by the second rescue and opening decision ⁽⁷⁾.

3.3. THIRD RECAPITALISATION OF NLB

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

3.4. TRANSFER OF IMPAIRED ASSETS TO THE BAMC

- (32) The Slovenia Stability of Banks Act, which came into force in December 2012, provides a framework for issuing guarantees to fund the transfer of legacy assets from banks to the BAMC, or to a special purpose vehicle. It also permits recapitalisations to address the losses of such banks resulting from the transfer of assets at their long-term economic value.
- (33) In May 2013 Slovenia designed a National Reform Programme aiming at implementing the EU Country Specific Recommendations addressed to Slovenia. That National Reform Programme includes the transfer of impaired assets from the three biggest Slovenian banks, including NLB, to the BAMC. Assets to be transferred to the BAMC include: bankrupt companies, claims to be restructured, claims with real estate collateral, financial holdings and other non-performing loans.
- (34) On 17 May 2013 Slovenia provided the Commission with a preliminary list of assets to be transferred from NLB to the BAMC amounting to EUR 1,9 billion. That list has been further updated since then and the size of the portfolio of assets to be transferred is EUR 2,2 billion (nominal amount) for loans and EUR 94 million (market value) for equities.

⁽⁶⁾ See detailed description in recitals 16 to 22 of the first rescue decision.

⁽⁷⁾ See full details in recitals 23 to 31 of the second rescue and opening decision.

4. THE RESTRUCTURING PLAN AND COMMITMENTS

- (35) The Slovenian authorities submitted a Restructuring Plan covering the restructuring period from 2013 until 31 December 2017.
- (36) The main pillars of the Restructuring Plan are enhanced corporate governance and risk management, a refocusing on the bank's core markets, a decrease of non-performing loans and a cost reduction programme. The Restructuring Plan includes financial projections for NLB until 31 December 2017 under a base scenario and it also factors in the adverse scenario developed under the AQR/ST.
- (37) Slovenia provided a number of commitments set out in the Annex. In order to ensure that the commitments will be implemented, a Monitoring Trustee will be appointed. The activities of the monitoring trustee will apply throughout the restructuring period.

4.1. RETURN TO VIABILITY IN THE LONG RUN

- (38) The two major issues with regard to restoring the viability of NLB are: (i) the implementation of up-to-date corporate governance structures and arrangements to ensure that NLB's decisions are business-oriented; and (ii) the overhaul of its credit policies and risk management processes, especially in the management of credit risk.
- (39) Corporate governance changes listed in the Annex will be implemented within three months after the date of adoption of this Decision, in accordance with the EU Capital Requirements Directive ⁽⁸⁾ and Slovenian domestic legislation. The resulting changes to the bylaws and internal rules of NLB seek to ensure that the management board of NLB will have the sole powers and responsibilities for managing the day-to-day business of NLB independently and in the sole interest of the bank. As a result, the arm's length principle will apply to the relationship between the bank and its shareholders, in particular the Republic of Slovenia. In that respect Slovenia commits not to intervene in the appointment of supervisory board members and executives other than through the exercise of its shareholder rights under ordinary Slovenian corporate law. NLB will allocate two-thirds of the seats and voting rights on the supervisory board and its committees to independent experts. NLB will put arrangements in place to ensure an independent and objective internal audit function. NLB will follow a prudent and sound business policy geared towards sustainability while implementing the planned measures. NLB will further review its incentive and remuneration policies in order to ensure that they do not encourage unreasonable risk-taking, are geared towards long-term and sustainable goals, and are transparent and compliant with the European Banking Authority Guidelines on remuneration Policies and Practices of 10 December 2010. NLB will cap, until 31 December 2017, the total remuneration to any board member and employee performing special work in line with the relevant rules set forth in the 2013 Banking Communication ⁽⁹⁾. The variable annual remuneration of the management board and of employees performing special work employed in the front office functions will be limited to five monthly salaries. The variable amount of employees performing special work employed in other functions will be limited to three monthly salaries. Further, the payment of at least 50 % of the variable remuneration will be deferred over a period of three years. As a result until 31 December 2017 such remuneration will not exceed 15 times the national average salary in Slovenia or 10 times the average salary of NLB, whichever is higher.
- (40) NLB will overhaul its internal pricing and risk management processes by implementing a number of rules and measures listed in detail in the Annex. In particular, pricing for new loans will be considered adequate if the new loan contributes to achieving a positive return on equity (hereinafter 'RoE') of at least [...] ^(*) % in 2014, [...] % in 2015, [...] % in 2016 and [...] % in 2017 on each client relationship, under the terms further specified in the Annex.
- (41) NLB's assets will be split between a core unit (around EUR 10,6 billion) and a non-core unit (around EUR 2 billion). A pool of impaired assets composed of non-performing loans (for a nominal amount of EUR 2,3 billion) and a list of equities (having a market value of EUR 94 million) will be transferred to the BAMC in the context of an impaired assets measure. NLB will reduce its group balance sheet total from approximately EUR 17,9 billion in 2010 to EUR [10-20] billion by 31 December 2017.

⁽⁸⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

⁽⁹⁾ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication'), OJ C 216, 30.7.2013, p. 1.

^(*) Confidential information.

- (42) In addition to the State aid received in March 2011 and July 2012, an additional capital injection of 1,558 billion by the State is envisaged in the Restructuring Plan. That third recapitalisation will immediately increase the Core Tier 1 ratio under the CRR of NLB to 15 %, and will also address the expected losses. It will therefore ensure that NLB will respect its regulatory capital requirements throughout the restructuring period.
- (43) NLB's future business strategy focuses on its core markets of retail, SME and selected corporate business activities. NLB plans a significant reduction of its participation portfolio consistent with its strategy of focussing on its core business in core regions. In that respect, the restructuring plan provides for a significant reduction of NLB's non-core business which encompasses the sale of all leasing and factoring/forfeiting activities and real estate management business and for the discontinuation, for the time being of the non-core business of providing new credit to corporate clients abroad.
- (44) NLB will reduce its credit business in Slovenia in the following sectors ([...] % reduction of RWA on average between 31 December 2013 and 31 December 2017): i) corporate clients in construction industrial sector (RWA from EUR [...] million at 31 December 2013 to EUR [...] million at 31 December 2017); ii) corporate clients in transport industrial sector (RWA from EUR [...] million at 31 December 2013 to EUR [...] million at 31 December 2017; iii) financial holdings (RWA from EUR [...] million at 31 December 2013 to EUR [...] million at 31 December 2017).
- (45) As a result of the implementation of the Restructuring Plan, and in particular the transfer of impaired assets to the BAMC, NLB's total assets will decrease from EUR 14,5 billion at 31 December 2012 to EUR [10-20] billion at 31 December 2017 and RWA from EUR 11,1 billion at 31 December 2012 to EUR [5-10] billion at 31 December 2017.
- (46) NLB's current portfolio is fully funded until its contractual maturity. For the future, NLB plans to refocus strongly on retail deposits, which are its historical funding base, but also plans to have a diversified wholesale funding base. Loan-to deposit ratios will improve from 105 % in 2012 to [70-80] % at 31 December 2017.
- (47) NLB is also planning a far-reaching cost-control and cost-reduction programme. NLB's operating costs amounted to EUR 368 million in 2012 at group level. NLB will reduce its operating costs at group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to EUR [300-350] million by 31 December 2014, EUR [300-350] million by 31 December 2015, EUR [250-300] million by 31 December 2016 and to EUR [200-250] million by 31 December 2017.
- (48) At 31 December 2017 NLB projects to achieve a RoE after tax of [5-10] %. The Restructuring Plan provides financial projections over the period 2013-2017 pointing to a Core Tier 1 ratio under CRR of [10-20] % at 31 December 2017. NLB's profits after taxes will amount to EUR [100-150] million in 2017.
- (49) Finally, Slovenia will reduce its shareholding in NLB [...] (the '[...]' by [...]). If Slovenia has not entered into binding sale and purchase agreements for the sale of its shareholding in NLB apart from [...], Slovenia and NLB will grant to the Divestiture Trustee an exclusive mandate to sell [...], [...], [...], [...], [...] and [...].

