



EUROPEAN COMMISSION

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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: **State Aid SA.39543 (2015/N), SA.41134 (2015/N), SA.41925 (2015/N), SA.43547 (2015/N) – 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.

Sir,

1. PROCEDURE:

- (1) By four decisions taken on 22 November 2015¹, one for each individual bank, (the "2015 Decisions") the Commission approved 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. (together "the banks").

¹ State Aid SA.39543 (2015/N) – Resolution of Banca delle Marche S.p.A., SA.41134 (2015/N) – Resolution of Banca Popolare dell'Etruria e del Lazio Soc. Coop., SA.41925 (2015/N) – Resolution of Cassa di Risparmio di Ferrara S.p.A and SA.43547 (2015/N) – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A.

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- (2) The resolution led to the immediate creation and capitalisation of four temporary credit institutions, Nuova Banca delle Marche S.p.A. ("Marche"), Nuova Banca dell'Etruria e del Lazio S.p.A. ("Etruria"), Nuova Cassa di Risparmio di Ferrara S.p.A. ("Carife"), Nuova Cassa di Risparmio di Chieti S.p.A. ("Carichieti") (together "the bridge banks"), fully capitalised and owned by the Italian Resolution Fund² ("the Resolution Fund").
- (3) The 2015 Decisions were based on a number of commitments³ provided by Italy, including:
 - (a) A transfer of impaired assets, namely the non-performing loans of the *sofferenze* ("Sofferenze") category for a transfer value of EUR 1 513 million, from the bridge banks to a newly created Asset Management Vehicle ("AMV") owned by the Resolution Fund.
 - (b) The sale of the bridge banks, followed by a stop of new business and entering a wind-down phase if the bridge banks were not sold by 30 April 2016, and finally their liquidation under ordinary insolvency procedures according to national law ("ordinary insolvency") within two years from the adoption date of the 2015 Decisions, i.e. by 22 November 2017.
- (4) By decision taken on 29 April 2016⁴ ("the first amendment decision") the Commission approved the prolongation of the sale deadline for the bridge banks until 30 September 2016 and the advancement of the deadline for the liquidation under ordinary insolvency to 30 April 2017.
- (5) On 17 June 2016, the monitoring trustee appointed by Italy signed the contract of mandate thus taking over the monitoring functions required by the 2015 Decisions.
- (6) By letter of 15 September 2016, Italy notified the request to amend the 2015 Decisions, consisting in the modification of the approved impaired asset measure.
- (7) On 16 September 2016, Italy took contact with the Commission to signal that the sale process might require more time than approved in the first amendment decision.
- (8) On 30 September 2016, Italy notified the request to amend the 2015 Decisions, consisting in an additional prolongation of the sale deadline.
- (9) By letter of 5 October 2016, Italy agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in

² The Resolution Fund was established by virtue of legislative decree of 16 November 2015 - Decreto legislativo (Dlgs) 180/2015.

³ See Annex I to the 2015 Decisions.

⁴ State aid SA.39543 (2015/N), SA.41134 (2015/N), SA.41925 (2015/N), SA.43547 (2015/N) – 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.

conjunction with Article 3 of Regulation 1/1958⁵ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

2.1. The impaired assets measure

2.1.1. The 2015 Decisions

- (10) On 22 November 2016, Bank of Italy as resolution authority decided to transfer all assets and liabilities (apart from remaining equity and subordinated debt) from the banks under resolution to four newly created bridge banks and subsequently to transfer non-performing loans ("NPL") from the bridge banks to a newly created AMV.
- (11) The portfolio of NPL to be transferred was identified as containing the entire loan portfolio in the worst category of NPL, namely exposures in default (i.e. *Sofferenze*). According to Italy, the figures provided were based on a provisional valuation performed on the entire balance sheet of the banks including a buffer for reasons of prudence as required under the Italian implementation law⁶ of Directive 2014/59/EU⁷ on bank recovery and resolution ("BRRD").
- (12) For all four banks, Italy notified to the Commission transfer values in absolute amounts as well as percentage values. Percentage values were the same across the four banks, namely 8.4% of gross book value⁸ ("GBV") for uncollateralised *Sofferenze* loans and 25% of GBV for collateralised *Sofferenze* loans
- (13) In total, Italy notified GBVs for the four portfolios to be transferred adding up to EUR 8 536 million. Those loans were held on the books of the banks at a net book value of EUR 3 612 million.
- (14) In its assessment of impaired asset measures, the Commission needs to establish whether the measure contains aid and then consider whether this aid is compatible in accordance with the Impaired Asset Communication⁹ ("IAC"). Accordingly, the Commission usually relies on external experts to establish the estimated current market value ("CMV") and the real economic value ("REV") of the assets subject to the impaired asset measure. In stressed markets the former can be significantly lower than the latter. The Commission then establishes the aid amount by subtracting the CMV from the notified transfer value – implying that the aid amount is zero if assets are transferred at CMV. In order for the measure

⁵ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁶ "DECRETO LEGISLATIVO 16 novembre 2015, n. 180" and "DECRETO LEGISLATIVO 16 novembre 2015, n. 181".

⁷ 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.

⁸ Gross book value corresponds to the notional amount of the loan given plus accrued interest if applicable but without any deductions, provisions or impairments taken into account.

⁹ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1.

to be compatible, the Commission verifies that the notified transfer value is not higher than the REV.

- (15) For the 2015 Decisions, given the urgency of the case, the Commission used its flexibility to perform a conservative assessment of the measure based on the information available. This assessment resulted in a very conservative CMV – a "safe harbor" CMV – for the calculation of the aid amount in the measure which the Commission established to overall amount to EUR 409 million for the four banks (see Figure 1 for details).
- (16) The fact that the notified transfer value was not much higher than the safe harbor CMV combined with the Commission's previous experience in the assessment of impaired asset measures in other countries, allowed the Commission to conclude that with very high likelihood, the notified transfer value was not greater than the REV and thus that the aid was compatible with the internal market on the basis of the IAC.

<i>Sofferenza</i>	Notified measure 2015							
	Notified GBV	Notified Transfer Value	Transfer value (% GBV)	Safe harbour REV*	Safe harbour REV (% GBV)	Safe harbour Market Value**	Safe harbour MV (% GBV)	Aid amount
Marche	4,552	916	20.1%	1,028	22.6%	[700-750]	[10-20]%	202
Etruria	1,896	334	17.6%	366	19.3%	[200-250]	[10-20]%	98
Carife	1,587	179	11.3%	264	16.7%	[150-200]	[5-10]%	84
Carichiati	500	85	17.0%	93	18.7%	[50-60]	[10-20]%	26
TOTAL	8,536	1,514	17.7%	1,752	20.5%	[1.000-1.500]	[10-20]%	409

* 27% for collateralised loans
9.7% for uncollateralised loans

** 20% for collateralised loans
[0-10]% for uncollateralised loans

Figure 1 - The notified aid measure in 2015

2.1.2. Events between the 2015 Decisions and the present amendment

- (17) The resolution authority implemented the transfer of 80% of the notified *Sofferenze* portfolio to the AMV on 26 January 2016 using the transfer values approved in the 2015 Decisions. Although legal ownership of those assets changed, they remained temporarily on the books of the bridge banks and continued to be managed by them.
- (18) On 5 May 2016, in accordance with the commitments annexed to the 2015 Decisions, Italy provided the Commission with the results of a final valuation that it had received in April 2016. That final valuation ("Italy's final valuation") had been carried out by external experts ("Italy's experts") contracted by the Bank of Italy as resolution authority.

