



EUROPEAN COMMISSION

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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA.41925 (2017/N-2) – Italy – Sale of the bridge bank Nuova Carife to BPER (third amendment to the resolution of Carife)

Sir,

1. PROCEDURE

- (1) By decision taken on 22 November 2015¹, (the "2015 decision") the Commission approved the resolution of Cassa di Risparmio di Ferrara S.p.A ("the old bank"). On the same date the Commission also approved the resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., and Cassa di Risparmio della Provincia di Chieti S.p.A.², all of which were previously in Special Administration under the Bank of Italy.
- (2) The four resolution decision led to the immediate creation and capitalisation of four temporary credit institutions Nuova Cassa di Risparmio di Ferrara S.p.A.

¹ Commission decision of 22 November 2015 in State aid case SA.41925– Resolution of Cassa di Risparmio di Ferrara S.p.A..

² Commission decision of 22 November 2015 in State aid case SA.39543– Resolution of Banca delle Marche S.p.A., SA.41134 – Resolution of Banca Popolare dell'Etruria e del Lazio Soc. Coop, and SA.43547 – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A.

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("Nuova Carife"), Nuova Banca delle Marche S.p.A., Nuova Banca dell'Etruria e del Lazio S.p.A., Nuova Cassa di Risparmio di Chieti S.p.A. (together "the bridge banks"), fully capitalised and owned by the Italian Resolution Fund³ ("the Resolution Fund").

- (3) In the notification for the 2015 decision, Italy committed⁴ to sell the respective bridge bank by 30 April 2016. If the bridge bank was not sold, it would have to stop new business, wind-down its current business and cease to exist after two years from the adoption date of the 2015 decision. This meant that by 22 November 2017 at the latest, the bridge bank in question would enter liquidation under ordinary national insolvency procedures according to national law ("ordinary insolvency").
- (4) By decision of 29 April 2016⁵ ("the first amendment decision") the Commission approved the prolongation of the sale deadline for the four bridge banks until 30 September 2016, while Italy notified the advancement of the deadline for the liquidation under ordinary insolvency to 31 April 2017.
- (5) By decision of 7 October 2016⁶ ("the second amendment decision") the Commission approved the modification of the approved impaired asset measure and the prolongation of the sale deadline for each of the bridge banks until 31 December 2016. In case that by 31 December 2016, there was no binding market offer for one or more of those bridge banks in their entirety, Italy committed to create the conditions to put those bridge banks into liquidation under ordinary insolvency by 31 March 2017. To facilitate that process, Italy committed to invite bids for parts of the bridge banks already in November 2016, with non-binding offers expected by 31 January 2017.
- (6) By decision taken on 30 April 2017⁷, the Commission approved the sale of three of the four bridge banks (Marche, Etruria and Carichieti) to Unione di Banche Italiane S.p.a. ("UBI").
- (7) On 26 June 2017 Italy notified the sale of Nuova Carife to BPER Banca S.p.A. ("BPER"). The notification included additional State aid measures linked to the sale of Nuova Carife to BPER and a business plan of BPER including Nuova Carife, supported by a set of commitments undertaken by Italy.
- (8) By letter of 25 June 2017, Italy agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in

³ The Resolution Fund was established by virtue of legislative decree of 16 November 2015 - Decreto legislativo (Dlgs) 180/2015.

⁴ See Annex I to the 2015 decision.

⁵ Commission decision of 29 April 2016 in State aid case SA.39543, SA.41134, SA.41925, SA.43547 – Italy - Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A.,

⁶ Commission decision of 7 October 2016 in State aid case SA.39543, SA.41134, SA.41925, SA.43547-Italy: Second Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A.,

⁷ Commission decision of 30 April 2017 in State aid case SA.39543 (2017/N-2), SA.41134 (2017/N-2), SA.43547 (2017/N-2) – Italy – Sale of the bridge banks Marche, Etruria and Carichieti to UBI Banca

conjunction with Article 3 of Regulation 1/1958⁸ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

2.1. Description of the beneficiary and the resolution measures taken prior to the sale

- (9) Nuova Carife is a bridge bank resulting from the resolution decision taken by the Bank of Italy on 22 November 2015. As part of the 2015 decision, the economic activity of the old bank in resolution was transferred to a newly created bridge bank Nuova Carife, excluding shares and subordinated debt which remained in the old bank that was sent into liquidation.
- (10) The old bank had a significant NPL (i.e. Non-Performing Loans) ratio. To facilitate selling the bridge bank, it was envisaged to transfer all loans classified as *sofferenze* from the bridge bank to a newly created Asset Management Vehicle ("AMV"). The net book value of those *sofferenze* loans was written down to the envisaged transfer price approved in the 2015 decision prior to being transferred to the bridge bank.
- (11) In the resolution process up to the sale, Italy applied to the bridge bank the following State aid measures that constituted State aid ("the 2015 measures")⁹:
- (a) **Measure 1:** At the creation of Nuova Carife, the Italian Resolution Fund closed the funding gap (negative net asset value) and then recapitalised Nuova Carife resulting in an initial capital ratio of 9% CET1.
- (b) **Measure 2:** In addition, Italy transferred at net book value from Nuova Carife to the newly created AMV those *sofferenze* loans that were identified at the time.
- (12) The aid amount granted to the bridge bank in the resolution process up to the sale can be summarised as follows:

Overview of the 2015 aid measures	Total (EUR Bn)
Total:	0.70
- Measure 1 capital injection	0.62
- Measure 2 impaired assets measures (transfer of <i>sofferenze</i>)	0.08

- (13) After the 2015 measures had been implemented by the competent authority, Nuova Carife continued to be loss making and its loan portfolio continued to deteriorate. Following the resolution action, the balance sheet continued to display high levels of NPL, consisting mainly of loans where the debtor is not yet in default but unlikely to pay its obligations in full ("UTP"). A significant amount of those UTP loans deteriorated further and migrated to the *sofferenze* category.

⁸ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁹ Commission decision of 22 November 2015 in State aid case SA.41925– Resolution of Cassa di Risparmio di Ferrara S.p.A., recital (32).

- (14) As of 31 December 2016 Nuova Carife presented the following balance sheet and profit and loss figures comparing to 31 December 2015:

(EUR million)	Nuova Carife	
	31 Dec 2015	31 Dec 2016
Total Assets	3 234	2 630
Capital and reserves	195	153
Profit and Loss	-11	-219

2.2. The sale process

- (15) In the notification for the 2015 Decision, Italy committed to launch the sale process of the bridge bank no later than 30 January 2016. If the bridge bank was not sold by 30 April 2016, the orderly winding down procedure should have been started and finalised no later than 2 years after the resolution date, i.e. 22 November 2017.
- (16) On 19 January 2016, the Bank of Italy as the resolution authority (the "Resolution Authority") launched the sale process of Nuova Carife and the other 3 bridge banks through a public call for expression of interest for the acquisition of one, more, or all four bridge banks or one or more of the non-core entities, i.e. the insurance subsidiaries (the so-called "the first phase of the sale process").
- (17) In April 2016, Italy informed the Commission that the sale process had encountered some unexpected delays, providing the delayed closing of the 2015 accounts as evidence which was deemed necessary to launch the due diligence phase. This led to a delay of roughly two months compared to the original planning and Italy requested a prolongation of the sale deadline to 30 September 2016. Italy also presented a schedule detailing how the sale process was to be successfully terminated by 30 September 2016 and which according to Italy included a safety buffer in the sale timeline. On 29 April 2016, the Commission approved the prolongation of the sale process until 30 September 2016.
- (18) On 19 April 2016 the Information Memorandum was made available to the potential investors. On 12 May 2016, when the deadline to provide non-binding offers expired, ten out of 26 interested investors submitted eleven non-binding offers (one investor submitted two offers on different perimeters). Of the eleven offers, six were selected while the others were put on stand-by.
- (19) On 21 July 2016, the final date for the submission of binding offers, three investors presented an offer, which the seller considered not compliant with the process letter, as it considered them non-binding due to conditions put forward, and therefore dismissed them.
- (20) Therefore, on 4 August 2016, the Resolution Authority declared the first phase of the sale process as concluded and opened a negotiated sales procedure ("the second phase of the sale process").
- (21) On 6 August 2016, a new formal letter of invitation was sent to eight national and international potential investors – including bidders that had taken part in the

previous procedure as well as other banking and financial investors. A term sheet specifying the minimum acceptable requirements for binding offers was included in the invitation letter.