4.2. BURDEN-SHARING

- (50) The Restructuring Plan provides for a coupon, dividend and profit distribution ban throughout the duration of the Restructuring Plan until 31 December 2017.
- (51) Slovenia commits that NLB will refrain during the restructuring period from making any payments on capital instruments, unless those payments stem from a legal obligation. Slovenia also commits that NLB will not call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the State may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. That commitment not to pay coupons during the restructuring period does not apply to newly issued instruments (meaning instruments issued after the Commission's adoption of the present decision), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of the present decision.

- (52) NLB's existing shareholders were already severely diluted due to the first and second recapitalisations in March 2011 and July 2012. NLB's remaining subordinated securities amount to EUR 250 million. Slovenia commits that before any State aid (i.e. the third recapitalisation and the transfer of impaired assets to the BAMC) is granted NLB will write-down in full its shareholders' equity and outstanding subordinated debts. As a result the State will become the sole shareholder of NLB, compared to the 33,1 % of shares it held before the first State recapitalisation in March 2011.
- (53) Slovenia commits to sell NLB's participations in the companies listed in paragraph 3 of the Annex, representing a total asset value of EUR [100-150] million as of 31 December 2012, and in non-core subsidiaries listed in paragraph (4) of the Annex, representing a total asset value of EUR [950-1000] million as of 31 December 2012. NLB will also sell all of its joint venture participations listed in paragraph (5) of the Annex. In addition, NLB will close [...] by [...].
- (54) Any possible recapitalisation by NLB of its subsidiaries via equity injections will be subscribed at (i) 25 % discount to the share price — after adjustment for the 'dilution effect' quantified using generally accepted market techniques ⁽¹⁰⁾ — immediately prior to the announcement of the capital injection or (ii) the lowest price at which other shareholders of those subsidiaries contribute to the recapitalisation. For non-listed entities, the market value of the shares will be established using an appropriate and generally accepted market-based valuation methodology. If any such capital injection takes the form of hybrids instruments, those instruments will contain an alternative coupon satisfaction mechanism and a provision determining the conversion rate of the hybrid instrument into equity capital at 25 % discount to the TERP (established in an analogical fashion to the case of equity injection).

4.3. DISTORTION OF COMPETITION MEASURES

- (55) In order to limit distortion of competition, NLB plans to reduce its business activities in Slovenia. NLB will reduce its balance sheet total from approximately EUR 17,9 billion in 2010 to EUR [10-20] billion by 31 December 2017.
- (56) NLB's commitments include the sale of banking participations in strategic markets. NLB will sell its [...] by [...]. That sale will reduce NLB's influence [...]. NLB will also fully divest its shareholding in [...], by [...].
- (57) NLB will reduce its credit activities in the construction, transport and financial holdings sectors in Slovenia by reducing RWA by [...] % on average in those sectors from 31 December 2013 to 31 December 2017. NLB will discontinue the business strategy of providing new credit activities to corporate clients abroad.
- (58) NLB will discontinue all leasing, factoring, and forfeiting business through the divestment of subsidiaries in Slovenia and abroad.
- (59) NLB will comply with a coupon ban, a dividend ban, an acquisition ban and a ban on advertising and aggressive commercial practices according to the terms specified in the relevant paragraphs of the Annex.
- (60) A capital repayment mechanism is put in place according to which NLB will pay dividend disbursements to its shareholder in 2015, 2016 and 2017 ⁽¹¹⁾. For the fiscal years 2015 and 2016, NLB will pay the lower of (i) 50 % of the excess capital above the applicable regulatory capital requirement under European and Slovenian law (including pillar 1 and 2) plus a capital buffer of 100 basis points or (ii) the net income for the relevant year. For the fiscal year 2017, NLB will pay the lower of (i) 100 % of the excess capital above the applicable regulatory capital requirement under European and Slovenian law (including pillars 1 and 2) plus a capital buffer of 100 basis points or (ii) the net income for the relevant year. Without prejudice to the competences of the Bank of Slovenia as banking supervisor of NLB, the dividend disbursement shall be suspended if it would endanger the solvency position of the bank in the following years.

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

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

4.4. DESCRIPTION OF THE IMPAIRED ASSETS MEASURE

a. Objective

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

b. Set up and characteristics

- (62) Slovenia established the BAMC to support the banking sector stability.
- (63) The overall objective of the BAMC is the management and orderly divestment of the assets it receives, maximising their recovery. In pursuing that activity, the BAMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.
- (64) The BAMC may acquire or cover risks, in particular from assets, securities, derivatives, rights and obligations from approved loans or guarantees with the associated collateral. The BAMC will pay NLB the established transfer value by State-guaranteed debt securities issued by the BAMC. The transfer value of the assets transferred to the BAMC will be equal to or below their real economic value (hereinafter 'REV') established by the Commission's experts in line with the State aid rules.

c. Scope of the transfer of impaired assets and loans

- (65) The transfer concerns the following categories of assets:
- (a) companies in bankruptcy with housing real estate as collateral;
 - (b) claims to financial holdings to be restructured;
 - (c) other companies in bankruptcy;
 - (d) other claims with housing real estate as collateral;
 - (e) financial holdings;
 - (f) construction companies;
 - (g) transport companies;
 - (h) other non-performing exposures.
- (66) On 17 May 2013 Slovenia sent to the Commission a preliminary list of assets to be transferred from NLB to the BAMC amounting to EUR 1,9 billion. That list has been further updated since then. The size of the portfolio to be transferred is EUR 2,3 billion of nominal for loans and EUR 94 million of market value for equities.
- (67) As a result of the asset transfer, the RWA of NLB will be reduced by EUR 1,4 billion and entails a total reduction of capital needs of EUR 112 million. Those figures were reported in the list of assets to be transferred to the BAMC sent to the Commission on 14 November 2013.

d. Methodology for the calculation of the transfer value

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

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

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

e. The transfer value

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

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

f. Market price

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

g. Independent expert advice for the Commission

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

5. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

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

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

6. COMMENTS FROM INTERESTED PARTIES

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

7. POSITION OF SLOVENIA

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

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

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

⁽¹²⁾ Communication from the Commission on the treatment of impaired assets in the Community banking sector (OJ C 72, 26.3.2009, p. 1).

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

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

⁽¹⁵⁾ Commission's Communication of 23 July 2009 on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

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

8. ASSESSMENT

8.1. EXISTENCE AND AMOUNT OF THE AID

- (82) The Commission has already concluded ⁽¹⁶⁾ that the first and the second recapitalisations of NLB constitute State aid, which was not disputed by Slovenia. Therefore in this section the Commission will assess only whether the two new measures (the third recapitalisation and the transfer of impaired assets to the BAMC) constitute State aid.
- (83) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings is, insofar as it affects trade between Member States, incompatible with the internal market.
- (84) As the third recapitalisation of EUR 1,558 billion will be provided directly by the Republic of Slovenia, the Commission concludes that the measure stems from State resources.
- (85) The third recapitalisation allows NLB to obtain capital in a situation of financial and economic crisis where due to high uncertainty surrounding the Slovenian banking sector it would be impossible to find such capital on the market. Therefore the Commission considers that the third recapitalisation would not have been provided by a market economy investor. The third recapitalisation must therefore be regarded as providing an advantage to NLB. Moreover, that advantage is selective since it only benefits one bank.
- (86) Given that NLB is and will be active in the financial sector, which is open to intense international competition, any advantage from State resources to the bank has the potential to affect intra-Union trade and to distort competition. The third recapitalisation therefore constitutes State aid within the meaning of Article 107(1) TFEU.
- (87) The aid element in the third recapitalisation amounts to EUR 1,558 billion.
- (88) As regards the transfer of impaired assets to the BAMC, the Commission considers that the measure involves State resources. Slovenia created the BAMC to support banking sector stability, helping troubled banks to transfer their risky assets off their balance sheet at a price over current market value. Those transfers of assets from NLB to the BAMC will limit the loss the bank would otherwise need to take in order to clean up its balance sheet and implement its restructuring plan.
- (89) In order to assess the existence of aid in the transfer of impaired assets to the BAMC, the Commission's experts have independently determined the current market value of the portfolio to be transferred as well as the REV, which at the same time will constitute the price at which the assets will be transferred. As the transfer value of the portfolio is higher than the current market value, the measure constitutes an advantage to NLB.
- (90) That advantage strengthens NLB's position compared to that of its competitors in Slovenia and other Member States that are not benefitting from the same State support. The measure must therefore be regarded as liable to distort competition and affect trade between Member States, given also that NLB is and will be active in the financial sector, which is open to intense international competition.
- (91) As regards the aid amount in the transfer of impaired assets to the BAMC it should be noted that footnote 2 to point 20(a) of the Impaired Assets Communication defines the aid amount in an asset relief measure as the difference between the transfer price of the assets and the market price. The transfer price is EUR 617 million, while the market price is estimated at EUR 486 million. The aid granted to NLB as a result of the transfer of impaired assets to the BAMC amounts to EUR 130 million.
- (92) Consequently, the total aid to NLB as a result of the first, second and third recapitalisations and the transfer of impaired assets to the BAMC amounts to EUR 2,321 billion, representing 20 % of NLB's RWA as of December 2012.