- (19) According to the results of Italy's final valuation, the value of the *Sofferenze* was higher than the transfer value approved in the 2015 Decisions. Moreover, Italy's experts restated upwards the amount in GBV of *Sofferenze* on the books of the four banks at the date of the resolution 22 November 2015. Italy provided further information on the differences between provisional and final valuation of the *Sofferenze* on 30 May 2016, following a request for information sent by the Commission on 19 May 2016.
- (20) On 21 July 2016, Italy informed the Commission of its intention to amend the 2015 Decisions in order to transfer the full amount of *Sofferenze* identified by Italy's experts and using the transfer value according to the findings by Italy's experts which is different compared to the perimeter and transfer value approved in the 2015 Decisions.
- (21) In submissions of 7 July and 15 September 2016, Italy argued that it had not been able to identify the full amount of *Sofferenze* loans at the time of the resolution of the banks and correspondingly could not have included the full amount in the impaired asset measure notified in November 2015. This occurred because the provisional valuation was based on the financial statements of 30 September 2015, while Italy's final valuation was based on financial information on 22 November 2015, the exact date when the resolution action took place.
- (22) In reaction to the intention of Italy to notify an amendment to the impaired asset measure as approved in the 2015 Decisions, the Commission contracted external valuation experts (the "Commission's experts") to assist it with the assessment of the applied methodology to calculate transfer values and the establishment of CMV and REV for the transferred assets.

2.1.3. *The amendment notified by Italy*

- (23) Correspondingly, Italy has notified an amendment to the impaired asset measure approved in the 2015 Decisions, consisting of:
 - (a) A transfer of a higher amount in GBV of *Sofferenze* loans due to those *Sofferenze* loans that emerged in the period 30 September 2015 – 22 November 2015 as identified in Italy's final valuation;
 - (b) An adjustment of the transfer values used in the transfer of all *Sofferenze* present in the banks at the date of the resolution of 22 November 2015 to the prices as indicated in Italy's final valuation.

<i>Sofferenze</i>	Notified measure 2015			Notified amendment 2016			Delta 2016/2015		
	Notified GBV	Notified Transfer Value	Transfer value (% GBV)	Notified GBV	Notified Transfer Value	Transfer value (% GBV)	Notified GBV	Notified Transfer Value	Transfer value (% GBV)
Marche	4,552	916	20.1%	4,986	[1000-1500]	[20-30]%	434	[350-400]	[5-10]%
Etruria	1,896	334	17.6%	2,071	[400-450]	[10-20]%	175	[70-80]	[0-5]%
Carife	1,587	179	11.3%	1,601	[200-250]	[10-20]%	14	[60-70]	[0-5]%
Carichiati	500	85	17.0%	577	[100-150]	[10-20]%	77	[20-30]	[0-5]%
TOTAL	8,536	1,514	17.7%	9,235	[2.000-2.500]	[20-30]%	699	[500-550]	[5-10]%

Figure 2 - Comparison of the notified amendment with the original aid measure approved in 2015

2.1.4. Methodology for the calculation of the transfer value

- (24) Italy has now notified the use of the values established in Italy's final valuation as transfer values. Those values are calculated based on a discounted cash flow approach, differentiating between secured and unsecured loans:
- (a) cash flows from secured loans were derived from enforcement values for the real estate collateral backing the loans;
 - (b) cash flows from unsecured loans were calculated based on historical recovery curves for similar asset classes or portfolio recovery business plans.
- (25) Loan level cash flows were then discounted using a factor estimated as the return rate required by an investor purchasing Asset Backed Securities (“ABS”) backed with a similar category of assets.

2.2. The sale process

2.2.1. The 2015 Decisions and the first amendment decision

- (26) According to the commitments to the 2015 Decision, the bridge banks had to be sold by 30 April 2016 at the latest, through an open, non-discriminatory and competitive selling process that would take place on market terms and seek to maximize the sales price for the assets and liabilities involved.
- (27) If the sale processes had not been completed by 30 April 2016, the bridge banks would have entered a wind-down phase in which they would have had to stop new business. The existence period of the bridge banks would have ended at the latest two years from the date of the resolution, i.e. no later than 22 November 2017, by being put into ordinary insolvency with the loss of the banking licenses.
- (28) On 29 April 2016 the Commission approved by means of the first amendment decision the request of Italy to postpone the sale process deadline to 30 September 2016. In case a sale of one or more bridge bank in its entirety would not materialise, it would still to be possible to sell the bridge banks in smaller lots,

more specifically (i) the business of the bridge banks would be parcelled into lots in the region of 5% of the bridge bank's assets (ii) each lot would be marketed independently (iii) no single buyer would be allocated lots representing a significant part of the assets of the bridge bank, in principle not totalling more than 20% of total assets of the bridge bank, (iv) bids would not be accepted if they implied a negative price for the sum of lots bought by a single bidder. Finally, Italy committed to shorten the existence period of the bridge banks to 30 April 2017, after which any unsold business would enter ordinary insolvency and the banking licence would be withdrawn.

- (29) According to Italy's submission at the time, the prolongation of the sales deadline to 30 September 2016 should have given sufficient comfort for a successful completion of the sale. The Commission noted that Italy included a safety buffer in its timeline for a sale.
- (30) Concerning the scenario of an unsuccessful sale of one or more bridge banks, Italy expected the prolonged sales period to generate sufficient market intelligence. For such a scenario, a shortened wind-down phase was foreseen, in which bundles of assets and liabilities could be sold out of the bridge banks, which would be sufficient to create the conditions for withdrawing the banking licence. In this regard, Italy had submitted a document outlining the wind-down phase in case the ongoing sale process of the bridge banks would fail. Italy expected a positive value resulting from the wind-down scenario overall. Its outline was thus predicated on the assumption that, through the notified sale in lots, the conditions would be created for withdrawing the remaining banking licences by end of April 2017 without need for further State aid, including in the liquidation phase. That no further State aid would be provided was also a commitment by Italy, which gave the Commission comfort as to the credibility of this scenario.

2.2.2. Events between the first amendment decision and the present amendment

- (31) On 18 August 2016, Italy informed the Commission that all the bids received on 21 July 2016 for the four bridge banks had been deemed not to comply with the terms, conditions and requirements set forth in the sale procedure. Italy informed further that, on 4 August 2016, the resolution authority had closed the ongoing tender process and opened a new negotiated process. In order for the new process to comply with the criteria of openness, transparency, non-discrimination and price maximisation, bidders that took part in the previous tender process as well as other banking and financial investors who had shown interest earlier in the process have been invited to the negotiated phase. At that stage, Italy expected to have signed Share Purchase Agreements ("SPA") by mid-September 2016.

2.2.3. The notified prolongation of the sale deadline

- (32) On 30 September 2016, Italy notified once again a prolongation of the sale period for all the bridge banks by three months to 31 December 2016. According to the notification the sale process will be concluded with a signed SPA to be notified to the Commission for the assessment of viability of any resulting entity no later than 31 December 2016.