- (22) On 29 August 2016, the final day for the submission of binding offers in the second phase of the sale process, four investors provided offers. Two investors who had already taken part in the previous phase submitted offers as well as two unsolicited offers from bidders present in the first phase of the sale process but which had not been invited to the second phase. The Resolution Authority decided to declare all offers as not compliant with the process letter and dismissed them accordingly.
- (23) On 30 August 2016, the Resolution Authority launched the third phase of the sale process by inviting six investors that had either submitted an offer or shown interest, in the previous stage of the sale procedure or have showed interest in a previous phase to submit binding offers. The deadline to receive binding offers was set for 30 September 2016, i.e. the deadline committed to in the Commission decision in force at the time (the first amendment decision).
- (24) On 16 September 2016, Italy took contact with the Commission services to signal that the sale process might require more time than approved in the first amendment decision and requested on 30 September 2016 an additional prolongation of the sale deadline by three months to 31 December 2016.
- (25) Italy submitted that in case that the sale of one or more bridge banks would be unsuccessful by 31 December 2016, it would remain possible to sell bundles of assets and liabilities out of a bridge bank until the end of their existence period, which was brought forward by one month to 31 March 2017. To this end, Italy committed to invite bidders by 1 November 2016 to submit offers for parts of the bridge banks. Any of the bridge banks or parts of bridge banks that remained unsold would be put into ordinary insolvency by 1 April 2017. On 7 October 2016, the Commission approved the prolongation of the sale process until 31 December 2016 by means of the second amendment decision.
- (26) On 27 October 2016 Italy submitted to the Commission services a document by the Resolution Authority on the progress of the resolution action started in November 2015, with a particular focus on the sale process of the bridge banks. Inter alia, Italy informed that the sale process has been carried on through multiple non-exclusive bilateral negotiations with all the interested investors. These negotiations were conducted without setting any specific conditions in terms of minimum price and indeed some of the offers/expressions of interest received would include mechanisms for a transfer of the credit portfolio related losses to the Resolution Fund. Italy thus concluded that the sale of the bridge banks as a whole would require an additional contribution by the Resolution Fund, but that this was preferable to a sale in parts or liquidation.
- (27) On 4 November 2016, Italy informed the Commission services that it considered notifying the sale of the three bridge banks to UBI, while the Commission services did not receive concrete indications related to the sale of Nuova Carife.
- (28) In the beginning of November 2016, Italy sent letters to five banks inviting interest in a sale of parts of the bridge banks, and to submit bids by January 2017. Moreover, since September 2016 the Resolution Authority had resorted to

multiple non-exclusive bilateral negotiations which it had been conducting by informal means (conference calls, meetings). Therefore, during numerous exchanges in November and December 2016, the Commission services voiced concerns to Italy on the conduct of the process up to date. While formal unconditional binding offers had not yet been received (prior to the December 2016 deadline), the bilateral negotiations in the last phase so far risked to have been conducted in a way not meeting the conditions regarding openness, non-discrimination and transparency.

- (29) On 5 December 2016, the Commission received a first indication for an interest by BPER for buying Nuova Carife in the regular report on the bridge banks provided by the monitoring trustee appointed under the 2015 decision.
- (30) On 2 January 2017, Italy stated to the Commission that BPER expressed its interest in the acquisition of Nuova Carife by submitting a non-binding offer on 30 December 2016. No binding offers had been received prior to the 30 December 2016 deadline.
- (31) On 3 January 2017, the Resolution Authority sent letters to those 14 bidders which had previously made non-binding offers during the different phases of the sale process inviting them to express their interest in further participating in the sale process by 9 January 2017 and if so, offering further due diligence and announcing a new deadline for binding offers by 27 January 2017. In these letters, the Resolution Authority indicated the relevant perimeters and the possibility to consider the following actions to positively complete the transaction, namely (i) possible equity contribution from the Resolution Fund, (ii) carve-out of NPL with transfer of losses and risks connected to the transfer of NPL to be covered also by the Resolution Fund, and (iii) representations and warranties indicating the relevant caps.
- (32) On 10 January 2017, Italy informed the Commission services that the Resolution Authority had not received any further expression of interest in participating in the sale process. With BPER remaining the only interested party in Nuova Carife, Italy confirmed to continue the process with BPER.

2.3. Description of the sale agreement and State aid measures (the "2017 measures") contained therein in favour of Nuova Carife sold to BPER

- (33) On 3 March 2017 Italy submitted to the Commission the Share Purchase Agreement ("BPER SPA") signed on 1 March 2017 by BPER and by the Resolution Authority for the acquisition of Nuova Carife. According to that agreement, BPER offered EUR 1 for the equity of Nuova Carife, including the following conditions:
 - (a) A staff reduction of approximately [350-400] FTEs, bringing the aggregate number of FTEs of Nuova Carife to [500-550] FTEs;
 - (b) A capital increase that would allow Nuova Carife to increase provisioning levels on a number of different identified risks and reach a net equity of EUR 153 million equivalent to a CET1 ratio at least equal to [5%-10%] at the end of 2017;

- (c) A transfer of the bad loans and unlikely-to-pay portfolios to a specialised investor.
- (34) Also on 3 March 2017, based on the conditions lays down in BPER SPA, Italy submitted a note estimating the amount of capital contribution needed at EUR 290 million.
- (35) On 15 May 2017, Italy submitted the Memorandum of Understanding ("MoU") dated 12 April 2017, between Nuova Carife and Quaestio Capital Management SGR S.p.a. Unipersonale – the manager of the Atlante fund ("Atlante"). The envisaged transaction referred to a credit portfolio with a gross book value of EUR 430 million and an average price of [15-20]% of that book value (EUR [80-90] million) and was to be implemented through different securitisation vehicles for which only senior and mezzanine tranches would be issued. The buyer reserved the right to exclude a share no higher than [10-20]% of the portfolio prior to closing date.
- (36) On 1 June 2017, Nuova Carife received a letter of confirmation of Atlante's binding commitment to underwrite the sale of the NPL portfolio. On 20 June 2017, Italy submitted the Atlante contract signed on the same day (the "Atlante PA"). Following further negotiations with the buyer, Atlante and Nuova Carife, the gross book value of the NPL portfolio according to the Atlante PA has been reduced to EUR 344 million at an average price of [15-20]% corresponding to EUR [60-70] million. In addition, two leasing portfolios relating to real estate leasing exposures have been included in the transfer after the closing. The first portfolio of gross book value of EUR [20-30] million should be sold by [...] (*) and the second of EUR [10-20] million by [...]. The additional leasing portfolios will be sold through securitisation structures for a total amount of EUR [5-10] million. In total, the NPLs will be sold to Atlante for EUR [60-70] million.
- (37) On 26 June 2017, Italy notified a capital injection by the Resolution Fund for an aggregate amount of EUR 295 million (*Measure a*), including:
- (a) A capital increase of EUR 207 million to increase the current capital position of EUR -54 million to EUR 153 million as required under the BPER SPA;
 - (b) A coverage of additional adjustments to provisions required under the BPER SPA to the amount of EUR 69 million;
 - (c) An additional EUR 14 million linked to the revision of the perimeter of the NPL portfolio sold to Atlante and its price (see recital (36)); and
 - (d) An additional amount of EUR 5 million as a buffer for unexpected minor costs connected to the closing of the BPER SPA.