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

8.2. COMPATIBILITY OF THE AID

8.2.1. *Legal basis for the compatibility assessment*

- (93) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended 'to remedy a serious disturbance in the economy of a Member State'. The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. This has been successively detailed and developed in the six Crisis Communications ⁽¹⁷⁾ as well as in the 2013 Banking Communication.
- (94) The 2013 Banking Communication applies to State aid measures notified from 1 August onwards. In NLB's case, Slovenia has notified additional State aid in the form of capital injections and capital relief after 1 August 2013. As a result the provisions of the 2013 Banking Communication apply to the compatibility assessment of NLB's restructuring plan.
- (95) The Commission's various approvals of the measures undertaken by the Slovenian authorities to combat the financial crisis ⁽¹⁸⁾ confirm the presence of a serious disturbance in the Slovenian economy. Therefore, the legal basis for the compatibility assessment of all the measures covered by the Restructuring Plan (namely the first recapitalisation, the second recapitalisation, the third recapitalisation and the transfer of impaired assets to the BAMC) is Article 107(3)(b) TFEU.
- (96) As regards specifically the compatibility of the transfer of impaired assets to the BAMC, the Commission assesses that measure with regard to the Impaired Assets Communication as adapted by the 2013 Banking Communication.
- (97) As regards the compatibility of the restructuring aid provided to NLB, the Commission assesses it on the basis of the Restructuring Plan with regard to the Restructuring Communication as supplemented by the 2013 Banking Communication.

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

- (98) As regards the compatibility of the aid provided to NLB in the form of the transfer of impaired assets to the BAMC, the Commission has to assess that measure on the basis of the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication. The Impaired Assets Communication defines impaired asset relief as any measure which 'free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses' and sets out criteria for the compatibility of such measures with the internal market. Those criteria comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

Eligibility of assets

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

⁽¹⁷⁾ Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ('2008 Banking Communication') (OJ C 270, 25.10.2008, p. 8); Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ('Recapitalisation Communication') (OJ C 10, 15.1.2009, p. 2); the Impaired Assets Communication; the Restructuring Communication; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2010 Prolongation Communication') (OJ C 329, 7.12.2010, p. 7) and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2011 Prolongation Communication') (OJ C 356, 6.12.2011, p. 7).

⁽¹⁸⁾ See e.g. Rescue recapitalisation in favour of NLB SA.32261 (11/N); Second recapitalisation of NLB and Restructuring of NLB SA.34937 (2012/C) (ex 2012/N) SA.33229 (2012/C) (ex 2011/N); and Recapitalisation of NKBM SA.35709 (OJ C 162, 7.6.2013, p. 5).

- (100) The Impaired Assets Communication however further sets out that a balance needs to be found between meeting the objective of immediate financial stability and the need to ensure the return to normal market functioning, which would plead in favour of flexibility when identifying classes of assets. In particular, whilst the Impaired Assets Communication cites as eligible assets those that triggered the financial crisis (it explicitly refers to US mortgage-backed securities), it also permits eligibility to be extended to 'well-defined categories of assets corresponding to a systemic threat upon due justification, without quantitative restrictions'.
- (101) As regards the present case, the impaired assets measure is targeted at non-performing assets mostly related to construction companies, transport companies and financial holdings, or non-performing assets with housing real estate collateral. Those sectors were at the core of NLB's difficulties with significant portfolios of non-performing loans (41 % of non-performing loans for financial holdings and 74 % for construction companies). The portfolio to be transferred accounts for more than half of impairments booked by NLB d.d. as of 31 December 2012. Those assets are therefore in line with the eligibility criteria of the Impaired Assets Communication.

Transparency and disclosure

- (102) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full *ex-ante* transparency and disclosure of impairments by eligible banks on the assets which will be covered by the relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. The Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.
- (103) An initial valuation of the assets has been performed by the Bank of Slovenia. First, a stress test was also disclosed on 10 May 2013 by the Bank of Slovenia, indicating the capital impacts of the transfer of asset from the three main Slovenian banks to the BAMC. Second, the results of the AQR/ST, carried out by independent experts, were disclosed on 4 December 2013, indicating the capital shortfall of the Slovenian banks under a stress scenario. The asset classes to be transferred have been clearly identified, and the transfer will only be performed on the basis of the valuation methodology approved by the Bank of Slovenia. The Member State has thus provided sufficient transparency and disclosure on the entirety of NLB's impaired assets to be transferred to the BAMC. In particular, the AQR/ST identifying the shortfall of capital of the bank was carried out by external experts.

Management of the assets

- (104) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of ensuring a clear functional and organisational separation between the beneficiary bank and its assets, notably as to their management, staff and clientele. The Communication provides in that respect that such arrangements should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.
- (105) The assets will be managed by the BAMC, which is fully independent from NLB. It can therefore be concluded that the separate asset management is in line with the requirements of the Impaired Assets Communication.

Valuation

- (106) Section 5.5 of the Impaired Assets Communication notes that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of valuation is to establish the REV of the assets. That value constitutes the benchmark level in so far as a transfer of impaired assets at that value indicates the compatibility of aid — it creates a relief effect because it is in excess of the current market value but keeps the aid amount to the minimum necessary.
- (107) The Bank of Slovenia assessed the portfolio and the Commission has scrutinised with external experts the valuation and the underlying general methodology in order to ensure a consistent approach at Union level.

(108) The conclusions are the following:

- (i) the materials submitted by NLB provide a thorough analysis of high qualitative standard;
- (ii) a rating-based approach using NLB's ratings and updated financial balance sheet data would be relevant for the portfolio transferred to the BAMC;
- (iii) the estimated REV of the corporate loan book of NLB ranges at 60,2 % of the gross exposure, with an error margin of +/- 5 %, on the basis of a comparative stresses method. The comparative stresses method applies a stress to the level of provisions as determined by an asset quality review. The Commission and its external experts calibrated that level of stress using case practice. The level of the REV as estimated by the experts refers to the corporate loan book of NLB, which is larger than the portfolio which has been finally identified for the transfer to BAMC. Therefore that estimate cannot be used as a proxy for the assessment of the REV of the portfolio to be transferred to the BAMC.

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

(110) For loans to going concern undertakings, the Commission applied a rating-based approach as recommended by the external experts. On the basis of the current rating of NLB and updated financial information on the exposure, the Commission determined a probability of default. Then the loss given default was assessed following a detailed analysis of collaterals, on the basis of existing credit documentation or prior credit quality review exercises.