- (33) In case the sale of one or more bridge banks would be unsuccessful within this extended period, it will remain possible to sell bundles of assets and liabilities out of a bridge bank until the end of their existence period, which is brought forward by one month to 31 March 2017. On 1 April 2017, any of the bridge banks or parts of the bridge banks remaining unsold would be put into ordinary insolvency.
- (34) In order to create the conditions for the withdrawal of the banking licence(s) by 1 April 2017 at the latest, Italy will take concrete steps to explore all possibilities to sell the bridge banks, also in parts. To this end, on 1 November 2016 Italy will address the bidders in the ongoing sales process, and possibly also other parties, to submit offers for bundles of assets and liabilities ("asset sale process"). Those parties will be invited to select, according to their preference, bundles of assets and liabilities (i.e. business lines, client relationships) from the four bridge banks and submit a supplementary non-binding offer by 31 January 2017 at the latest. Italy submits that the assets sold cannot comprise more than 1/3 of each of the bridge banks, for which no signed share purchase agreement has been received by 31 December, and that none of those bundles will include a banking license.
- (35) By 15 February 2017, on the basis of the non-binding offers received for assets and liabilities of a bridge bank in the event that its sale has remained unsuccessful, Italy will submit a plan with all steps necessary to create the conditions that the remaining banking licences can be withdrawn by 1 April 2017. This will include a timeline with the estimated dates for the closing of sale agreements for the bundles of assets and liabilities for which non-binding offers have been received. Moreover, the plan will include steps to transfer out all unsold deposits by 31 March 2017. Until that date, any remaining deposits, i.e. those not included in these bundles, can be matched with cash and transferred out of the bridge banks.
- (36) Likewise, by 15 February 2017, Italy will notify to the competent authority the request to withdraw the banking licenses of the remaining bridge banks by 1 April 2017. That request will contain all envisaged steps to facilitate the withdrawal of the banking licence by 1 April 2017.
- (37) Italy submits that during the existence period of the bridge banks, in the ongoing sale process as well as in the sale of bundle of assets and liabilities, Italy is exploring all possible means to minimise the cost of the resolution and maximize the recovery value. When arriving in ordinary insolvency on 1 April 2017, Italy considers that all possibilities to sell the bridge banks as a whole or in parts will have been explored and therefore, a sale of whole businesses will no longer be expected. In ordinary insolvency, asset sales remain possible but with a EUR 700 million maximum limit on the asset bundle sold per transaction and a EUR 3 billion maximum limit on the amount of assets an individual buyer can acquire.
- (38) As in its previous proposal for an amendment, Italy maintains that no further State aid will be provided, including in ordinary insolvency.

3. POSITION OF ITALY

3.1. The amended impaired asset measure

3.1.1. Need for the correction of the initial impaired asset measure

- (39) In its submission on 7 July 2016, Italy argues that due to time constraints and the urgency of the situation, the Bank of Italy as resolution authority carried out the provisional valuation of assets and liabilities on the basis of the latest available accounting statements (30 September 2015) which did not take into account the loans that had deteriorated between 30 September 2015 and 22 November 2015.
- (40) By letter of 15 September 2016, the Bank of Italy states that for the purpose of Italy's final valuation, the financial position of the banks at the date of the resolution (22 November 2015) was used. Comparing the results of Italy's final valuation with the results of the provisional valuation, the following elements have been identified by Italy:
- (a) A higher amount of *Sofferenze* – gross book value of EUR 9.2 billion vs EUR 8.5 billion in the provisional valuation – due to *Sofferenze* loans that have emerged in the period between 30 September 2015 and 22 November 2015.
 - (b) A higher valuation of the overall *Sofferenze* – on average, transfer values for the four banks amounted to [30-40]% of GBV for collateralised loans compared to the earlier notified transfer value according to the provisional valuation of 25% of GBV and for uncollateralised loans of [5-10]% of GBV compared to 8.4%.
 - (c) Losses on assets and liabilities other than *Sofferenze* of EUR 388 million no higher than the prudential buffer of EUR 398 million, Italy says it considered in the provisional valuation for the four banks taken together.
- (41) Italy submits that Italy's final valuation does not change the resolution measures as planned and implemented by the resolution authority through its resolution decisions taken on 22 November 2015, but simply restates the situation as of the resolution date in the most accurate form.
- (42) Correspondingly, Italy also submits that the value of the *Sofferenze* portfolio determined in Italy's final valuation should be regarded as a more accurate valuation of the loans compared to the "simple" haircuts used in the 2015 Decisions and that existing but undetected *Sofferenze* at the time of the resolution should be included in the final implementation of the measure. Therefore, Italy wishes to adjust the transfer values for the entire *Sofferenze* portfolio.

3.1.2. Existence of aid, its necessity and compatibility

- (43) According to Italy, the measure in its restated form does not entail additional disbursements from the Resolution Fund. Italy further submits that the valuation of the *Sofferenze* portfolio performed by Italy's experts has been conducted taking into consideration the IAC.

- (44) The final figures determined by Italy's final valuation trigger no variation of the resolution scheme as notified by Italy last November and approved by the Commission. Italy takes the view that the transfer value of the loans already disposed and of the loans still to be disposed to the AMV has to be updated in line with the outcomes of Italy's final valuation.

3.2. The prolongation of the sale deadline

3.2.1. Need for a deadline prolongation

- (45) Italy submits that notwithstanding the continuous and vast energies deployed for the selling process, the time required for successful completion has proved to be much longer than planned for the following reasons:
- (a) The appetite of buyers for Italian banks has been hampered from June to July 2016 by the market reaction to the results of the referendum on the EU membership of the UK. In addition, potential buyers have been hindered up to end of July 2016 by concerns related to the European Banking Authority's ("EBA") 2016 stress tests published on 30 July 2016; in fact, four banking groups that had initially withdrawn from the auction, would have expressed interest in the process again in the beginning of August 2016.
 - (b) Achieving clarity for the inherent risks of the bridge banks for sale has been requiring enormous efforts since the resolution of 2015.
 - (c) After initial liquidity outflows, the bridge banks have achieved a stabilization of the customers franchise only in the course of spring.
 - (d) The financials for year 2015 of the bridge banks were closed only in late May 2016 due to the complexity of the resolution procedure and related accounting questions.
 - (e) Certainty on the tax position and on the legal risks related to the treatment of subordinated bondholders in resolution was fully achieved only in late July 2016.
 - (f) The bridge banks are perceived to have too large a portfolio of loans classified as 'unlikely to pay', which generated lengthy examinations and discussions with the bidders.
 - (g) Ongoing discussions with the competent supervisor.
- (46) Hence, Italy submits that a prolongation to 31 December 2016 of the deadline by which a binding SPA for each bridge bank should be signed is necessary.

3.2.2. Existence of aid, its necessity and compatibility

- (47) Italy considers that the submitted amendment proposal does not entail any new aid. It does also not change the conditions under which the Commission assessed that the aid measures approved in the 2015 Decisions were compatible with the internal market.

3.3. Commitments

- (48) The commitments that Italy submitted with the notification for the present amendment substitute in full the commitments annexed to the first amendment decision. The new commitments relate to the notified revision of the sales process and are reflected in Section 2.2.3 above. The full commitments are contained in Annex I.

4. ASSESSMENT OF THE MEASURES – EXISTENCE OF AID

4.1. Existence of aid

- (49) 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.
- (50) The Commission has assessed in detail the measures implemented during the resolution of the banks in the 2015 Decisions and established their aid nature¹⁰. That assessment remains unchanged.
- (51) Regarding the notified amendment, the Commission points out that the prolongation of the sale deadline described in section 2.2.3 of the present decision does not in itself entail new aid within the meaning of Article 107(1) TFEU. Moreover, the Commission recalls Italy's commitment that it would provide no additional aid either during the existence period of the bridge banks or in liquidation under ordinary insolvency.

4.1.1. Correcting the GBV of the notified measure

- (52) Regarding the notified changes to the impaired asset measures, Italy's final valuation identified a higher GBV of the *Sofferenze* at the date of the resolution, namely EUR 9 235 million GBV compared to EUR 8 536 million GBV submitted to the Commission in November 2015.
- (53) For all the existing *Sofferenze* according to Italy's final valuation, Italy's experts assess the value of the *Sofferenze* loans to be [20-30]% of GBV ([30-40]% of GBV for collateralised exposures and [5-10]% of GBV for uncollateralised).
- (54) According to the Commission's findings, the results of Italy's final valuation for Marche are based on an incorrect GBV calculation which does not account for accrued interest. Based on the Commission's experts' results, the Commission estimates that effect to be at least EUR 1 168 million. Correcting by that number, the total GBV would be EUR 10 403 million. Moreover, the GBV of the entire portfolio is likely to be even higher.¹¹
- (55) Correcting the GBV correspondingly in the calculation of percentage values reduces the value of *Sofferenze* loans in Italy's final valuation down to [10-20]%

¹⁰ See section 5.1.2 in each of the 2015 Decisions.