(*) Covered by the obligation of professional secrecy

- (38) Moreover, Italy notified the BPER SPA containing the following further measures:
- (a) Unlimited guarantees in favour of BPER for misrepresentation, fraud and for liabilities resulting from the 2015 resolution action (*Measure b*);
 - (b) Guarantees covering (*Measure c*):
 - (i) the risk linked to any potential losses and liabilities against Nuova Carife up to EUR [...] million (the General Cap);
 - (ii) the risk linked to [specific legal risks] of Nuova Carife up to EUR [...] million (the Special Cap);
 - (iii) in favour of BPER part of those guarantees and obligations which Nuova Carife would have to provide to the buyer of the NPL portfolio. At the moment of the signing of the BPER SPA, the total amount of those guarantees was unknown but limited to the existence of the transferred assets and the relevant mortgages;
 - (c) Positive ruling by the Italian tax authority regarding the availability of DTAs in Nuova Carife for the use of BPER at consolidated level (*Measure d*).
- (39) In addition to the EUR 1 sale price, the BPER SPA also contains three different profit sharing mechanisms in favour of the Resolution Authority:
- (a) Of all DTA used, the Resolution Fund will receive thirty percent;
 - (b) Should BPER sell its participation held in [...] ¹⁰ within [...] years from the acquisition date and for a consideration higher than its book value, the Resolution fund will receive 70% of the capital gain;
 - (c) Should BPER sell any of the real estate properties owned by Nuova Carife within [...] years from the acquisition date and for a consideration higher than their book value, the Resolution fund will receive 50% of the capital gain.
- (40) Under the Atlante PA, Nuova Carife provides a number of guarantees to Atlante related to the existence of loans and mortgages as well as the state of the real estate collateral. Those guarantees have caps adding up to EUR [40-50] million including [10-20] million of real estate related maintenance costs.
- (41) On 20 June 2017, Italy notified an amendment to the BPER SPA, signed on 16 June 2017 clarifying how those guarantees granted by Nuova Carife under the Atlante PA are covered under *Measure c* (see (38)(b)(iii)) and adding EUR [10-20] million of real estate related maintenance costs agreed under the Atlante PA to be covered on top of the other guarantees.

¹⁰ [...]. At 31 December 2016, Nuova Carife owned [5-10]% of [...].

2.4. The integration of Nuova Carife into BPER

- (42) On 31 January 2017, Italy shared with the Commission a presentation of the business plan of Nuova Carife and of the combination of BPER and Nuova Carife. On 15 May 2017, Italy submitted the business plan which was previously presented to the SSM, covering the period from 2017 until the end of 2021.
- (43) The size difference between BPER and Nuova Carife is illustrated in the following table:

	BPER (31/12/2016)	Nuova Carife (31/12/2016)	Nuova Carife/BPER
Total Assets (EUR, millions)	64,957	2,630	4.0%
Customer Loans (EUR, millions)	45,494	1,743	3.8%
Deposits from Customers (EUR, millions)	38,912	2,035	5.2%
Number of employees	[10000-15000]	[500-1000]	7.4%
Number of national bank branches	[1000-1500]	[100-150]	8.5%

Table 1 - Comparison BPER - Nuova Carife

- (44) Giving its strong track-record on mergers and acquisitions¹¹, BPER will speedily integrate Nuova Carife into its own organisation. It is envisaged that IT systems will be fully integrated, BPER internal control systems will be implemented, the brand name of the bridge bank will disappear and the legal entity that was Nuova Carife will cease to exist by 31 December 2017.
- (45) As part of the conditions precedent under the BPER SPA, the number of headcount in Nuova Carife will have been reduced to [500-550]¹², representing a decrease of about [40-50]% prior to the closing of the sale of Nuova Carife to BPER.
- (46) The plan further outlines that out of [100-150] branches of Nuova Carife, only [40-50] will be continued after 31 December 2017 corresponding to a reduction of roughly [50-60]%.
- (47) The integration of Nuova Carife into BPER will result in an improvement of the asset quality profile of the combined entity. The gross NPL ratio decreases from [20-30]% to [20-30]%. This is a consequence of the increased stock of performing loans.

¹¹ The following banks were acquired or incorporated between 1994 and 2015: Banca Popolare di Ravenna, Cassa Rurale di Sicignano negli Alburni, Banca Popolare del Materano, Banca Popolare di Lanciano e Sulmona, Cassa di Risparmio di Vignola, Banca Popolare di Crotone, Credito Commerciale Tirreno, Banca Popolare della Val d'Agri, Banca Del Monte di Foggia, Banca Popolare del Sinni, Banca Popolare di Aprilia, Banca Popolare di Castrovillari e Corigliano Calabro, Banca Popolare di Salerno, Cassa di Risparmio della provincia dell'Aquila, Banca Popolare dell'Irpinia, Banco di Sardegna, Eurobanca del Trentino, Meliorbanca

¹² A headcount of [500-550] corresponds to [500-550] FTEs as agreed in the BPER SPA.

- (48) The business plan submitted by BPER concludes that the current risk framework will be sufficient to integrate Nuova Carife. Nuova Carife can be integrated into BPER without any violations to the latter's risk framework. The integration of Nuova Carife has a marginal impact on BPER risk parameters but all these risk parameters remain within the risk framework as used by BPER before integration of Nuova Carife. BPER does not need to adjust its risk framework in order to be able to integrate Nuova Carife and is essentially using the same risk limitations as before the integration.

3. COMMITMENTS BY ITALY

- (49) In order to substantiate a speedy integration of Nuova Carife into BPER and the adherence to State aid rules, Italy has provided the following commitments:
- (50) Italy commits not to provide any capital or liquidity support to BPER or Nuova Carife or the old bank after the closure of the sale.
- (51) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the old bank may be transferred to Nuova Carife.
- (52) Italy commits that Nuova Carife will be fully integrated in BPER no later than 31 December 2017. In particular, the corporate name will be changed, the trademark discontinued and Nuova Carife will cease to exist as a separate legal entity with a separate banking license by 31 December 2017. If those deadlines are not met, Italy will present to the Commission a proposal containing remedy measures.
- (53) During its remaining existence as stand-alone entity (i.e. up to 31 December 2017 or earlier), Nuova Carife will apply a strict executive remuneration policy. Nuova Carife will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than that currently paid by Nuova Carife.
- (54) Nuova Carife will reduce the number of its employees to no more than [500-550] by 31 December 2017.
- (55) Nuova Carife will reduce the number of its branches to no more than [40-50] by 31 December 2017.
- (56) Nuova Carife will apply BPER's credit policy as soon as possible and in any case no later than 31 December 2017. That credit policy shall be approved by the Management Board, ensure a fair treatment for all customers through non-discriminatory procedures based on credit risk and define the thresholds above which the granting of loans must be approved by higher levels of management. The decision-making process shall be centralized at group level and provide clear safeguards to ensure a consistent implementation of BPER's instructions within Nuova Carife.
- (57) In addition the credit policy shall require that the pricing of loans and mortgages complies with strict guidelines by BPER that include the obligation to respect strictly the credit policy's standard tables of interest rate bands (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with Nuova Carife (e.g. level and

stability of deposits, fee structure and other cross-sales activities) and the funding cost of Nuova Carife. Infringements of that pricing policy shall be reported to the Monitoring Trustee.