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

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

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

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

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

Burden-sharing and remuneration

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

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

Conclusion on the impaired assets measure

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

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

- (119) According to point 31 of the 2013 Banking Communication, any restructuring plan involving restructuring aid will, with the exception of the requirements on capital raising and burden-sharing, continue to be assessed on the basis of the Restructuring Communication.
- (120) According to the Restructuring Communication and the 2013 Banking Communication, first, the restructuring plan has to demonstrate that the restructuring process a beneficiary of State aid is undergoing is suitable to restore its long-term viability. Second, the aid amount must be limited to the minimum necessary and both shareholders and subordinated creditors must contribute to reducing the capital shortfall to the maximum extent. Third, measures need to be in place to limit distortion of competition created by artificially supporting the market power of the beneficiary and to ensure a competitive banking sector. Finally, monitoring and procedural issues need to be addressed.

(i) Restoration of long-term viability

- (121) As set out under the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which demonstrates how the long-term viability of the beneficiary will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.
- (122) The Restructuring Plan for NLB covering the period up to 31 December 2017 shows a return to viability at the end of that restructuring period. The main trigger is the expected improvement in the quality of the portfolio and the reduced need for additional impairments and provisioning. The return to viability will also be achieved by the cleaning of NLB's balance sheet resulting from the planned transfer of non-performing assets to the BAMC. NLB will also profit from improved operational efficiency resulting from cost reduction measures and stabilisation of income. To ensure the bank's viability after taking into account the transfer of non-performing assets to the BAMC, the Restructuring Plan is based on the assumption of a recapitalisation by the State of EUR 1,558 billion in 2013 and a full write-off of subordinated bonds and shareholders' equity in the amount of EUR 250 million.
- (123) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. The Restructuring Plan first explains the causes of NLB's difficulties. NLB's loan portfolio was badly hit during the crisis and generated high amounts of impairment losses.
- (124) The growth of the loan book was funded by the wholesale market, which resulted in soaring loan-to-deposit ratios (from 74 % in 2002 to 137 % in 2009). In the meantime, the bank did not sufficiently strengthen its capital base and relied heavily on hybrids before the start of the crisis.
- (125) Prior to the crisis, NLB accumulated exposures to the construction industry, property developers and financial holdings, but the quality of the associated risk management lagged behind. The accumulation of bad loans proved to be disastrous when the crisis started and the economy slowed. The national road construction programme ended in 2008 and the domestic demand for real estate declined drastically. Most Slovenian companies were highly leveraged and found themselves squeezed with an economic downturn, a depreciation of assets and stocks and reduced access to credit. The conjunction of a severe economic downturn and a poor risk management framework resulted in rising non-performing loans. Indeed, non-performing loans reached 29 % of gross loans for NLB at 30 September 2012, with the worst record for the construction industry (74 %). As a result, losses after tax amounted to EUR 87 million in 2009, EUR 202 million in 2010, EUR 240 million in 2011 and EUR 273 million in 2012.
- (126) Weak corporate governance rules and the resulting influence of the State in the day-to-day business of the bank was also one of the reasons leading to the problems of the bank.

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

a. Strengthening the corporate governance framework

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

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

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

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

b. Strengthening the pricing policies and risk management framework

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

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

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

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

c. Rebalancing the business toward less risky activities

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

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

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

d. Repairing the balance sheet structure

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

(140) The amount of the third recapitalisation takes into account the needs of the bank resulting from the AQR/ST. After that recapitalisation the Core Tier 1 ratio of the bank under the CRR will immediately reach 15 % and a level of [10-20] % by 31 December 2017, largely exceeding the capital requirement set by the Bank of Slovenia at 9 % Core Tier 1 ratio under the CRR.

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

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

e. Restoring long-term profitability

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

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

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

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

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

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

(ii) Own contribution and burden-sharing

- (149) The Restructuring Communication supplemented by the 2013 Banking Communication indicates that an appropriate contribution by the beneficiary is necessary to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides (i) that both the restructuring costs and the amount of aid should be limited and (ii) that there should be a maximum burden-sharing by existing shareholders and subordinated creditors.
- (150) Adequate burden-sharing will normally entail, after losses are first absorbed by equity, contributions by hybrid capital holders and subordinated debt holders. Hybrid capital and subordinated debt holders must contribute to reducing the capital shortfall to the maximum extent. Such contributions can take the form of either a conversion into Common Equity Tier 1 ⁽¹⁹⁾ or a write-down of the principal of the instruments. In any case, cash outflows from the beneficiary to the holders of such securities must be prevented to the extent legally possible.
- (151) The Restructuring Plan does not contain any elements that suggest that the aid exceeds the means required to cover the costs resulting from the restoration of viability of NLB. The capital shortfall which needs to be covered by the third recapitalisation was determined on the basis of an AQR/ST. That capital injection estimation is based in particular on an asset evaluation which shows that level to be necessary and sufficient to sustain a stress situation. The AQR/ST brought further certainty on the level of capital needed. The amount of the third recapitalisation makes it possible for the bank to meet its regulatory capital requirements and market expectations. In addition, a capital repayment mechanism will be in place to limit the build-up of excess capital in NLB, under which NLB will have to pay dividends for the fiscal years 2015, 2016 and 2017 calculated on increasing percentage of any excess capital. The capital repayment mechanism ensures that excess capital above minimum regulatory capital requirements will not permit the bank to enter into new business before repaying the State.
- (152) Notwithstanding the dividend ban, in order to allow NLB d.d. to obtain dividends from its subsidiaries and to avoid the build-up of liquidity in them they may pay out dividends. Those companies may make such dividend payments if NLB d.d. is — directly or indirectly — the majority shareholder and all external shareholders combined hold less than 15 % of shares and voting rights in the relevant company. The Commission considers that the possibility for the subsidiaries to make such dividend payments to NLB d.d. contributes to maintain the aid amount to the minimum necessary, will allow an appropriate degree of flexibility for the efficient management of NLB's consolidated capital and liquidity and will facilitate the repayment of aid. The fact that, as a result of that, also minority shareholders of the subsidiaries would receive part of the dividends represents a proportionate spill-over effect compared to those benefits considering in particular the relative small amount of dividends eventually payable to all shareholders other than NLB d.d. which will not exceed of more than one-tenth the amount of dividends eventually payable to NLB d.d..
- (153) First, the commitments regarding the burden-sharing of shareholders and subordinated debt holders comply with the Restructuring Communication supplemented by the 2013 Banking Communication.
- (154) In that respect, Slovenia committed that before any State aid is granted to NLB (i.e. the third recapitalisation and the transfer of impaired assets to the BAMC), the latter will write-down in full its shareholders' equity and outstanding subordinated debts so ensuring compliance with the requirements of 2013 Banking Communication. The Commission positively notes that the contribution of subordinated debt holders is achieved to the maximum extent possible, thus ensuring adequate burden-sharing. The State capital injections will only be implemented after the complete implementation of the wipe-out of the subordinated debt holders. That sequence ensures that all existing subordinated debt holders have to fully contribute to the restructuring costs of the bank prior to the State stepping in. The State will thereby own 100 % of the bank's shares after the third recapitalisation compared to 33,1 % prior to the first capital injection by the State.
- (155) Second, point 24 of the Restructuring Communication provides that an adequate remuneration of State capital is also a means of achieving burden-sharing.

⁽¹⁹⁾ As defined by Article 26 of Regulation (EU) No 575/2013.