¹¹ The value of EUR 1 168 million was established on a subset of roughly 86% of all *Sofferenze* loans. No extrapolation to the remaining 14% was performed.

of GBV ([20-30]% of GBV for collateralised exposures and [5-10]% of GBV for uncollateralised).

- (56) Because Italy has notified its intention of using the values resulting from Italy's final valuation as transfer values, those values should be compared with the values the Commission approved in the 2015 Decisions, namely the transfer value of 17.7% and the safe harbour REV of 20.5% (27% of GBV for collateralised exposures and 9.7% for uncollateralised). Overall, that comparison shows that the findings of Italy's final valuation confirm the safe harbour assessment of the Commission performed in the 2015 Decisions.¹²

<i>Sofferenza</i>	Notified amendment 2016			Commission's assessment of the 2016 amendment	
	Notified GBV	Notified Transfer Value	Transfer value (% Notified GBV)	Corrected GBV	Transfer value (% Corrected GBV)
Marche	4,986	[1000-1500]	[20-30]%	6,154	[20-30]%
Etruria	2,071	[400-450]	[10-20]%	2,071	[10-20]%
Carife	1,601	[200-250]	[10-20]%	1,601	[10-20]%
Carichieti	577	[100-150]	[10-20]%	577	[10-20]%
TOTAL	9,235	[2.000-2.500]	[20-30]%	10,403	[10-20]%
secured	5,828	[1500-200]	[30-40]%	6,854	[20-30]%
unsecured	3,407	[250-300]	[5-10]%	3,549	[5-10]%

Figure 3 – Impact of the correction of the GBV on transfer values

4.1.2. Quantification of the aid amount in the 2015 Decisions

- (57) The Commission recalls that in the 2015 Decisions, it established the aid amount per bridge bank, based on the following information provided by Italy:
- Transfer values for the *Sofferenza* loans in the four banks in absolute numbers;
 - Transfer values for the *Sofferenza* loans in relative values, amounting to 25% of GBV for collateralised and 8.4% of GBV for uncollateralised *Sofferenza* loans; and
 - A break-down of the *Sofferenza* portfolios of the four banks into secured and unsecured loans.

¹² The number of 31% for secured exposures mentioned by Mr Ignazio Visco, Governor of the Bank of Italy, before the Sixth Standing Committee (Finance and Treasury) of the Italian Senate by 19 April 2016, for example relies on the numbers provided by Italy's experts which, as shown by the Commission's experts, are based on incorrect numbers for the GBV in Marche (see Figure 3).

- (58) While elements (b) and (c) should have allowed the Commission in principle to recalculate the transfer value in absolute numbers (a), the results were consistent only for Etruria and Carichieti. For Marche and Carife, the information provided to the Commission was inconsistent in that the percentage values of 25% and 8.4% of GBV (b) applied to the portfolio split between secured and unsecured loans (c) arrived at an absolute amount which was higher than the transfer value in absolute terms (a) notified by Italy. In the 2015 Decisions, the Commission approved the notified transfer values as absolute amounts.
- (59) In the 2015 Decisions, the Commission then established the CMV of the portfolio based on safe harbour values for the determination of the appropriate market values. The Commission has the flexibility to consider safe harbour values¹³ in view of the urgency of a specific case; however, those values have to be sufficiently conservative and prudent.
- (60) The Commission calculated the corresponding safe harbour CMVs based on data of a single market transaction which had occurred from the perimeter of the banks and the Commission's own experience and past case practice with respect to impaired asset measures in other Member States¹⁴. The Commission concluded that safe harbour values of 20% of GBV for collateralised and [0-5]% of GBV for uncollateralised *Sofferenze* exposures were appropriate for calculating CMV.
- (61) For Etruria, Marche and Carichieti, the Commission then calculated the CMV by applying those safe harbour values to the notified split between secured and unsecured exposures and subtracted the result from the transfer value in absolute terms to establish the aid amount. For Carife the Commission subtracted the result from the transfer value in percentage terms applied to the split between secured and unsecured to establish the aid amount.

4.1.3. *Quantification of the aid amount for the notified amendment*

- (62) In order to assess the existence of aid in the transfer of impaired assets to the AMV under the newly notified conditions, the Commission assessed the CMV of the portfolio to be transferred at the date of the resolution based on the findings of the Commission's experts. Figure 4 summarises the Commission's findings per bank and compares them to those in the 2015 Decisions.

¹³ Communication from the Commission on the treatment of impaired assets in the Community banking sector, annex I and annex IV, OJ C 72, 26.3.2009, p.1-22.

¹⁴ Ireland, Netherlands, Spain, Slovenia.

<i>Sofferenza</i>	Aid approved in 2015				Commission's assessment			
	Notified Transfer Value	Safe harbour Market Value	Market Value (% notified GBV)	Aid amount	Notified Transfer Value	Estimated Market Value	Market Value (% Corrected GBV)	Aid amount
Marche	916	[700-750]	[10-20]%	202	[1000-1500]	[1000-1500]	[10-20]%	222
Etruria	334	[200-250]	[10-20]%	98	[400-450]	[350-400]	[10-20]%	29
Carife	179	[150-200]	[5-10]%	84	[200-250]	[200-250]	[10-20]%	46
Carichieti	85	[50-60]	[10-20]%	26	[100-150]	[50-60]	[5-10]%	51
TOTAL	1,514	[1000-1500]	[10-20]%	409	[2.000-2.500]	[1500-2000]	[10-20]%	348

Figure 4 - Aid amounts

- (63) First of all, the Commission notes that the CMV established by the Commission's experts is overall significantly higher than the safe harbour CMV relied on for the 2015 Decisions. As the split between secured and unsecured exposures is known and has hardly changed between the aid approved in 2015 and the notified amendment, this increase is due to an increase in prices. At equal transfer values, this would significantly decrease the aid amount contained in the measures. This decrease is counter-balanced by the increase in the total amount of *Sofferenza* transferred and the increase in the transfer values for the *Sofferenza*.
- (64) For Etruria and Carife, those two effects compensate each other and the Commission correspondingly confirms that the aid element contained in the originally notified impaired asset measures for Etruria and Carife is actually lower than the aid amount that the Commission prudently approved for those measures in the 2015 Decisions.
- (65) For Carichieti and Marche, increasing the amount of *Sofferenza* transferred as well as the transfer values, leads to a slight increase in aid amount in the impaired asset measure (EUR 24 million for Carichieti and EUR 20 million for Marche).
- (66) However, the Commission notes that the parameters underlying the impaired asset measure as notified and approved in the 2015 Decisions, namely a transfer of all *Sofferenza* exposures present in the banks at the date of the resolution, has not been altered. That has also been acknowledged by Italy. The notified amendment is based solely on a revision by Italy of both the number of *Sofferenza* present at the date of resolution as well as their value.
- (67) Therefore, the Commission considers the amounts of EUR 24 million for Carichieti and EUR 20 million for Marche to be new aid in the meaning of Article 107(1) TFEU but required for the implementation of the measure as originally envisaged in the resolution plan.

4.2. The beneficiary of the aid

- (68) The Commission has already determined the beneficiaries of the aid in section 5.1.3 of the 2015 Decisions.
- (69) Since no buyer has been identified in the currently ongoing sale process so far, the Commission cannot at this stage conclude whether there is aid or not to the buyer(s).

5. ASSESSMENT OF THE MEASURES – COMPATIBILITY

5.1. Legal basis of the assessment

- (70) The legal basis for the compatibility assessment of the aid measures is specified in section 6.1 of the 2015 Decisions.
- (71) As described in section 4.1 of this Decision, the notified amendment entails modifications of the impaired asset measures which result in new aid with respect to Marche and Carichieti, and a prolongation of the sale deadline, which in itself does not entail new aid. Hence, the compatibility assessment as presented in the 2015 Decisions and the first amendment decision will have to be reconsidered, specifically the compatibility of the amended impaired asset measures with the IAC, and both the impaired asset measures as well as the prolongation of the sale deadline with respect to the 2013 Banking Communication¹⁵.
- (72) All the other elements of the compatibility assessment developed in the 2015 Decisions are still valid, as they are unaffected by the notified amendments.