- (58) Nuova Carife shall monitor credit risk through a well-developed set of alerts and reports, which enables Nuova Carife's Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of Nuova Carife on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.
- (59) Italy commits that a Monitoring Trustee is appointed to report to the Commission on the compliance with the above commitments.

4. POSITION OF ITALY

- (60) Italy accepts that the 2017 measures constitute State aid and requests the Commission to verify their compatibility with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as they are necessary in order to remedy a serious disturbance in the Italian economy.
- (61) Italy considers that aid is needed to conclude the sale procedure of Nuova Carife, that otherwise would be put into liquidation, with the consequence of a huge disruption of value, a massive intervention of the Deposit Guarantee Scheme and the loss of the amount already injected in Nuova Carife by the Resolution Fund with severe repercussions on the whole banking sector and risks for financial stability.
- (62) Italy also submits that the amount of aid has been determined in an open, fair and transparent sale procedure leading to a sale at market terms.
- (63) In a paper submitted by Italy on 27 October 2016, Italy considers that the capital increase by the Resolution Fund is fully consistent with the resolution action as described in the resolution measures adopted by the Italian authorities in November 2015. It follows as a financial effect of the evolution of the market situation in the course of the implementation of the resolution measures. Even a negative price may represent indeed a maximum price, whenever it corresponds to the highest consideration that the market is ready to pay in the given circumstances. Under this perspective, the higher financial burden for the Resolution Fund is nothing more than the consequence of the due implementation of the resolution measures according to its terms and within a certain envisaged time span.
- (64) In the same paper Italy argues that since November 2015 when the resolution measures were adopted, the market conditions have worsened and given cause to a depreciation of the bridge bank' assets that could not have been foreseen at the time of the 2015 decision and now hinders the possibility of a successful sale process in the absence of additional funding. The negotiations conducted with

potential investors have shown that the sale of the bridge bank was not possible without a further contribution of the Resolution Fund.

- (65) Italy puts forward a budget of EUR 295 million for the 2017 measures corresponding to the recapitalisation amount necessary and an additional buffer.
- (66) Italy submitted commitments to ensure that BPER implements the integration plan of Nuova Carife as described in recitals (50) to (59).

5. ASSESSMENT OF THE MEASURE

5.1. Existence of aid

- (67) Pursuant to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. The Commission will assess in the following sections whether those cumulative conditions are met for the resolution measures.

5.1.1. The 2015 measures

Overview of the 2015 aid measures	Total EUR Mn
Total aid amount:	700
- Measure 1 capital injection	620
- Measure 2 impaired asset measures	80

- (68) On the basis of the assessment carried out in recitals (46) to (83) of the 2015 decision, the Commission found that the 2015 measures fulfil all the conditions laid down in Article 107(1) TFEU and qualify as State aid to Nuova Carife. The Commission recalls that no additional aid was granted to Nuova Carife when the Commission approved the corrected impaired asset measure in the second amendment decision in 2016¹³.

5.1.2. The 2017 measures

- (69) The 2017 measures contain four separate measures (see recitals (37) to (41)):
 - (a) *Measure a*: A capital injection from the Resolution Fund;
 - (b) *Measure b*: Unlimited guarantees from the Resolution Fund with respect to the correctness of the information provided to BPER as well as for legal risks connected to the resolution measures, in particular the transfer of NPL to the Italian AMV;
 - (c) *Measure c*: Limited guarantees from the Resolution Fund with specific caps towards specific, identified risks; this includes also the additionally

¹³ Commission decision of 7 October 2016 in State Aid cases SA.39543, SA.41134, SA.41925, SA.43547 – Italy - Second Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A., recitals 62-67.

guaranteed contribution of EUR 11 million for real estate costs passed on to the Resolution Fund via the BPER SPA amendment;

- (d) *Measure d*: A certain amount of DTAs stemming from Nuova Carife which can be used by the combined entity going forward.
- (70) Regarding *Measure d*, Italy has stated that the tax ruling for BPER is structurally the same as the one obtained by UBI in the case of the three bridge banks¹⁴. On that basis, the Commission does not consider that the related advantage was selective.
- (71) Regarding *Measure b*, the Commission considers that unlimited guarantees against misrepresentation of information by the seller towards the buyer, be it fraudulent or through negligence, do not confer a selective advantage to either Nuova Carife or the buyer as such a guarantee corresponds to standard market practice. The buyer has to be in a position to rely on the information provided by the seller to be factually correct and representative in order to make its purchase decision.
- (72) Moreover, the Resolution Authority in exercising its duties will incur a certain amount of legal risk that is recognised by the relevant legislation and gives rise to specific risks of legal challenges. The Commission considers it normal market practice for a buyer to exclude liability for any such resolution action undertaken by the Resolution Authority in the exercise of its duties.
- (73) Regarding *Measure a* and *Measure c*, the Commission notes that Italy has provided an overall figure of EUR 295 million as maximal amount of capital injection provided to Nuova Carife by the Resolution Fund under *Measure a* and has not excluded the presence of further aid in *Measure c* but without providing a specific quantification for that measure.
- (74) *Measures a* to *c* refer to contributions from the Resolution Fund. In line with established case-law¹⁵, the Commission considers that the intervention by the Resolution Fund – even if financed through private contributions – involves State resources. In the present case, the use of Resolution Fund resources has been triggered by the resolution measures adopted by the Resolution Authority.
- (75) The management and use of Resolution Fund resources is decided in accordance with the law with the aim to provide financial assistance to the implementation of resolution measures adopted by the resolution authority with respect to its public policy objectives. The decision taken by the Resolution Authority is taken in its capacity as a body fulfilling a public mandate rather than in the capacity of a market economy operator.¹⁶ The Commission therefore considers that *Measures a* to *c* are financed through State resources and are imputable to the State.

¹⁴ Commission decision of 30 April 2017 in State aid case SA.39543 (2017/N-2), SA.41134 (2017/N-2), SA.43547 (2017/N-2) – Italy – Sale of the bridge banks Marche, Etruria and Carichiati to UBI Banca, recital 69.

¹⁵ See Case C-345/02 *Pearle and others* EU:C:2004:448, paragraphs 37 and 38. That approach was applied in Commission decision in the State aid case NN 61/2009 – "Rescue and restructuring of Caja Castilla-La Mancha", Spain, 29.06.2010, C(2010)4453 corr., recitals 96-118.

¹⁶ See Case C-124/10 P *Commission v EDF* EU:C:2012:318, paragraphs 80 and 81.