- (156) As regards the first and the second recapitalisations, the Commission notes that they were conducted at prices compatible with the burden-sharing principles ⁽²⁰⁾. Concerning the third recapitalisation included in the Restructuring Plan, the State will own 100 % of the bank after the recapitalisation, thereby maximising the burden-sharing. The Commission has also already established that the transfer of impaired assets to the BAMC is appropriately remunerated.
- (157) Third, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by NLB, NLB will carry out cost-cutting measures resulting in a decrease of operating costs from EUR 368 million at 31 December 2012 to EUR [250-300] million at 31 December 2017 in a base case scenario. The Restructuring Plan also provides for a divestment of at least [80-90] % of the bank's non-banking activities. In addition a capital repayment mechanism is put in place allowing payment of dividends to the State for the fiscal years 2015, 2016 and 2017 to a maximum extent without endangering the regulatory capital requirements of the bank.
- (158) Fourth, in addition to those structural measures, Slovenia also committed to a coupon ban, an acquisition ban and a ban on advertising and aggressive commercial practices.
- (159) The Commission notes that the commitment not to pay coupons does not apply to newly issued capital instruments provided any payment of coupons on such newly issued capital instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of this decision ⁽²¹⁾. The Commission accepts that limitation of the coupon ban in order to permit the group to raise fresh hybrid capital on the market in line with point 26 of the Restructuring Communication. The issuance of subordinated securities after the date of adoption of this decision will permit the bank to raise additional funding and hybrid capital while not triggering the payment of coupons on existing securities, in particular on existing subordinated debt. By virtue of the limitation of the coupon ban the bank will therefore be in a position to issue additional Tier 1 capital under the CRR, which may potentially reduce the capital it needs in form of equity. In that respect, it must be recalled that coupons must be optional and cannot be mandatory for debt instruments to qualify as Tier 1 capital under the CRR. Finally, in the present case it can also be noted that, after the full write-down of NLB's shareholders' equity and outstanding subordinated debt, no equity and no subordinated debt is left in the bank. The limitation of the coupon ban does not undermine the useful effect of a coupon ban of the kind contemplated by the Restructuring Communication because the commitment provided by NLB that the payment of coupons on new instruments will not create a legal obligation to make any coupon payments on NLB's existing securities will prevent any unnecessary outflow of capital.
- (160) Accordingly, burden-sharing on equity, hybrid and subordinated debt-holders, cost reductions, divestments and adequate remuneration for the aid represent a sufficient own contribution by NLB to the costs of its restructuring.
- (161) For those reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

(iii) Measures limiting the distortion of competition

- (162) Finally, section 4 of the Restructuring Communication requires that the Restructuring Plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates post-restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the beneficiary's own contribution and burden-sharing over the restructuring period.
- (163) NLB has received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 2,321 billion equivalent to 20 % of NLB's RWA ⁽²²⁾. The adequate remuneration of the aid and the need to implement measures to limit potential distortions of competition are necessary in particular in view of the relatively large amount of aid.

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

⁽²¹⁾ Other decisions refer to similar commitments: see recital 218 of Commission Decision in Case Restructuring of Royal Bank of Scotland and participation in the Asset Protection Scheme C(2009)10112 final (OJ C 119, 7.5.2010, p. 1) and recital 165 of Commission Decision in Case Restructuring of Lloyds Banking Group C(2009) 9087 final (OJ C 46, 24.2.2010, p. 2).

⁽²²⁾ RWA as of December 2012.

- (164) A first measure that will limit distortions of competition is the divestment of NLB's stakes in [...]. The divestment of its [...], will reduce NLB's market share [...]. The divestment of NLB's [...] will also contribute to limit NLB's market share and open the market to competitors.
- (165) The reduction of NLB's market presence in loans to the corporate sectors of construction, transport and financial holdings is achieved thanks to the yearly limitations on RWA in those sectors.
- (166) In addition, NLB will discontinue leasing, factoring, forfeiting and non-core business in Slovenia and abroad so further contributing to limit the possible spill-over effect of the State aid received to activities other than its core banking business.
- (167) NLB will continue its operations under conditions limiting the distortion of competition. As a monoline bank with enhanced risk management and governance policies and a more efficient lending policy with enhanced pricing achieving a RoE of [10-20] % on new loans at 31 December 2017, the bank will refrain from providing excessively advantageous conditions to its clients. Those elements contribute to the viability of NLB but also limit distortions of competition.
- (168) Slovenia committed to an acquisition ban, ensuring that NLB will not use the State aid received to acquire any new business. In addition a capital repayment mechanism is put in place allowing NLB to pay dividends to the State for the fiscal years of 2015, 2016 and 2017 to a maximum extent without endangering the regulatory capital requirements of the bank. That capital repayment mechanism ensures that excess capital above regulatory capital requirements or any other regulatory requirements will not permit the bank to enter into new business before repaying the State.
- (169) In addition to those structural measures, Slovenia also committed to a set of behavioural constraints preventing distortions of competition. The Commission welcomes a ban on advertising State support and on aggressive commercial practices, thus preventing NLB using the aid for anti-competitive market conduct.
- (170) Taking into account that mix of measures and commitments, there are sufficient safeguards to limit potential distortions of competition in view of the amount of aid to NLB.

8.2.4. Monitoring of the Restructuring Plan

- (171) Pursuant to section 5 of the Restructuring Communication supplemented by the 2013 Banking Communication, regular reports are required to allow the Commission to verify that the Restructuring Plan is being implemented properly. Slovenia will appoint a monitoring trustee who will provide the Commission with semi-annual monitoring reports.
- (172) To ensure proper implementation of the Restructuring Plan throughout its duration, the Slovenian authorities will take all the necessary measures to ensure that NLB complies with the commitments listed in the Term Sheet.
- (173) Moreover, the correct implementation of the Restructuring Plan and the full and correct implementation of all commitments contained in the Term Sheet attached in the Annex to this Decision will be continuously monitored by an independent, sufficiently qualified Monitoring Trustee. The Monitoring Trustee will have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustee may ask NLB for explanations and clarifications. Slovenia and NLB are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring.

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

- (174) The Commission notes that the Restructuring Plan presented by Slovenia adequately addresses the issues of viability (corporate governance included), burden-sharing and distortion of competition and is in line with the requirements of the Restructuring Communication supplemented by the 2013 Banking Communication.
- (175) The Commission thus removes the doubts of the Commission on the compatibility of the Restructuring Plan raised in the second rescue and opening decision.

9. CONCLUSION

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

HAS ADOPTED THIS DECISION:

Article 1

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

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

Article 2

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 18 December 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

COMMITMENTS TOWARDS THE EUROPEAN COMMISSION

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

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

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

- (1) [**reduction of the balance sheet**] According to the content of the restructuring plan NLB will reduce its group balance sheet total from approximately EUR 17,9 billion in 2010 to EUR [10-20] billion by 31 December 2017, with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance sheet total.
- (2) [**reduction of costs**] NLB's operating costs amounted to EUR 368 million in 2012 at Group level. NLB will reduce its operating costs at Group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to achieve either a cost-to-income ratio below 55 % or in case the cost-to-income ratio is above [50-60] % to EUR [300-350] million by the end of 2014, EUR [300-350] million by the end of 2015, EUR [250-300] million by the end of 2016 and to EUR [250-300] million by the end of 2017.

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

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

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

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

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

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

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

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

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

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As of 31 December 2012, non-core participations represented a total asset value of EUR [950-1 000] million.

- (4.1) The above participations shall be divested (i.e. sold, liquidated or wound down), or their divestment shall be procured, to the extent that by 31 December 2015, the asset value of these participations shall be reduced by at least [40-50] % (i.e. to at least EUR [550-600] million) and by at least [80-90] % (i.e. to at least EUR [150-200] million) by 31 December 2016.
- (4.2) The divestment of a participation is deemed to be completed once the respective company has been liquidated or wound down or NLB d.d. has concluded a binding sale and purchase agreement for the respective participation with one or more Purchasers that are independent of and unconnected to NLB.
- (4.3) The commercial activity of participations that have not been divested within the deadlines set out in (i) above, e.g. due to pending lawsuits or disputes with other shareholders, will be terminated in accordance with the duration and nature of the underlying business. No new business will be executed (except forced prolongations of existing engagements). In such a case, the respective divestment is deemed to be completed if either the total assets of a particular participation have been reduced to 10 % compared to the total assets of the participation as of 31 December 2012, or the statutory formal liquidation procedure has been initiated, or the capital requirements for the subsidiaries concerned do not exceed a total of EUR 5 million on a consolidated level.
- (4.4) If NLB misses the asset reduction target for 2015, prompt corrective action should be implemented and notified to the Commission.
- (4.5) If NLB misses the asset reduction target for 2016, NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by [...] the above participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth in paragraph 4.2 above.
- (4.6) In any case participations shall be divested in a manner consistent with the Commitments.
- (5) **[sale of joint venture participations]** NLB d.d. will sell all of its joint venture participations in the following companies by [...]:
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]
- (5.1) The sale of the above joint venture participations is deemed to be completed once: (i) NLB has concluded a binding agreement for the respective participation with one or more Purchasers that are independent of and unconnected to NLB. (ii) the ownership of the joint ventures had been reduced to [...] %.
- (5.2) If NLB has not concluded binding sale and purchase agreements concerning each of the above participations or reduced its ownership to [...] % by [...], NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by [...] the participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth in in paragraph 5.1 above.