5.2. Compatibility of the amended impaired assets measure with the IAC

- (73) In order to assess the compatibility of an impaired asset measure with the internal market, the criteria set out in the IAC as adapted and complemented by the 2013 Banking Communication need to be examined, namely: (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.
- (74) The Commission made it clear in the 2015 Decisions that some of these criteria could not be considered fulfilled but on balance came to the conclusion that the measures as originally notified could still be considered compatible with the internal markets.

5.2.1. Eligibility of the assets

- (75) The Commission accepts Italy's argument that the measure as approved in 2015 has not been fundamentally changed, in particular the transferred assets remain limited to *Sofferenze* present in the banks on the resolution date.
- (76) Therefore, the Commission's considerations regarding eligibility of assets as laid out in section 6.3 of the 2015 Decisions remain valid and the eligibility criteria of the IAC are considered fulfilled.

5.2.2. Transparency and disclosure

- (77) In the 2015 Decisions, the Commission highlighted the fact that Italy was not in a position to provide the Commission with a detailed identification of the assets as required under the IAC but considered that in light of the very limited existence period of the bridge banks, the requirement could on balance still be considered

¹⁵ 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, OJ C216, 30.7.2013, p. 1.

fulfilled. The Commission considers that this consideration has to be reviewed given the significantly extended existence period of the bridge banks.

- (78) For the notified amendment, the Commission has been provided with asset-level tapes of the portfolios already transferred to the AMV on 26 January 2016 as well as for the leasing portfolio yet to be transferred, representing 88% of the portfolio to be transferred. No details have been provided on the two other portfolios of *Sofferenze* loans included in the notified transfer, i.e. a securitised portfolio and the additional *Sofferenze* which were identified by Italy's experts during Italy's final valuation.
- (79) The Bank of Italy submitted at the time of the 2015 Decisions, and reiterated its position in the submission of Italy of 15 September 2016, that the resolution decision was based on a provisional valuation of the assets based on information as of 30 September 2015 and that Italy was not in a position to obtain updated information at the time.
- (80) The Commission takes note of this explanation but points out that all four banks had been under special administration led by Bank of Italy for many months, and in some cases years, prior to resolution. Moreover, the Commission notes that in the summer of 2016, Italy was still not in a position to provide the Commission with line-by-line information on the additional *Sofferenze* loans which according to Italy and Italy's experts had been identified as having emerged between 30 September 2015 and 22 November 2015.
- (81) Finally, the Commission's found that the detailed loan-level data provided for the loans already transferred has been of particularly bad quality. In an in-depth review of credit files, credit documentation for 21 out of the 25 largest loans showed important inconsistencies between the credit documentation and the loan-level data provided¹⁶.
- (82) Given that (a) the resolved banks were under special public administration prior to their resolution, (b) resolution action was taken more than ten months ago and (c) the transfer of loans to the AMV occurred already in January 2016, those problems should raise significant further questions regarding the management of the process in general and of those assets more specifically.
- (83) The Commission's experts have spent significant amount of time on understanding and remedying those data related issues. Given that the remediated loan-level data covers 88% of the overall portfolio, the Commission considers the transparency requirement fulfilled.

5.2.3. *Management of the assets*

- (84) As envisaged in the 2015 Decision, the transferred *Sofferenze* are managed by an AMV which is fully independent from the bridge banks although the latter continued for a transitory period of time the day-to-day management of those

¹⁶ In addition, 14 out of 25 credit files showed important gaps in the documentation making it impossible to make a reliable estimation of the recoveries and their timing. Main documents missing or incomplete were the collateral appraisal reports (21 out of 25) and guarantee documents (20 out of 25).

loans. It can therefore be concluded that the separate asset management is in line with the requirements of the IAC.

5.2.4. Valuation

- (85) According to the Bank of Italy, Italy's experts assessed the portfolio in line with the EBA draft "Regulatory Technical Standards on valuation under BRRD" and taking into consideration the IAC. Italy provided a note from the Bank of Italy, as well as the reports of the independent experts appointed by the Bank of Italy explaining how the final transfer value of the assets transfer to the AMV was calculated.
- (86) The Commission has scrutinized the valuation and, in particular, the underlying general methodology in order to ensure a consistent approach at Union level. For that purpose, the Commission has availed itself of the support of independent external experts, to:
- (a) provide technical support on the valuation of the portfolio to be transferred, assessing how the existing materials submitted by the bridge banks and the management of the AMV could be used to assess the REV;
 - (b) estimate the REV and current market value of the portfolio earmarked to be transferred.
- (87) The Commission, supported by its experts, have developed a discounted cash flow model assessing the likely recovery from each type of *Sofferenza* loan and applied that model to all loans for which detailed information was made available. Figure 5 - Summary of the valuation below summarises the outcome of that exercise.

<i>Sofferenza</i>	Commission's assessment 2015				Commission's assessment 2016				
	Notified Transfer Value	Transfer Value (% GBV)	Safe harbour REV*	Safe harbour REV (% GBV)	Notified Transfer Value	Transfer Value (% Corrected GBV)	REV	REV (% Corrected GBV)	Aid above REV
Marche	916	20.1%	1,028	22.6%	[1000-1500]	[20-30]%	[1000-1500]	[20-30]%	8
Etruria	334	17.6%	366	19.3%	[400-450]	[10-20]%	[450-500]	[20-30]%	0
Carife	179	11.3%	264	16.7%	[200-250]	[10-20]%	[200-250]	[10-20]%	10
Carichiati	85	17.0%	93	18.7%	[100-150]	[10-20]%	[60-70]	[10-20]%	42
TOTAL	1,514	17.7%	1,752	20.5%	[2000-2500]	[10-20]%	[2000-2500]	[10-20]%	61

Figure 5 - Summary of the valuation

- (88) First, the Commission points out that the overall REV of [10-20]% of the corrected GBV compares to a notified transfer value of 17.7% approved in the 2015 Decisions. The comparison demonstrates that the reasoning that the notified transfer value of 17.7% of GBV was lower than the REV was sound on average.
- (89) However, the REV resulting from the calculation of the Commission's experts is [10-20]% of the corrected GBV and actually lower than the safe harbour REV of [20-30]% of GBV, demonstrating that – if anything – the Commission's assessment in the 2015 Decisions was not overly conservative.

- (90) Regarding the overall low level of REV, the Commission points first to the significant differences between banks. Data quality and availability has been much better in the two larger institutions Marche and Etruria than in the two smaller banks Carife and Carichieti.
- (91) The low values for REV correspond partly to that very low level of data quality which has been particularly bad for Carichieti.¹⁷ In line with the IAC and as applied by the Commission's experts, the corresponding high level of uncertainty and risk has to be reflected in prudent assumptions and haircuts. Compared with a market value supported by actual market transactions¹⁸, this leads to a smaller than usual difference between REV and market value for those cases.
- (92) In conclusion, the Commission considers the valuation criterion to be fulfilled for all four banks but reiterates its caution regarding the valuation for Carichieti and – to a lesser extent – for Carife, hampered by the significant difficulties in obtaining reliable data.