- (76) The Commission notes that the 2017 measures are the outcome of an open, fair and transparent sale process on market terms (see recitals (94) to (98)). The 2017 measures result in a highly negative sale price. The fact that those measures are required for the sale to take place demonstrates the highly distressed state of Nuova Carife.
- (77) There is clear evidence from the sale process that no other market buyer was available to buy Nuova Carife under economically more advantageous conditions. Given the highly distressed state of Nuova Carife, the Commission therefore has no doubts that *Measure a* and *Measure c* provide a clear selective advantage to the bank's activities which was only available to Nuova Carife and kept its activities alive and allowed their sale to a buyer.
- (78) Even if *Measure a* and *Measure c* had to be assessed in comparison to the conduct of a comparably situated market economy operator, under the current circumstances no private operator acting on the basis of market economy principles would be willing to re-capitalise Nuova Carife, due to the fact that a bridge bank is by definition a temporary institution with the goal of selling all its assets. Only to the extent that it maximises the value of those assets, the bridge bank is allowed to continue its business and compete with other private operators on the market until the eventual sale. Since a sale in the market would not have procured a positive price, a market economy operator would have preferred to simply allow Nuova Carife to enter into liquidation proceedings, instead of injecting more funds in order to reach a sale price of only one euro.
- (79) The Commission finds that the 2017 measures distort or threaten to distort competition as they allow the economic activities of Nuova Carife to obtain the necessary conditions to enable their sale to the buyer and thereby continue competing in the market rather than exiting it as required under the commitments attached to the second amendment decision if a sale had failed (and also as it would have happened without the aid measures assessed in the present decision). That distortion is all the more important because of the fact that Nuova Carife will continue competing in the market as a separate legal entity until the end of 2017 under the present commitments.
- (80) The Commission finds that the 2017 measures are also affecting trade between Member States as the financial services market is by its nature global, and some of the competitors of Nuova Carife in Italy are subsidiaries or branches of foreign banks.
- (81) On the basis of the foregoing, the Commission finds that *Measure a* and *Measure c* fulfil all the conditions laid down in Article 107(1) TFEU and qualify as State aid to Nuova Carife.
- (82) Regarding the quantification of *Measure a*, Italy has notified the total amount of up to EUR 295 million which includes a buffer of EUR 5 million against other conditions in the Nuova Carife SPA as explained in detail in recital (37).
- (83) The Commission considers the full amount of the notified recapitalisation of EUR 295 million by the Resolution Fund as State recapitalisation aid. Italy recognises the aid nature of *Measure a*.

- (84) Regarding the quantification of *Measure c*, the Commission notes that the BPER SPA contains a number of different guarantees with different cap amounts.
- (85) Italy has requested a Commission decision on the present measures to be taken prior to the end of June 2017 in order to avoid the BPER SPA conditions precedent being checked on accounts other than those of end of year 2016, presumably to avoid having to indemnify to BPER further losses incurred by Nuova Carife which would further increase the direct State recapitalisation aid required.
- (86) In view of the time pressure, the Commission will have to resort to safe harbour assumptions in order to quantify the aid amount contained in *Measure c* under the BPER SPA. In this respect, the Commission recalls that Italy has not explicitly contested the presence of further aid in the guarantees contained in the BPER SPA.
- (87) With respect to *Measure c*, the Commission recalls that there are three elements:
- (a) The General Cap of EUR 15 million;
 - (b) The Special Cap of EUR 150 million;
 - (c) The guarantee arising from guarantees provided by Nuova Carife under the Atlante PA where indemnifications sum up to EUR 46.1 million.
- (88) With respect to (87)(c), the Commission specifies that under the BPER SPA, the resulting guarantee is ensured for 100% only if it can be satisfied from the remaining portion of the General Cap. If the General Cap was already used up, deductions to the guarantee apply. If the full amount of EUR 46.1 million was to be provided by Nuova Carife to Atlante and the General Cap was entirely used for other claims, the resulting deductions under the BPER SPA would result in only a EUR 40 million claim by BPER on the Resolution Fund.
- (89) On the basis of the figures described in recitals (87) and (88), the Commission considers that the maximal State aid amount contained in those guarantees is EUR 205 million.
- (90) Correspondingly, the Commission considers that the overall State aid amount in the 2017 measures is confined to up to EUR 295 million under *Measure a* and up to EUR 205 million under *Measure c*, corresponding to a total aid amount of up to EUR 500 million.

Overview of the 2017 aid measures	Total EUR Mn
Total aid:	up to 500
Capital injection	up to 295
of which cash contribution	290
of which buffer for additional costs	up to 5
Other guarantees	up to 205
of which the General Cap	up to 15
of which the Special Cap	up to 150
of which additional guarantees stemming from the NPL transaction between the bridge banks and Atlante	up to 40

5.2. Beneficiary of aid

5.2.1. Assessment of the sale process

- (91) The 2015 decision, as well as the first and second amendment decisions, were based inter alia on the commitment by Italy that "the sale of the bridge banks or parts thereof will be conducted through open, transparent, non-discriminatory and competitive sale processes that take place on market terms and with the aim to maximize the sale price".
- (92) Compliance with this condition is of key importance, as it would allow excluding that the buyer is also a potential aid beneficiary. Under recitals 79 and 80 of the 2013 Banking Communication¹⁷, the sale of a credit institution during an orderly liquidation procedure may entail State aid to the buyer, unless the sale is organised via an open and unconditional competitive tender and the assets are sold to the highest bidder. In particular, when determining if there is aid to the buyer of the credit institution or parts of it, the Commission will examine whether:
- (a) the sales process is open, unconditional and non-discriminatory;
 - (b) the sale takes place on market terms;
 - (c) the credit institution or the government, depending on the structure chosen, maximises the sales price for the assets and liabilities involved.
- (93) A sale procedure can be considered:
- (a) Open/Competitive: if all interested and qualified bidders were able to participate in the process.
 - (b) Transparent: if all interested bidders were equally and duly informed at each stage of the procedure. In addition, the interested bidders have to have access to information, sufficient time to assess it and to be informed of the selection and award criteria.

¹⁷ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("*2013 Banking Communication*"), OJ C 216, 30.7.2013, p. 1.

- (c) Non-discriminatory: if all interested bidders are aware of the selection and award criteria specified in advance of the process. To guarantee equal treatment the criteria for the award of the contract should enable bids to be compared and assessed objectively.
- (d) Unconditional/fair: if a potential buyer is generally free to acquire the assets to be sold and to use them for its own purposes irrespective of whether or not it runs certain businesses.