- (5.3) In any case participations shall be sold in a manner consistent with the Commitments.
- (6) **[sale of participations in banks]** NLB d.d. will sell its participations in [...] by [...]. The sale of a participation is deemed to be completed once NLB d.d. has concluded a binding sale and purchase agreement for the respective participation with one or more Purchasers that meet the following requirements: (i) be independent of and unconnected to NLB (ii) have the financial resources, proven expertise and incentive to maintain and develop the acquired business and/or companies as a viable and active competitive force (iii) do not create prima facie competition concerns or give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the concerned business. If NLB d.d. has not concluded binding sale and purchase agreements concerning its participations in [...] by [...], NLB d.d. shall grant the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell by [...] these participations (or the remainder thereof) to one or more Purchasers that meet the requirements set forth above in this paragraph 6 and at no minimum price.
- (6.1) NLB d.d. will also fully divest its participation in [...] by [...]. If the participation of NLB d.d. in [...] is not fully divested by [...], NLB d.d. will propose on its own initiative, fully support, vote in favour and execute any measure, decision or shareholders' resolution necessary to put [...] in run-off starting from [...] until extinction of its loan portfolio (3 years maximum). In any case, NLB d.d. will propose on its own initiative, fully support, vote in favour and execute any measure, decision or shareholders' resolution necessary to have [...] refraining from any new lending origination by [...].
- (7) **[reduction of credit business and closure of [...]]** NLB d.d. will reduce its market presence in the following ways:
- (a) closure [...] by [...];
- (b) reduction of credit business in Slovenia with:
- (b.1) financial holdings [SIC codes 64.200, 64.300, 64.920, 64.990, 70.100, 70.200, 70.220 ⁽¹⁾]; the risk-weighted assets ('**RWAs**') of this portfolio amounted to EUR [500-550] million as of 31 December 2012. NLB d.d. will ensure that the RWAs of this portfolio will be reduced according to the following schedule:

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

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

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

- (b.3) corporate clients from the construction sector with an exposure over 5 million [SIC codes 41.100, 41.200, 42.110, 42.220, 68.100 ⁽³⁾]; the RWAs of this portfolio amounted to EUR [900-950] million as of 31 December 2012. NLB d.d. will ensure that the RWAs of this portfolio will be reduced according to the following schedule:

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

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

⁽²⁾ The same logic applies to financial holdings.

⁽³⁾ The same logic of codes as for financial holdings and construction.

- (7.1) If in any of these three sectors the provided RWA's reduction targets are missed by more than [10-20] %, NLB d.d. shall refrain from undertaking any new credit activities in Slovenia in the relevant sector until the respective RWA's reduction target is achieved. In addition, NLB shall promptly submit to the Commission a contingency plan showing its ability to achieve by 31 December 2017 the relevant RWA's reduction target(s).
- (8) **[business with foreign clients]** NLB d.d. shall refrain from undertaking any new credit activities with corporate clients incorporated outside Slovenia and are not members of the groups whose headquarter or final beneficiary is in Slovenia. NLB d.d. will limit its activities with such clients to the orderly execution and management of credit contracts. For the sake of clarification, trade and export financing for Slovenian companies in relation to foreign countries and treasury operations with foreign banks are not subject to this limitation.
- (9) **[corporate governance]** Slovenia undertakes to implement in NLB up-to-date corporate governance structures in accordance with the EU Capital Requirements Directive and Slovenian domestic legislation. The related necessary changes to NLB d.d. bylaws and internal rules have to be implemented in three months after the adoption of the decision of the Commission on the restructuring plan of NLB. In particular:
- (9.1) Slovenia undertakes to observe:
- (a) the corporate governance rules according to paragraphs from 9.2 to 9.9.
 - (b) the framework and segregation of duties set by Slovenian corporate and banking/regulatory legislation for shareholders, management and supervisory board of financial institutions; and
 - (c) the Commission's Guidance on Corporate Governance and Relationship Framework for Banks in which the State has a Stake;
- (9.2) the management board of NLB d.d. will have the sole powers and responsibilities for managing the day-to-day business of NLB independently and in the sole interest of the bank. Neither the supervisory board nor the shareholders' assembly or any representatives of shareholders may issue any instructions to the management board or interfere otherwise with the day-to-day management of the bank;
- (9.3) apart from supervising and monitoring by the Supervisory Board, no other corporate body or unit shall issue instructions to the Management Board; in particular, there shall be no direct or indirect instruction by any shareholder or by the State to the Management Board. This shall also apply to the Assembly General Meeting, whose decision taking competence shall be limited to the catalogue of decisions as foreseen by the law and in the statutes. Furthermore, individuals who use their influence on a company to induce members of the Management Board to act in a manner which causes damage to the company or its shareholders must reimburse the company for the resulting damage.
- (9.4) the arm's length principle shall apply to the relationship between the bank and its shareholders, in particular Slovenia;
- (9.5) all members of the supervisory board shall pass the 'fit and proper test', i.e. they shall be reliable and avail of the necessary professional skills to properly assess and monitor NLB's business. Slovenia will not intervene in the appointment of supervisory board members and executives over and above its own nominees and its shareholder rights under ordinary Slovenian corporate law;
- (9.6) two thirds of the seats and voting rights on the supervisory board and its committees shall be allocated to independent experts, i.e. persons who are neither currently employed nor have been employed 24 months prior to their appointment by the Slovenian government and who do not currently hold nor have held 24 months prior to their appointment a leadership or managing function within a Slovenian political party;
- (9.7) NLB will ensure an effective, independent and objective internal audit function. For this purpose, the internal audit function will report and be answerable only to the Management Board and Supervisory board's Audit Committee, where at least one member has recent and relevant financial experience. Further, the findings and recommendations by the internal audit function shall receive proper attention and be discussed in the Audit Committee/Management Board, followed by an appropriate action plan to address identified problems. Decision not to act on findings by the internal audit function shall be well substantiated and, upon request, reported to the Monitoring Trustee

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

- (a) management board: five monthly salaries;
- (b) employees performing special work ⁽¹⁾ employed in the front office function: five monthly salaries;
- (c) employees performing special work employed in other functions: three monthly salaries

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

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

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

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

- (b.1) the relevant person's contribution to NLB economic position, especially in the context of previous business policies and risk management; and
- (b.2) the necessity of a market-oriented salary, so as to be able to employ particularly suitable persons who can achieve sustainable growth.

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

- (a) any confidential, commercially sensitive or personal information provided to government bodies and marked as such will be treated accordingly and not circulated to other banks and undertakings in which the state has a stake;
- (b) the government will manage and maintain its stake in the bank separately from the management of its interests in any other bank in which the state has a stake;
- (c) the exercise of any rights held by the state and the management of the state's interests in any banks shall be on a commercial basis and shall not prevent, restrict, distort or significantly lessen nor impede effective competition. Any disposal of the state's shareholding must be conducted in a transparent, open and competitive process.

(10) **[risk management and credit policies]** NLB will overhaul its risk management process and in particular NLB d.d. and its core banking affiliates ⁽²⁾ will:

⁽¹⁾ Employees performing special works as defined in the bank's remuneration policy are beside management board; (i) Business function — employees in the front offices of NLB d.d.; direct risk assumers: directors at the second level of management, directors of departments in financial markets, directors of retail branch offices, directors of corporate (large, SME) business centres; (ii) Common function — directors at the second and third levels of management; (iii) Supervisory function — directors at the second and third line of management, employees included in the internal control system (internal audit, etc.) and other independent control functions (risk management, etc.), Chief Information Security Officer (CISO); (iv) Other employees whose total annual income exceeds EUR 100 000 gross.

⁽²⁾ NLB Razvojna banka, NLB Montenegro banka, NLB Banka Tuzla, Tutunska banka, NLB Banka Priština and NLB Bank Beograd.