5.2.5. *Burden-sharing and remuneration*

- (93) The Commission has already concluded in section 6.2 of the 2015 Decisions that shareholders and holders of subordinated debt have contributed to the maximum extent possible.
- (94) For Etruria, the Commission finds that the transfer value according to the notified amendment is lower than the REV (see Figure 5). Therefore, the burden-sharing criterion is fulfilled for Etruria.
- (95) For the three other banks, Marche, Carife and Carichieti, the Commission notes that the notified transfer value is higher than the REV. According to point 41 of the IAC, a transfer above REV can be considered compatible if the bank undergoes far reaching restructuring and a mechanism is introduced to allow the recovery of the aid above REV at a later stage.
- (96) First, the Commission points out that the aid amount above REV for Marche (0.3%) and Carife (1.5%) is small relative to the overall aid amount approved in the 2015 Decisions. While the aid amount above REV is relatively higher for Carichieti (22%), the Commission points out that in that case the absolute amount of aid approved in the 2015 decision was small (see Figure 6 for details). Therefore, the Commission maintains that for Marche and Carife as well as to a lesser extent for Carichieti, the distortion of competition due to the additional amount of aid is limited.
- (97) Moreover, the Commission recalls that it approved a contemporary recapitalisation for the bridge banks in the 2015 Decisions. In that respect the

¹⁷ For example, the loan-level information provided to the Commission's expert has included a great number of collaterals for which the value was zero. Those numbers have been disputed both by Italy's expert and the bank. Although the Commission's experts have acknowledged that the likelihood that those numbers are incorrect is high, and in spite of spending significant amount of time on data remediation, the Commission's experts have not been presented with sufficient evidence to suggest that the valuation might be more in line with the assessment of Italy's expert.

¹⁸ According to the Commission's experts, there were roughly 20 comparable market transactions in 2015 and significant interest and liquidity from external investors in investing in Italian NPLs.

Commission points out that a reduction of the transfer value to the applicable REV in those three banks would have reduced the aid amount provided through the impaired measures. However, it would also have increased the amount of losses in those banks by the same amount. Given that shareholders and holders of subordinated debt instruments had already contributed to the maximum extent, any such additional losses would have had to be covered by an increase in the amount of recapitalisation.

- (98) Therefore, if the measure had been implemented with full information available at the time of resolution, the Commission would have approved it on the basis of the aid amount necessary which would have been the same as it is now – although the split between aid in the impaired asset measure and in the recapitalisation measure would likely have been slightly different.
- (99) Finally, the Commission points out that the bridge banks resulting from the resolution of the banks are already significantly smaller than they were pre-resolution (61% for Marche, 42% for Carife and 66% for Carichiati). Moreover, should a sale in full fail by the end of 2016, they will be sold in bundles of assets and liabilities and eventually liquidated under ordinary insolvency by 1 April 2017 and eventually liquidated under ordinary insolvency. Therefore, the banks have undergone and will continue to undergo far-reaching restructuring within the meaning of point 41 of the IAC.

<i>Banks</i>	Aid above REV			Balance sheet		
	Aid above REV	Total aid approved in 2015 (IAM + recapitalisation)	% aid above REV / Total aid approved in 2015	sheet prior to the resolution	Balance sheet 30 June 2016	% BS 30 June 2016 / BS prior to the resolution
	EUR million			EUR billion		
Marche	8	2,248	0.3%	23	14	60.8%
Etruria	0	823	0.0%	12	7	57.3%
Carife	10	707	1.5%	7	3	42.0%
Carichiati	42	193	22.0%	5	3	66.0%
TOTAL	61	3,971		47	27	

Figure 6 - Aid above REV comparing to the 2015 measures

- (100) On balance, the Commission therefore considers that in view of the preceding facts, the burden sharing criterion is fulfilled also for Marche, Carife and Carichiati in line with point 41 of the IAC.

5.2.6. Conclusion on compatibility with the IAC

- (101) In light of the above, the Commission considers that the transfer of impaired assets to the AMV meets all the conditions and requirements of the IAC.

5.3. Compatibility of the impaired asset measures with the 2013 Banking Communication

- (102) For Etruria and Carife, the Commission considers that the reasoning regarding compatibility under the 2013 Banking Communication remains intact, in

particular with respect to burden sharing, given that the notified amendment does not result in a greater aid amount than already approved in the 2015 Decisions.

- (103) For Marche and Carichieti, the Commission has found that the amended terms with respect to the transfer of impaired assets lead to an increase in the amount of aid by EUR 20 million for Marche and EUR 24 million for Carichieti (see Figure 5). Therefore, the Commission considers that the compatibility conditions under the 2013 Banking Communication need to be reconsidered.
- (104) As the Commission accepts the reasoning that the impaired asset measure is unchanged in principle but changing only in line with restated figures, the Commission has to assess the question whether it would have required different measures for compatibility reasons based on the additional aid found.
- (105) First of all, the Commission reiterates that shareholders and holders of subordinated debt have already contributed to the maximum extent possible in the 2015 Decisions. Additional losses would therefore have increased the aid amount and not led to additional burden sharing.
- (106) Furthermore, the Commission points out that it approved measures for the four banks which were structurally identical and based on identical commitments. On the basis of those commitments, the Commission considered that the distortion of competition were limited to a minimum in each case although the aid intensity approved as measured by total pre-resolution balance sheet was very different across the four banks (see Figure 7).
- (107) The additional amount of aid found in the restated impaired asset measures increases the aid intensity for Marche and Carichieti. However, the aid intensity remains in both cases lower than the aid intensity of 10.2% that the Commission approved in the case of Carife. Therefore, the Commission considers that it would have approved the resolution measures for Marche and Carichieti in 2015 also on the basis of the slightly increased aid intensities without additional commitments.
- (108) In view of the preceding points, the Commission considers that the compatibility assessment carried out in the 2015 Decisions for Marche and Carichieti is not affected by the notified amendment and the amended measures remain compatible with the 2013 Banking Communication.

<i>Banks</i>	New aid	Total aid approved in 2015 (IAM + recapitalisation)	Balance Sheet prior to the resolution	% Aid approved in 2015 / BS prior to the resolution	% New aid / BS prior to the resolution	% total aid / BS prior to the resolution
Marche	20	2,248	22,700	9.9%	0.1%	10.0%
Etruria	0	823	12,300	6.7%	0.0%	6.7%
Carife	0	707	6,900	10.2%	0.0%	10.2%
Carichiati	24	193	4,700	4.1%	0.5%	4.6%
TOTAL	43	3,971				

Figure 7 - Amount of new aid compared to the balance sheet of the banks prior to the resolution

5.4. Compatibility of the extended sales process with the 2013 Banking Communication

- (109) The prolongation of the deadline to sell all bridge banks in their entirety requires a review of the limitation of distortions of competition, since the limited existence period of the bridge banks was one of the conditions that allowed the Commission to conclude that distortions of competition stemming from the market presence of the bridge banks were limited in the 2015 Decisions.
- (110) In the 2015 Decisions the Commission concluded that distortions of competition stemming from the market presence of the bridge banks during their existence period are limited, essentially for two reasons:
- (a) the bridge banks have been established for a limited period of time, and if not sold by 30 April 2016 they would be orderly wound down according to Commitment 4 in Annex I to the 2015 Decisions;
 - (b) no later than two years after the date of the resolution, i.e. by 22 November 2017, they would be subject to ordinary insolvency and their banking licence would be revoked.
- (111) In the first amendment decision, the Commission concluded that additional distortions of competition stemming from the extended market activity of the bridge banks during the prolonged sale process were balanced by a shorter existence period, should the sale process prove unsuccessful. Italy had committed and drawn up a scenario to sell unsold bridge banks in smaller lots, in order to create the conditions for an accelerated withdrawal of the banking licence(s). This scenario was hypothetical because it was foreseen as a contingency plan for the time after the sales deadline (then 30 September 2016). On that basis, the Commission accepted a prolongation of the sales period coupled with a shortened existence period of the bridge banks and took the view that the balance of the original decisions was preserved.
- (112) Italy has now requested another prolongation of the sales deadline, leading to a continued market presence of the bridge banks.