5.2.2. *Conclusions on the sale process and on the absence of aid to the buyer*

- (94) The Commission attaches great importance to the fact that on 3 January 2017 the seller sent letters to those investors that had submitted at least a non-binding offer during the entire sales process, inviting them to express whether they would still be interested in the sales process. In that letter, the seller stated the possibility of an equity contribution on or before closing into the bridge banks by the Italian Resolution Fund or other subject; of a carve-out of a meaningful portion of the bridge banks NPLs, with transfer of losses and risks connected to the transfer of the NPLs to a third party to be covered by the Resolution Fund; and of a meaningful set of guarantees, indicating the possible caps.
- (95) The mentioned letter set a deadline of 9 January to confirm interest, indicating the perimeter of the bridge banks of interest and the actions and minimum requirements in terms of (i) possible equity contribution, (ii) NPLs carve out, and (iii) guarantees and relevant caps, viewed as key elements towards the submission of the final binding offer. The letter offered the possibility for further due diligence and asked to submit a final, binding and unconditional offer on a certain funds basis for the bridge banks and the non-core entities by 27 January 2017.
- (96) The Commission considers that by this letter all parties having registered serious interest as evidenced by a non-binding offer in one of the previous phases were informed of the changes of the minimum acceptable requirements for binding offers as detailed in recital (29) and were granted additional time to confirm their interest to participate further in the sale process. Therefore, the Commission considers that thereby compliance with the conditions of transparency, non-discrimination and absence of undue conditionality was ensured, also in view of the fact that the first three phases were not finalised due to the absence of valid bids.
- (97) The Commission therefore concludes on the basis of the available evidence that the sale process that led to the selection of BPER's offer can be considered as open, transparent, non-discriminatory and competitive, that it took place on market terms and was aimed at maximising the sale price.
- (98) The Commission is hence in the position to exclude the presence of aid to the buyer of Nuova Carife, and to identify Nuova Carife as the sole beneficiary of the 2015 and 2017 aid measures.

5.3. Compatibility of aid

5.3.1. Legal basis for the compatibility assessment

- (99) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State." The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications¹⁸, as well as in the 2013 Banking Communication.
- (100) In the 2013 Banking Communication, the Commission acknowledged that Member States should encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability.
- (101) Since the 2015 and 2017 measures are aimed at allowing the positive outcome of a sale that ensures the orderly market exit of Nuova Carife as stand-alone entity through its absorption by an eventual purchaser, the Commission considers that it will assess the compatibility of the 2015 and 2017 measures by reference to the 2013 Banking Communication.
- (102) When notifying the aid measures in the resolution of the old bank in November 2015, Italy did not present a restructuring plan for Nuova Carife to the Commission. As no demonstration of the return to viability of Nuova Carife had been provided, the Commission therefore assessed the compatibility of the aid measures under section 6 of the 2013 Banking Communication on liquidation aid. Such aid can be considered compatible with the goal to terminate the ailing credit institution's activity over a limited period of time.
- (103) Points 71 to 78 of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of an orderly winding down. Point 70 states that the Commission will assess the compatibility of measures aimed at resolving credit institutions on the same lines *mutatis mutandis* as set out in sections 2, 3 and 4 of the Restructuring Communication. Point 78 of the 2013 Banking Communication states that sections 3.1.2 and 3.1.3 must be complied with *mutatis mutandis*.

¹⁸ Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("*2008 Banking Communication*"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("*Recapitalisation Communication*"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication*"), OJ C 329, 7.12.2010, p. 7 and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*"), OJ C 356, 6.12.2011, p. 7.

- (104) Points 79 to 82 of the 2013 Banking Communication provide that it is possible to sell the economic activity of an entity having benefited from liquidation aid, where the sale is organised via an open and unconditional competitive tender and the assets are sold to the highest bidder. If aid is granted to the economic activity to be sold (as opposed to the purchaser of that activity), the compatibility of such aid will be subject to an individual examination. If therefore the economic activity is not wound down but sold to a market participant on competitive terms, the compatibility of liquidation aid will require an assessment of the restoration of viability through that market participant. As detailed in the 2015 decision and the first and second amendment decisions, the aid measures were considered compatible taking into account the possibility of a sale of the economic activity by the Resolution Authority.
- (105) Therefore, the Commission considers that, in order for the notified aid measures to be compatible under Article 107(3)(b) TFEU, it must comply with the following criteria:
- (a) *Limitation of costs of winding down*: aid amounts should enable the credit institution to be wound down in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary credit institution continues to operate;
 - (c) *Own contribution (burden-sharing)*: appropriate own contribution to the costs of winding down should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity;
 - (d) *Restoring long-term viability*: the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.

5.3.2. *Compatibility of the 2015 measures with the 2013 Banking Communication and the Restructuring Communication*

Limitation of the aid to the minimum

- (106) The Commission has concluded in recitals 92 to 96 of the 2015 decision that aid entailed by the 2015 aid measures was limited to the minimum.

Limitation of distortions of competition

- (107) The Commission has concluded in recitals 97 to 104 of the 2015 decision that distortions of competitions stemming from the market presence of the bridge bank as a result of the 2015 aid measures are limited.

Own contribution (burden-sharing)

- (108) The Commission has concluded in recitals 105 to 109 of the 2015 decision that shareholders and holders of subordinated debt have contributed to the maximum extent possible.

Restoring long-term viability

- (109) In the 2015 decision, the Commission explained that it will establish in a separate decision whether the transferred economic activity is viable in the long term, taking into account among others the restructuring actions planned by the buyer.

5.3.3. Compatibility of the 2017 measures with the 2013 Banking Communication and the Restructuring Communication

Limitation of the aid to the minimum

- (110) As assessed in recitals (94) to (98) of this decision, the sale process that led to the selection of BPER's offer was open, transparent, non-discriminatory and competitive, it took place on market terms and was aimed at maximising the sale price.
- (111) On the basis of that sale process, the BPER offer was selected as the offer presenting the best commercial terms for the sale of Nuova Carife in spite of the fact that it results in a negative sale price overall. Therefore, that negative sale price has to be considered as minimising the costs linked to the sale of Nuova Carife.
- (112) As such, the Commission considers that the Resolution authority selected BPER's offer because it was the one that minimised the costs linked to the sale and thereby also the additional State aid required.
- (113) In that respect, the Commission also notes the presence of three separate earn-out mechanisms as described in recital (39) which are likely to reduce the net cost to the State.
- (114) On that basis, the Commission concludes that the State aid contained in the 2017 measures is limited to the minimum and necessary in order to conclude a sale of Nuova Carife to a market buyer.

Limitation of distortion of competition

- (115) The Commission recalls that a continued market presence of both the residual entity and Nuova Carife might give rise to competition concerns.
- (116) Due to the absence of assets, the residual entity (the resolved bank) stopped all activities at the moment of the transfer of their assets to Nuova Carife. On 9 December 2015 the residual entity was formally put under compulsory winding up by ministerial decrees at the proposal of Bank of Italy, in line with the commitment undertaken by the Italy in the context of the 2015 decision. The residual entity therefore no longer competes on the market or pursues any new activities.
- (117) As far as Nuova Carife is concerned, as presented in recitals (68) to (90), the State aid contained in the 2015 and 2017 measures in sum amounts to up to EUR 1.2 billion corresponding to up to 46% of the total assets of Nuova Carife as of 31 December 2016.

- (118) The Commission notes that Nuova Carife has been offered for acquisition to competitors through an open and competitive sale process, and has been ultimately sold to the highest bidder.
- (119) In addition the Commission notes that in the notification of the sale, Italy has provided commitments ensuring that Nuova Carife will cease to exist as a stand-alone entity, will be fully integrated within BPER according to the process described in recitals from (42) to (48) and will entirely disappear as stand-alone entity including its corporate and brand name.
- (120) Moreover, the market footprint has already been reduced significantly through a reduction in headcount of [40-50]% and will be further reduced through the implementation of the commitment by Italy to implement branch closures of about [50-60]%.
- (121) The Commission notes that the BPER SPA was signed on 1 March 2017, after the deadline provided by Italy in the commitments attached to the second amendment decision (i.e. 31 December 2016).
- (122) The Commission recalls in that respect that it had already been established in early January that no other investor was interested in Nuova Carife. Moreover, Italy had signalled prior to the deadline of 31 December 2016 its intention to send a final process letter to investors and had explained its view that the sale process had been already in an advanced stage and needed finalising. Also, concrete steps on downsizing (agreement with the unions) were taken in January 2017, before the SPA was signed. Finally, the BPER SPA was signed still before Italy's commitment to put Nuova Carife into insolvency would have applied on 1 April 2017.
- (123) Taking all those elements into account, the Commission considers that the distortions of competition stemming from the market presence of the residual entity during its orderly winding-down and of Nuova Carife during its existence period are limited, despite the large amount of aid Nuova Carife received and the absence of remuneration to the State for the aid it has already provided and for the aid now notified.