- (10.1) price every new loan (considering as new loan any new business not related to an existing transactions) by using an appropriate internal pricing tool (such as the currently used 'Kreditni Kalkulator' and its future version) or (in the case of mass market retail and SME ⁽¹⁾ exposures) using appropriate internal pricing guidelines. Pricing for new loans will be considered adequate if the new loan contributes to achieve a positive Return on Equity before tax ('RoE') of at least [...] % in 2014, [...] % in 2015, [...] % in 2016 and [...] % in 2017 on either the individual loan or on each client relationship. The calculation of the RoE of a client relationship can include interest income, fees as well as other combined products of the same client. The calculation of RoE on client level and pricing according to minimum RoE has to be implemented by 30 June 2014 on standalone level and by 31 December 2014 for all core banking affiliates
- (a) For the purpose of this calculation, the volume weighted average of all loans with a single client (since the date of this decision), other fee business or banking transactions contributing to the profitability of the relationship with the same client can be taken into account, so that a new loan might generate a lower return if it is compensated by revenues of other fee business or banking transactions. New loans will have a credit documentation demonstrating a pre-deal calculated RoE for the either the individual loan or other live exposure on single client including fee business or banking transactions. In the case of mass market retail and SME transactions, this pre-deal calculated RoE may be replaced by a verification that the transaction is in line with internal pricing guidelines and a centralized demonstration that pricing guidelines assure a return on equity of [...] % in 2014, [...] % in 2015, [...] % in 2016 and [...] % in 2017.
- (b) Any deviation from the pricing resulting in a lower price level will be documented. This documentation will include robust commercial reasoning for the deviation and will be presented to the Monitoring Trustee. The total amount of deviations will not exceed the amounts defined in paragraph 10.6.
- (c) Credit deals not falling under this pricing policy regime: Transactions with related parties (i.e. Group members and employees), restructuring cases (of D, E and C clients with a delay in payments of more than 90 days) and all money market transactions.
- (10.2) adapt the credit rating process such that a financial statement analysis and a credit scoring indicating at the very least leverage and performance parameters such as return on capital, EBIT Interest Coverage, Debt/EBITDA, Debt/(Debt+Equity) etc. will be taken into account before engaging on a new credit exposure with any business client. Every customer to which NLB d.d. has an exposure exceeding EUR 1 million should be re-rated annually;
- (10.3) document all restructuring decisions i.e. all new credit deals with non-performing corporate clients with an exposure over EUR 10 000 and include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement, demonstrating that the solution which maximizes the net present value for the bank is chosen. Unless a RoE of at least [...] % can be obtained, restructuring decisions will be such that the bank is able to terminate the engagement at least every 12 months. Where NLB d.d. does not have the exclusive right to accept, propose or approve restructuring agreements or to take restructuring decisions it shall exercise its rights according to the above principles. A list of all recent restructuring decisions will be regularly provided to the Monitoring Trustee (at least every 6 months). The documentation of any restructuring decision will be presented to the Monitoring Trustee upon request.
- (10.4) ensure that all credit officers approving credits to SME and corporate clients will have attended an internal training familiarizing them with the credit rating process and established pricing methodologies no later than 30 June 2014;
- (10.5) implement a refinement of the client rating process to a fully internal ratings based system, approved by the Bank of Slovenia, by no later than 31 December 2014
- (10.6) should the Monitoring Trustee reveal a failure on behalf of NLB to comply with any of the Commitments under this paragraph 10 NLB d.d. shall provide the Monitoring Trustee with a remedial plan indicating which actions it has taken and intends to take in order to avoid a breach in the following quarter. The plan will be submitted in time for the Monitoring Trustee to report on it in its next semi-annual report to the Commission. Should the remedial plan not deliver the expected results and objectives, NLB d.d. will limit for a term of 12 months — starting the quarter following the reporting of such breach of Commitments — the new lending volume per

⁽¹⁾ Middle size companies: companies with the exposure from EUR 500 000 to 10 million on NLB Group level or with revenue in the amount from EUR 2,5 million to 50 million in two consecutive years., Small companies: companies with the exposure up to EUR 500 000 on NLB Group level or with revenue up to EUR 2,5 million in two consecutive years.

reporting period to 66 % of the new lending volume ⁽¹⁾ of the reporting period in which the Commitment was breached. This does not apply to an individual breach of a Commitment under paragraphs 10.1, 10.2 and 10.3 provided that a further investigation by the Monitoring Trustee reveals that such breach can be considered an isolated error or omission and that there is no evidence hinting that a total volume per client of more than EUR [...] million of deals is affected by such breach.

- (11) **[non-discrimination]** Slovenian State-owned companies will by no means be treated more favourably than non-state-owned companies (non-discrimination). NLB d.d. should make available throughout the restructuring period an annual report comparing the lending conditions applied to state-owned companies and to similar private companies.
- (12) **[behavioural commitments]** Slovenia commits to introduce the following behavioural safeguards in respect of NLB's restructuring:
 - (12.1) **[bans on advertising and aggressive commercial strategies]** to impose a ban on advertising related to the state support to NLB and to the state ownership in NLB (or to any competitive advantages arising in any way from the aid to NLB or the state ownership in NLB) and to prevent NLB from employing any aggressive commercial strategies which would not be pursued without state support (advertisement ban);
 - (12.2) **[Capital repayment Mechanism and dividend ban]** Based on the audited year end accounts NLB d.d. will pay in form of dividend disbursement the following amounts to its shareholders:
 - (i) For the fiscal year 2015 and 2016: the lower of (i) 50 % of the excess capital above the applicable minimum capital requirement on the consolidated level under European and Slovenian law (including pillar 1 and 2) plus a capital buffer of 100 basis points; or (ii) the net income for the relevant year;
 - (ii) For the fiscal year 2017: the lower of (i) 100 % of the excess capital above the applicable minimum capital requirement on the consolidated level under European and Slovenian law (including pillars 1 and 2) plus a capital buffer of 100 basis points; or the net income for the relevant year.
 - (12.2.1) Without prejudice to the competences of Bank of Slovenia as banking supervisor of NLB, the dividend disbursement shall be, totally or partially, suspended if, on the basis of a reasoned request by NLB endorsed by the Monitoring Trustee, it is considered that it would endanger the solvency position of the bank in the following years.
 - (12.2.2) For the fiscal years 2013 and 2014 no dividend will be paid.
 - (12.2.3) The subsidiaries of NLB d.d. are subject to a dividend ban along the same lines as outlined above for NLB d.d. Notwithstanding this ban, NLB Group companies may pay out dividends to their shareholders if NLB d.d. is — directly or indirectly — the majority shareholder and all external shareholders combined hold less than [10-20] % of shares and voting rights in the respective company.
 - (12.3) **[coupon ban]**; to ensure that NLB will refrain during the restructuring period from making any payments on capital instruments, unless those payments stem from a legal obligation, and not to call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the state may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. This commitment not to pay coupons during the restructuring period does not apply for newly issued instruments (meaning instruments issued after the final Commission's approval of the restructuring plan), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on NLB's securities existing at the moment of the adoption of the Commission's Restructuring Decision (coupon ban);
 - (12.4) **[acquisition ban]** to ensure that NLB will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and pool of assets which form a business.
 - (a) Exemption requiring Commission's prior approval: Notwithstanding this prohibition, NLB may, after obtaining the Commission's approval, acquire businesses if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition ⁽²⁾;

⁽¹⁾ New lending volume per reporting period means the loan amounts contractually agreed in a given reporting period.