- (113) The prolongation of the deadline to sell the banks in their entirety by three months should, according to Italy, give sufficient comfort for a successful completion of the sale that would imply a durable return to viability of those entities in the hands of a new owner. Should the prolonged ongoing sale process result in a successful sale of a bridge bank in its entirety, Italy commits that a signed SPA for any of the bridge banks in their entirety will be notified to the Commission by 31 December 2016 at the latest.
- (114) For the existence period during which the bridge banks remain present in the market, the Commission welcomes Italy's commitments on the behaviour of the bridge banks limiting the resulting distortions of competition. In particular, bridge banks will (a) further improve risk management including at customer level and take corrective actions if necessary, (b) in principle not actively seek new customers and, in any event, not pursue aggressive commercial strategies and (c) price their products in line with the more conservative range in the market, i.e. deposits will be priced below and credit or other loan business will be priced above the current market average.
- (115) If Italy has not received concrete market interest for a bridge bank in its entirety by 31 December 2016 at the latest, the notified second amendment includes concrete steps to proceed with a sale of assets and liabilities to prepare for the remaining bridge banks' orderly exit from the market.
- (116) To this end, Italy will invite by letter, by 1 November 2016 at the latest, all parties which have previously expressed an interest, and possibly other parties, to select from the four bridge banks business lines, client relationships, assets and liabilities according to their preferences and submit a supplementary non-binding offer by 31 January 2017.
- (117) In view of the fact that the tender stage of the sale process was already terminated once by the Bank of Italy in July 2016 without a result, the Commission welcomes the concrete steps to widen the sale procedure to provide for the event that a bridge bank was not eliciting market interest for its entire business. A bidder who prefers purchasing the entire business of a bridge bank because it considers its value to be greater than that of smaller bundles of assets, will continue to be able to express that preference by submitting a corresponding binding offer by 31 December 2016 (or earlier). Non-binding offers for parts of the bridge banks will expected to be submitted by 31 January 2017.
- (118) Thus, the invitation to also bid for the bridge banks in parts could potentially open up additional opportunities for the sale of bridge banks and for returning parts of those businesses to viability in the hands of a new owner.
- (119) At the same time, Italy's commitment to widen the sale procedure also contributes to addressing the distortions of competition stemming from the existence of the bridge banks in the market. That is because concrete steps are taken that limit the existence period of the bridge banks.
- (120) Italy will also limit the size of asset bundles for sale to a maximum size of no larger than 1/3 of the balance sheet of a bridge bank that has remained unsold. That commitment will further contribute to limiting distortions of competition, as it increases the chances that a purchasing entity can absorb and restructure the acquired bundle.

- (121) Widening the sales process to asset-and-liability bundles could moreover open up further opportunities to transfer to another market participant those parts of the banking business, for which a banking licence is required, in particular deposits, thus substantiating Italy's aim to put an unsold bridge bank into ordinary insolvency. Even for the case where deposits may not be sold together with assets, it will remain possible during the existence period of the bridge banks to match these deposits with cash and transfer them to a market participant.
- (122) For all bridge banks or part of bridge banks remaining, Italy will by 15 February 2017 submit a plan with all steps necessary to create the conditions for the banking licence(s) to be withdrawn, with timelines for the closing of sale agreements for bundles of assets and liabilities for which non-binding offers have been received. While deposits can be included in those bundles, the plan will also include steps to transfer out all unsold deposits by 31 March 2017. Until that date, any deposits not included in those bundles can be matched with cash and transferred out of the bridge banks.
- (123) With respect to possible transfers of deposit books, the Commission recalls that the financing of the relevant funding gaps does not constitute State aid to the transferred claims and liabilities, if the latter together do not constitute an undertaking. Therefore, if the deposit book to be transferred is not combined with other assets but only matched with cash, it does not constitute an undertaking and thus, even if the cash were provided from State resources, there would be no aid to that transferred deposit book.¹⁹
- (124) Italy has provided in the commitments that the overall process outlined above to be implemented before 1 April 2017 is exploring all possible means to minimise the cost of the resolution and maximize the recovery value during the existence period of the bridge banks, in the ongoing sale process as well as in the sale of bundles of assets and liabilities. This implies that at the point of arriving at ordinary insolvency, all the possibilities to sell the banks as a whole or in parts should have been explored and a sale of whole business will no longer be expected to be realised. The Commission fully shares that view.
- (125) The Commission welcomes that the process which Italy is implementing also allows Italy to advance the final end date for the existence period of the bridge banks by one month compared to the first amendment decision to 1 April 2017. Italy also will limit the maximum size of one lot of assets put for sale in ordinary insolvency to EUR 700 million while no individual buyer will be able to acquire more than EUR 3 billion of assets.
- (126) The Commission welcomes the fact that Italy will notify already by 15 February 2017 to the competent authority the request to withdraw the banking licenses of

¹⁹ Commission decision of 23 July 2014 on National Bank of Greece – NBG. Three cooperative banks were acquired by NBG, but there was no transfer of branches or employment contracts or loans to NBG Bank, but only deposits. The loans remained with the three Cooperative Banks in liquidation. The Commission's assessment of the existence of aid is contained in paragraphs 180-188 of that decision, which is available at: http://ec.europa.eu/competition/state_aid/cases/245545/245545_1605985_304_2.pdf

the remaining bridge banks by 1 April 2017. That request will contain the envisaged steps to fulfil the requirements.

- (127) Overall, the Commission notes that Italy maintains its previous commitment that no further State aid will be provided, including in ordinary insolvency. Also, the Commission has already assessed above that the additional aid in the amended impaired asset measure for Carichieti and for Marche does arise only in the implementation of the measure as originally envisaged in November 2015. More broadly, however, Italy's commitment not to grant further aid is a necessary step, as it provides comfort that the resolution strategy designed by Italy is based on realistic assumptions.
- (128) Taken together, Italy's commitments considerably strengthen the credibility of the plan to achieve the withdrawal of the banking licence by the notified date. This in turn strengthens the plausibility of the end date to the existence of the bridge banks, and therefore to the competition distortions they create.
- (129) In light of the above, the Commission concludes that distortions to competition stemming from the extended market presence of the bridge banks during the full sale process and the asset sale process remain limited under the amended commitments.
- (130) The Commission 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. Such a notification and decision by the Commission will only be required if a signed SPA for any of the bridge banks is notified by Italy to the Commission by 31 December 2016. As regards the asset sales, the Commission will perform a viability assessment where necessary, in which it will take into due consideration the size and strength of the buyer relative to the size and strength of the business acquired.
- (131) In light of all the foregoing, the Commission considers that the amended resolution plans do not put into question the assessment of the Commission in the 2015 Decisions and the amended measures are therefore compatible with the internal market pursuant to Article 107(3)(b) TFEU.

6. COMPLIANCE OF THE MEASURES AND THE AMENDED COMMITMENT CATALOGUE WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

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

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

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.

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 Decisions and in the first amendment decision of 29 April 2016. The amendments notified by Italy to the measures which were approved in the 2015 Decisions and the first amendment decision are not of such a nature as to change the Commission's assessment.
- (135) Therefore, the Commission maintains its initial assessment that the measures do not violate indissolubly linked provisions of the Directive in the context of the State aid rules.
- (136) 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.

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

7. CONCLUSION

The Commission has accordingly decided to approve the transfer of impaired assets including additional aid to Nuova Banca delle Marche S.p.A. of EUR 20 million and to Nuova Cassa di Risparmio di Chieti S.p.A. of EUR 24 million and the prolongation of the sale deadline for the bridge banks from 30 September 2016 to 31 December 2016 to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union, and not to raise objections.

The Commission notes that Italy exceptionally accepts that the adoption and notification of the Decision be in the English language.