Own contribution (burden-sharing)

- (124) As recalled in recital (108) the Commission has concluded that shareholders and holders of subordinated debt have contributed to the maximum extent possible.

Long-term viability of the combined entity

- (125) According to the 2013 Banking Communication, if the market exit of an aided entity is achieved through a sale to a competitor, the Commission will have to ensure that the aided entity is restored to long-term viability through the integration efforts of the buyer. In its viability assessment, the Commission will take into due consideration the size and strength of the buyer relative to the size and strength of the business acquired.
- (126) BPER is a systemic Italian bank under the supervision of the SSM/ECB with a very solid capital position (CET1 ratio of 14.5%). Nuova Carife on the other hand

is a small, significantly loss-making bridge bank with a large problem regarding legacy asset quality.

- (127) First of all, the Commission points out that BPER is significantly larger than Nuova Carife on all important measures (see Table 1). On that basis, the Commission considers that any impact that the integration of Nuova Carife could possibly have on BPER will by definition be very limited. In addition, BPER puts forward a successful track record of mergers, acquisitions and integration processes.
- (128) Moreover, the Commission recalls that the business acquired by BPER from Nuova Carife has been significantly cleaned up through the 2017 measures. In particular, the problematic legacy loan portfolio has been reduced significantly in line with the requirements under the BPER SPA. Moreover, economies through the reduction in staff and branches under the BPER SPA and Italy's commitments will further improve the financial strength of the acquired business.
- (129) The improved state of the acquired business of Nuova Carife is recognised in the submitted business plan, which shows that BPER is expected to have an immediate beneficial statistical impact from the acquisition on its NPL ratio. Further evidence to the limited additional risk acquired by BPER is the fact that there is only a very limited downwards effect on the CET1 ratio ([...]%) and not taking into account any benefit from the further integration of the business).
- (130) In sum, the Commission concludes that the acquisition of Nuova Carife by BPER is unlikely to have any significant impact on the situation of BPER and considers that the significant improvements to Nuova Carife's business through the 2017 measures combined with the cost restructuring commitments in the integration into BPER will further reduce any potential strain on the viability of the combined entity stemming from the acquisition.

5.3.4. Overall conclusion on compatibility

- (131) The Commission considers that the 2015 and 2017 measures are compatible with the internal market pursuant to the meaning of Article 107(3)(b) TFEU.

6. COMPLIANCE OF THE RESOLUTION OF THE BANK WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU¹⁹ ON BANK RECOVERY AND RESOLUTION

- (132) The Commission needs to assess whether the measures violate indissolubly linked provisions of Directive 2014/59/EU on bank recovery and resolution ("Directive 2014/59/EU"), which Italy has transposed into national law²⁰.

¹⁹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and EU No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190. Italian acts transposing the BRRD are decreto legislativo 16 novembre 2015, n. 180 and decreto legislativo 16 novembre 2015, n. 181.

²⁰ "DECRETO LEGISLATIVO 16 novembre 2015, n. 180" and "DECRETO LEGISLATIVO 16 novembre 2015, n. 181".

- (133) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held²¹ "that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108 TFEU] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108 TFEU]".²²
- (134) The Commission has already assessed the compliance with indissolubly linked provisions of Directive 2014/59/EU in the 2015 Decision, in the first amendment decision and in the second amendment decision.
- (135) The Commission maintains that the present decision to use the resolution financing arrangements in order to support the sale of the bridge institution does not violate indissolubly linked provisions of Directive 2014/59/EU, and in particular Article 101 thereof.
- (136) The Commission notes that Article 101(1) of Directive 2014/59/EU specifies the use of the resolution financing arrangements for different purposes in support of resolution tools. In particular, Article 101(1)(d) of Directive 2014/59/EU provides that the financing arrangements may be used to make contributions to a bridge institution. This is complemented by the second subparagraph of Article 101(1) of Directive 2014/59/EU, which provides that the financing arrangements may be used also in respect to the purchaser in the context of the sale of business tool. Article 40(6)(b) of Directive 2014/59/EU provides that following an application of the bridge institution tool the resolution authority may transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party. Hence, the Union legislator anticipated that that the process commenced with application of the bridge institution tool may be completed by a sale of the bridge institution.
- (137) The Commission notes that in 2015, as part of the resolution, Italy created the bridge bank as a temporary institution for sale and, if not sellable, for its wind down eventually under national insolvency law. The sale of the bridge institution was also indicated in 2015 Commission decision on the compatible aid. It should be noted that in the circumstances, offsetting a negative sale price of a bridge institution is in conformity with Article 101(1) of Directive 2014/59/EU for the purpose of supporting the effectiveness of the bridge institution tool.
- (138) The Commission also maintains that the measure is not in breach of Article 101(2) Directive 2014/59/EU. This provision stipulates that, if the use of the financing arrangements indirectly results in part of the losses being passed on to the financing arrangements, the bail-in provisions laid down in Article 44 of the Directive 2014/59/EU must apply. Yet, this provision is not applicable in the current case: according to Article 130(1) subparagraph 3 of Directive 2014/59/EU Member States were obliged to apply the bail-in provisions laid down in Section 5 of Chapter IV of Title IV of Directive 2014/59/EU only from 1 January 2016. In

²¹ See *inter alia* Joined Cases C-134/91 and C-135/91 *Keramina-Keramische v Greece* EU:C:1992:434, paragraph 20; Case T-184/97 *BP Chemicals v Commission* EU:T:2000:217, paragraph 55; and Case T-289/03 *BUPA and others v Commission* EU:T:2005:78, paragraphs 313 and 314.

²² Case 74/76 *Ianelli v Meroni* EU:C:1977:51 paragraph 14.

the current case however the institution in question entered into resolution already in November 2015, i.e. before 1 January 2016.

- (139) As the resolution process foreseeing the creation of a bridge institution and its subsequent sale was initiated in 2015, in order to ensure compliance with the principles of legal certainty and legitimate expectations the process should continue to be governed by the BRRD provisions applicable at the time, i.e. without the bail-in provisions set out in Article 44 of Directive 2014/59/EU.
- (140) Regulation (EU) No 806/2014 is not applicable to this case either, as the institution in question was placed under resolution by the Italian authorities before the date of application of the second subparagraph of Article 7(3) of Regulation (EU) No 806/2014 that have conferred to the SRB the responsibility for the resolution of less significant institutions if the Single resolution fund is used. The resolution process of this institution therefore continues to remain under the responsibility of the national resolution authorities.
- (141) This is without prejudice to the prerogative of the Commission to initiate infringement procedures against a Member State for breach of Union law, including breach of the provisions of Directive 2014/59/EU.

7. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the notified aid of up to EUR 295 million capital injection from the Resolution Fund to Nuova Carife and up to EUR 205 million additional guarantees under the BPER SPA on the grounds that it is compatible with the internal market pursuant to Article 107 (3) b of the Treaty on the Functioning of the European Union

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

Your request should be sent electronically to the following address:

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

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

ANNEX I - ITALY COMMITMENTS

COMMITMENTS OF THE REPUBLIC OF ITALY TO THE EUROPEAN COMMISSION

which are an integral part of resolution measures applied to:

SA. 41925 (2017/N-2) – Resolution of Cassa di Risparmio di Ferrara SpA

INTRODUCTION

Italy hereby provides the following Commitments (the "Commitments") that entirely replace the Commitments submitted to the Commission for its decision of 22 November 2015 and those submitted to the Commission for its decisions of 29 April 2016 and 7 October 2016.

The Commitments shall take effect upon the date of adoption of the European Commission's (the "Commission") decision approving sale of Nuova Cassa di Risparmio di Ferrara S.p.A. to BPER Banca S.p.A. and shall cease on 31 December 2017.

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

DEFINITIONS

- a) The "Bridge Bank" refers to Nuova Cassa di Risparmio di Ferrara S.p.A.
- b) The "Old Bank" refers to Cassa di Risparmio della Provincia di Ferrara S.p.A.
- c) Purchaser: BPER Banca (BPER Banca) S.p.A.
- d) Closing Date: has the same meaning as in the share purchase agreement by and between the Italian Resolution Fund and BPER Banca dated 1 March 2017

GENERAL COMMITMENTS

- 1) Italy will not provide any capital or liquidity support to the Purchaser or the Bridge Bank or the Old Bank after the closure of the sale, beyond the support approved in the present decision.

COMMITMENTS RELATED TO THE BRIDGE BANK

- 2) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the Old Bank or the Residual Entity may be transferred to the Bridge Bank
- 3) The Bridge Bank will apply strict executive remuneration policies. The Bridge Bank will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than that currently paid by the Bridge Bank.
- 4) The Bridge Bank will be fully integrated into the Purchaser no later than by 31 December 2017. By that time, the Bridge Bank will cease to exist as a separate legal entity with separate banking license.
- 5) The Purchaser of the Bridge Bank shall change the corporate name Nuova Cassa di Risparmio di Ferrara into a name that does not include any reference to Nuova Cassa di Risparmio di Ferrara as soon as possible and in any case not later than 31 December

2017. The Purchaser will also discontinue the trademark of Nuova Cassa di Risparmio di Ferrara (or any combinations of it) as soon as possible and in any case not later than 31 December 2017.

If this deadline is not met, Italy will present the Commission a proposal containing remedy measures to discontinue the corporate name of the Bridge Bank.

6) The Bridge Bank will reduce, respectively, the number of employees to no more than [500-550] by 31 December 2017 and the number of branches to no more than [40-50] by 31 December 2017.

7) Since the Closing Date, the credit risk management and monitoring policy of the Bridge bank will be revised by the Purchaser so that any relevant loans and mortgages will be subject to its undisputable consent. The complete alignment to the Purchaser credit policy - requiring the completion of the ICT migration - will be realized as soon as possible and in any case no later than 31 December 2017. That credit policy should respect the principles laid out in Commitments below. Once it is established by the Monitoring Trustee that the same credit policy is applied within the Bridge Bank as within the Purchaser, the Monitoring Trustee will verify that the credit policy is applied correctly by looking into a representative sample of loans during the last monitoring period.

8) The Credit Policy shall specify that all customers shall be treated fairly through non – discriminatory procedure based on credit risk. The Credit Policy defines the threshold above which the granting of loans must be approved by higher levels of management. Similar thresholds shall be defined regarding the restructuring of loans and the handling of claims and litigations. The Credit Policy shall be centralized in selected centers for a decision-making process at Group level, and provide a clear safeguards to ensure a consistent implementation of its instructions within the Bridge Bank.

9) The Credit Policy, approved by the Management Board, shall require that the pricing of the loans and mortgages comply with strict guidelines. Those guidelines shall include the obligation to respect strictly the credit policy's standard tables of interest rate band (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with the Bridge Bank (e.g. level and stability of deposits, fee structure, and other cross sale activities) and the funding cost of the Bridge Bank. Specific loan asset classes are generated (e.g. commercial loan, mortgage, secured/unsecured, etc) and their pricing framework is tabulated to an appropriate Credit Policy table that shall be updated on a regular basis by the Credit Committee. Any exception must be duly authorized by the Credit Committee or at a lower level of authority when allowed by the Credit Policy. Tailor – made transaction such as syndicated loans or project finance shall respect the same principles, with due account being taken of the fact that they may not fit in standardized credit policy tables. Infringements of that pricing policy shall be reported to the Monitoring Trustee.

10) The Bridge Bank shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: i) identify early signals of loan impairment and default events; ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); iii) assess the overall exposure of the Bridge Bank on an individual customer or portfolio basis; and iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.

MONITORING TRUSTEE

11) Italy commits that the Purchaser shall appoint a Monitoring Trustee whose mandate is to report to the Commission on compliance by Italy and by the Bridge Bank with the Commitments listed in this document.

12) The Monitoring Trustee shall be independent of the Bridge Bank and shall possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall not be subject to a conflict of interests throughout the exercise of his mandate.

13) The Trustee shall be remunerated by the Bridge Bank in a way that does not impede the independent and effective fulfilment of the Trustee's mandate.

PROPOSALS BY THE PURCHASER

14) Italy commits that no later than four weeks after the Closing Date, the Purchaser shall submit to the Commission for approval a list of two or more persons whom the Purchaser proposes to appoint as the Monitoring Trustee, with an indication which of those is the Purchaser preferred choice. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out above and shall include:

- a. The full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- b. The outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

APPROVAL OR REJECTION BY THE COMMISSION

15) The Commission shall have the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Purchaser shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Purchaser shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

NEW PROPOSAL

16) If all the proposed Trustees are rejected, Italy commits that the Purchaser shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in clauses 19-20.

TRUSTEE NOMINATED BY THE COMMISSION

17) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Purchaser shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

FUNCTIONS OF THE TRUSTEE

18) The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Italy or the Purchaser, give any orders or instructions to the Trustee in order to ensure compliance with the Commitments. The Bridge Bank and Italy are not entitled to give instructions to the Trustee.

DUTIES AND OBLIGATIONS OF THE MONITORING TRUSTEE

- 19) The Monitoring Trustee shall:
- a. Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments. The report should be delivered by 31/12/2017 at the latest;
 - b. Monitor the compliance with the Commitments;
 - c. Propose such measures as the Monitoring Trustee considers necessary to ensure Italy's and the Bridge Bank compliance with the Commitments;
 - d. Submit a final report to the Commission, to be delivered four months after the deadline stated in par 4).

DUTIES AND OBLIGATIONS OF ITALY AND THE BRIDGE BANK

20) Italy commits that the Bridge Bank shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance, managerial, administrative support and information as the Monitoring Trustee may reasonably require to perform its tasks.

REPLACEMENT, DISCHARGE AND REAPPOINTMENT OF THE TRUSTEE

21) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

- a. The Commission may, after hearing the Monitoring Trustee, request the Purchaser to replace the Trustee; or
- b. The Purchaser, with the prior approval of the Commission, may replace the Trustee.

22) If the Trustee is removed, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred in clauses 19-20.

23) Besides the removal, the Trustee shall cease to act only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.