⁽²⁾ See point 41 of the Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

- (b) Exemption not requiring Commission's prior approval: NLB may acquire stakes in undertakings provided that the purchase price is less than EUR 1,5 million (0,01 % of NLB's total assets as of Dec 2012) in each individual case and that the cumulative purchase prices paid by NLB for all such acquisitions over the whole restructuring period is less than EUR 3,75 million (0,025 % of NLB's total assets as of Dec 2012).
 - (c) Activities not falling under the acquisition ban: 1) Acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms; 2) Disposals and restructuring within NLB Group, including buy-outs of minority shareholders and the buy-out of the remaining shares of NLB Vita from KBC.
- (13) **[Burden sharing]** Slovenia commits that before any State aid is granted the existing shareholders' equity and all outstanding subordinated debt will be written off in full.
- (14) **[reduction of State's shareholding and [...]]** Slovenia will reduce its shareholding in NLB d.d. to [...] ('[...]') by [...]. If Slovenia has not entered into (a) binding sale and purchase agreement(s) for the sale of its shareholding in NLB d.d. exceeding the [...] by [...], Slovenia and NLB d.d. shall grant to the Divestiture Trustee (appointed in accordance with paragraph 19) an exclusive mandate to sell NLB d.d.'s participations in the following [...], for a minimum price not lower than [...] book value:
- [...]
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]

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

- (14.1) Should Slovenia sell its shareholding in NLB d.d. exceeding [...] by [...], at the latest, all commitments defined in this document will cease to apply from 31 December 2016 onward, with the exception of the commitment to restrict to an appropriate level the total remuneration to any board member and employee performing special work according to paragraph (9.9) which will apply and be complied with until 31 December 2017.
- (15) **[Transfer of assets to the BAMC]** The transfer value of the assets transferred to the BAMC will be equal to or below their Real Economic Value (REV) established by the Commission's experts in line with the state aid rules.
- (16) **[Recapitalisation of subsidiaries]** Unless Stated differently under applicable legislation
- (a) Recapitalisation of subsidiaries via equity injections will be subscribed at the lower of (i) 25 % discount to the share price (after adjustment for the 'dilution effect') immediately prior to the announcement of the capital injection, or (ii) the lowest price at which other shareholders of NLB's subsidiaries will contribute to the recapitalisation of subsidiaries. The 'dilution effect' can be quantified using generally accepted market techniques (for instance, the theoretical ex-rights price (TERP)). For non-listed subsidiaries, the market value of the shares should be established using an appropriate market-based valuation approach (including a peer group multiplier approach or other generally accepted valuation methodologies).
 - (b) In case the capital injection takes the form of hybrids instruments, those instruments will contain alternative coupon satisfaction mechanism and the provision determining the conversion rate of the hybrid into equity capital at the 25 % discount to TERP (established analogically as in case of equity injection stipulated in (a)).

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

- (17) **[reporting]** Until the end of the restructuring period, Slovenia undertakes to send to the Commission a semi-annual progress report. The report shall summarize the progress in implementing the restructuring plan and details on disposals of equity participations, liquidation of subsidiaries and reduction of RWAs. The report will be submitted every six months no later than by each 30 November for the first half of the year and each 31 May for the second half of the year.
- (18) **[Monitoring Trustee]** The complete and correct implementation of all Commitments and obligations set out in this catalogue will be continuously and thoroughly monitored and checked by a suitably qualified Monitoring Trustee who: i) is independent from NLB and the government of Slovenia; ii) possesses the necessary qualifications to carry out its mandate; iii) will neither have nor become exposed to a conflict of interest.
- (18.1) The Commission will have discretion to approve or reject the proposed trustees, and to approve the proposed mandate subject to any modifications it deems necessary for the trustees to fulfil their obligations.
- (18.2) The trustee(s) will assume its specified duties in order to ensure compliance with the Commitments. The Commission may give any orders or instructions to the trustee in order to ensure compliance with the conditions and obligations referred to in this Decision and the Commitments.
- (18.3) Slovenia (Ministry of Finance) commits that NLB d.d. will provide and cause to provide the Monitoring Trustee with all such cooperation, assistance, rights, powers and information as the Monitoring Trustee may reasonably require and need for the proper performing of its tasks, duties and obligations.
- (18.4) NLB d.d. and its core banking affiliates will set up an internal process to channel to the Monitoring Trustee all necessary information and documentation in order to monitor the implementation of the Commitments. NLB d.d. will give the Monitoring Trustee upon its request full and complete access to any of its books, records (including board minutes), documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties. NLB will make available to the Monitoring Trustee one or more offices in the bank's head office and will be available for meetings on request of the Monitoring Trustee.
- (18.5) For the proper performing of its tasks, duties and obligations, the Monitoring Trustee shall be entitled to participate at the NLB d.d.'s Supervisory board meeting in line with the relevant legislation and to interview NLB d.d.'s Management and Supervisory Board members in relation to the compliance with the Commitments and to:
- (a) monitor the internal organisation of NLB, in cooperation with NLB's internal control bodies. For this purpose, the Trustee will be entitled to interview the members of the NLB d.d.'s Supervisory board and its Risk and Audit Committees. The Trustee will upon its request receive all reports emanating from internal control bodies. The trustee shall monitor (i) that recommendations related to the Commitments from permanent supervisors or periodic controllers/auditors are duly enforced and (ii) that action plans are implemented in order to correct any failure identified within the internal control framework;
 - (b) monitor commercial practices of NLB d.d. and its core banking affiliates, with a focus on credit policy and deposit policy. The Trustee may interview members of all relevant credit committees, in particular those responsible for (i) the scoring/rating of customers, (ii) the granting of loans to customers (iii) the management of non-performing loans and restructured loans and (iv) the provisioning of non-performing loans and restructured loans.
 - (c) monitor policy of NLB d.d. and its core banking affiliates toward the restructuring and provisioning of non-performing loan, and interview all members of the relevant committees responsible for the restructuring and the provisioning of non-performing loans. NLB shall upon its requests communicate to the Trustee any risk report communicated to the Supervisory Board, or any analysis/review aimed at assessing the credit exposure of NLB. The trustee shall perform its own analysis, on the basis of the above-mentioned reports, interviews, and, if need be, the review of individual credit files (this should be without prejudice to the banking secrecy framework). In that regard, the Trustee should be entitled to interview credit analysts and risk officers who were involved in the sample cases when deemed appropriate.
- (19) **[Divestiture Trustee]** The following provisions apply to the appointment of a Divestiture Trustee:
- (a) Slovenia must propose to the European Commission for approval, no later than one month before the deadlines specified in (12) a list of one or more persons whom it proposes to appoint as Divestiture Trustee;
 - (b) the Divestiture Trustee must be appointed within one week of the European Commission's approval in accordance with the mandate approved by the European Commission;

- (c) Slovenia must grant comprehensive powers of attorney to the Divestiture Trustee:
 - (i) to effect the disposal of State's shareholding in NLB (including the necessary powers to ensure the proper execution of all the documents required for effecting the disposal); and
 - (ii) to take all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the disposal, including the appointment of advisors to assist with the disposal;
 - (d) NLB d.d. and its affiliates must provide the Divestiture Trustee with all such cooperation, assistance and information as the Divestiture Trustee may reasonably require to perform its tasks; and
 - (e) the Divestiture Trustee shall be remunerated by NLB d.d. and in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee's mandate.
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CORRIGENDA**Corrigendum to Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine**

(Official Journal of the European Union L 229 of 31 July 2014)

On page 1, recital 5:

for: '(5) It is also appropriate to apply restrictions on access to the capital market for certain financial institutions, excluding Russia-based institutions with international status established by intergovernmental agreements with Russia as one of the shareholders. Other financial services such as deposit business, payment services and loans to or from the institutions covered by this Regulation, other than those referred to in Article 5, are not covered by this Regulation.'

read: '(5) It is also appropriate to apply restrictions on access to the capital market for certain financial institutions, excluding Russia-based institutions with international status established by intergovernmental agreements with Russia as one of the shareholders. Other financial services such as deposit business, payment services and loans to or from the institutions covered by this Regulation, other than those referred to in Article 5, are not covered by these restrictions.'

on page 4, Article 4(4):

for: '4. Where authorisations are requested pursuant to paragraph 2 of this Article, Article 3, and in particular paragraphs 2 and 5 thereof, shall apply *mutatis mutandis*.'

read: '4. Where authorisations are requested pursuant to paragraph 3 of this Article, Article 3, and in particular paragraphs 2 and 5 thereof, shall apply *mutatis mutandis*.'