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



ANNEX I - ITALY COMMITMENTS DEFINITIONS

For the purpose of these Commitments, the following terms shall mean:

1. Banks: Banca delle Marche S.p.A, Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A, Cassa di Risparmio della Provincia di Chieti S.p.A.
2. Bridge Banks: the legal entities to which selected assets and liabilities were transferred on the basis of the Resolution Schemes.
3. Residual Entities: the legal entities resulting after the banking licenses of the Banks were revoked and where the remaining assets and liabilities of the Banks remained.
4. Decision: the second amendment decision of the European Commission authorizing the State aid measures.
5. Existence Period: the Existence Period starts with the setup of the Bridge Banks. The Existence Period ends when the Bridge Banks are sold. If the Bridge Banks are not sold, the Existence Period ends when the Bridge Banks are wound up entirely, or their banking licenses are revoked or they stop any banking activity, whichever occurs earlier.
6. Ordinary Insolvency Period: the Ordinary Insolvency Period starts when the Bridge Banks become subject to ordinary insolvency proceedings, and ends when the ordinary insolvency proceedings are concluded.

The Commitments shall take effect upon the date of adoption of the Decision.

With respect to the Bridge Banks, the Commitments apply throughout the Existence Period.

- 1) The Bridge Banks will be managed in a prudent manner with the objective of being divested.
- 2) 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. The names of the Banks, Banca delle Marche, Banca Popolare dell'Etruria e del Lazio, Cassa di Risparmio di Ferrara, Cassa di Risparmio della Provincia di Chieti, will not be transferred to the buyer.
- 3) Italy will continue the ongoing sale process for each of the Bridge Banks in its entirety until 31 December 2016. Italy will notify a signed share purchase agreement for the respective Bridge Banks to the Commission by 31 December 2016 at the latest.

- 4) Without prejudice of the ongoing sale process referred to in point 3, by 1 November 2016, Italy will invite by letter all parties which have expressed an interest for the Bridge Banks or parts thereof during the ongoing sale process to submit supplementary offers. Those parties will be invited to select according to their preference bundles of assets and liabilities (i.e. business lines, client relationships) from the four Bridge Banks and submit a supplementary non-binding offer by 31 January 2017. Italy may extend the same invitation to parties who have not yet expressed any interest during the ongoing sales process. Italy reserves its unchallengeable rights not to accept in its sole discretion and judgement any of these offers, in full or in part, even in case a share purchase agreement is not signed for the concerned Bridge Bank.
- 5) If no signed share purchase agreement is notified to the Commission by 31 December 2016 at the latest, it will only be possible to sell bundles of assets and liabilities of those Bridge Banks for which no signed share purchase agreement has been received. Bundles of assets and liabilities sold during this period cannot cover more than 1/3 of each of the Bridge Banks. None of those bundles will include a banking license.
- 6) The Bridge Banks will be subject to ordinary insolvency proceedings and their banking licence revoked at the latest by 1 April 2017.
- 7) By 15 February 2017, Italy will submit a plan with all the necessary steps to facilitate the withdrawal of the banking licence by 1 April 2017, including a timeline with the estimated dates for the closing of the sale agreements for bundles of assets and liabilities. The plan will include steps to transfer out all unsold deposits by 31 March 2017.
- 8) By 15 February 2017, Italy will notify to the competent authority the request to withdraw the banking licenses of the remaining Bridge Banks by 1 April 2017. That request will contain all envisaged steps to facilitate the withdrawal of the banking licence by 1 April 2017.
- 9) According to the plan submitted on 15 February 2017, Italy will do the best effort to match with assets and sell all deposits by 31 March 2017. If any deposits remain unsold by that date, those deposits can be transferred out of the Bridge Banks to third parties at the latest by 31 March 2017 matched with cash only.
- 10) During the existence period of the Bridge Banks, in the ongoing sale process as well as in the sale of bundle of assets and liabilities Italy is exploring all possible means to minimise the cost of the resolution and maximize the recovery value. At the point of arriving at the Ordinary Insolvency Period, all the possibilities to sell the banks as a whole or in parts have been explored and a sale of whole business will no longer be expected to be realized. Therefore, during the Ordinary Insolvency Period the maximum size of one lot of assets put for sale will be limited to EUR 700 million and no individual buyer will be able to acquire more than EUR 3 billion of assets.

- 11) Italy commits to notify to the Commission the result of the sale procedures in advance of their implementation to allow their assessment under the European Union State aid framework.
- 12) Italy will not provide any additional capital or liquidity aid to the Banks, the Residual Entities or the Bridge Banks throughout the Existence Period and the Ordinary Insolvency Period. In addition, the Bridge Banks will not provide any additional capital and/or liquidity to the Residual Entities, except for a limited amount of resources (e.g. personnel) necessary for the liquidation procedures of the Residual Entities.
- 13) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the Banks or the Residual Entities may be transferred to the Bridge Banks.
- 14) Granting loans by Bridge Banks to enable borrowers to purchase shares or hybrid instruments of the Bridge Banks shall be prohibited, whoever those borrowers are.
- 15) The Bridge Banks will not pay any coupons on hybrid capital instruments (or any other instruments for which the coupon payment is discretionary) or dividends on own funds instruments and subordinated debt instruments other than where there is a legal obligation to do so and other than on those held by the Resolution Fund or by shareholders or subordinated debt holders which entered into the Bridge Banks after their set up. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, the Bridge Banks shall submit the proposed coupon or dividend payment to the Commission for approval.
- 16) The Bridge Banks 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 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.
- 17) The Bridge Banks have to continue the further improvement of their risk management activities and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.
- 18) The Bridge Banks can only purchase investment grade securities or euro area sovereign securities.
- 19) Recognising their limited further existence, the Bridge Banks will operate with prudent and sound risk policies. In principle, the Banks will not actively seek new customers and, in any event, they will not pursue aggressive commercial strategies.

The Banks will price their products in line with the more conservative range in the market, i.e. deposits will be priced below the current market average, while credit or other loan business will be priced above the current market average.

- 20) The Bridge Banks will apply strict executive remuneration policies. The Bridge Banks will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than 15 times the national average salary in Italy or 10 times the average salary of employees of the Bridge Banks.
- 21) Without prejudice of the powers of the resolution authority to transfer further assets from the Residual Entities to the Bridge Banks, the Bridge Banks shall not acquire any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertakings which have the legal form of a company and any package of assets which forms a business.
- 22) The acquisition ban shall not apply to acquisitions that take place in the ordinary course of banking business in the management of existing claims towards ailing firms, including the conversion of existing debt into equity instruments and where the purchase price paid by the Bridge Banks for any acquisition is less than 0.01 % of the balance sheet size of the Bridge Banks at 22 November 2015, and where the cumulative purchase prices paid by the Bridge Banks for all such acquisitions starting on 22 November 2015 until the end of the Existence Period, is less than 0.025% of the balance sheet size of the Bridge Banks at 22 November 2015.
- 23) Notwithstanding the acquisition ban, the Bridge Banks may, after obtaining the Commission's approval, and, where appropriate, on a proposal of the Bank of Italy, acquire businesses and undertakings if it is in exceptional circumstances necessary to restore financial stability or to ensure effective competition. The acquisition ban does not apply to the mergers and acquisition of entities within the banking group or among the Bridge Banks for the purposes of a sale.
- 24) The Bridge Banks shall manage the assets they receive with the objective of being divested, in a way that maximizes the net present value of these assets, including, if convenient, the sale of subsidiaries to third parties.
- 25) In order to facilitate the sale of the Bridge Banks any initiative useful to maximize the value of the subsidiaries shall be carried out including, if convenient, the sale to third parties.
- 26) The Bridge Banks will refrain from advertising referring to Resolution Fund support and from employing any aggressive commercial strategies which would not take place without the Resolution Fund support.
- 27) Full and proper implementation of all commitments will be monitored by a Monitoring Trustee independent from the Banks or the Bridge Banks, proposed by Italy, approved by the Commission and appointed and paid by the Bridge Banks; the Monitoring Trustee will have the duty to monitor the full compliance with the Commitments until the end of the Existence Period. The Monitoring Trustee will

provide a final report to Commission one month after the beginning of the Ordinary Insolvency Period.