

## II

(Non-legislative acts)

## DECISIONS

## COMMISSION DECISION (EU) 2015/1582

of 17 July 2013

**on the measures SA.30704 — 12/C (ex NN 53/10), which Latvia has implemented for Latvian Mortgage and Land Bank SA — ‘commercial segment’**

(notified under document C(2013) 4406)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to those provisions <sup>(1)</sup>,

Whereas:

### 1. PROCEDURE

- (1) On 19 November 2009, the Commission approved two recapitalisation measures in favour of ‘The Mortgage and Land Bank of Latvia’ <sup>(2)</sup> (‘MLB’ or ‘the bank’) for a total amount of LVL 72,79 million (EUR [102,5-103,6] million), which were granted to the bank in January and November 2009 <sup>(3)</sup> respectively (‘the November 2009 decision’).
- (2) On 1 April 2010, the Latvian authorities notified a further recapitalisation in the amount of LVL 70,2 million (EUR 100 million), which had been implemented on 23 March 2010. The notification was registered on 6 April 2010. The Latvian authorities provided the Commission with further information between May 2010 and January 2012 <sup>(4)</sup>.
- (3) On 26 January 2012, the Commission decided <sup>(5)</sup> to temporarily approve the recapitalisation measure of LVL 70,2 million granted on 23 March 2010, a recapitalisation measure of LVL 50 million granted to the bank at the

<sup>(1)</sup> OJ C 130, 4.5.2012, p. 42.

<sup>(2)</sup> In Latvian, Latvijas Hipoteku un zemes bankas.

<sup>(3)</sup> Commission Decision in State aid case NN 60/09, *Recapitalisation of ‘The Mortgage and Land Bank of Latvia’* of 19 November 2009 (OJ C 323, 31.12.2009, p. 5).

<sup>(4)</sup> For further details see recitals 3-21 of the opening decision.

<sup>(5)</sup> Commission Decision in State aid case SA.30704 (12/C) (ex NN 53/10) — *Additional aid measures to the Latvian Mortgage and Land Bank* of 26.1.2012 (OJ C 130, 4.5.2012, p. 42).

end of 2011 (granted as a liquidity measure to be converted into capital), a standby liquidity facility of up to LVL 250 million for the bank, guarantees to international creditors of the commercial segment of MLB of up to LVL 32 million and liquidity support of up to LVL 60 million for the solvent liquidation of the bad assets within HipoNIA, an asset management company owned and financed by MLB, and to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') in respect of those measures in so far as they were needed for the restructuring of the commercial segment of MLB ('restructuring measures') and benefitted its development segment and in respect of the transformation plan of MLB <sup>(1)</sup> ('the opening decision'). The Commission had doubts as to the compatibility of the restructuring measures with the internal market in the light of the Commission's Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current financial crisis under the State aid rules <sup>(2)</sup> ('the Restructuring Communication').

- (4) The Commission invited interested parties to submit their comments on the restructuring measures. The Commission did not receive any comments from interested parties.
- (5) On 22 March 2012, a meeting between the Latvian authorities and the Commission took place.
- (6) On 5 April 2012, Latvia submitted its comments on the opening decision.
- (7) Between May 2012 and June 2013, Latvia and the Commission exchanged information regularly. Latvia kept the Commission informed of the progress made with regard to a privatisation process for the commercial part of the bank by way of several submissions of information.
- (8) On 23 May 2013, the Commission requested additional information. By letter dated 3 June 2013, Latvia replied to the request for information, except for the questions on the development segment of the bank. At the same time, Latvia provided various supporting documents, including an update on the sale of MLB's commercial part.
- (9) On 21 June 2013, the Latvian authorities informed the Commission that they exceptionally accept that this Decision be adopted in the English language.
- (10) On 28 June 2013, Latvia informed the Commission that it had in fact lent HipoNIA LVL 70,98 million, and had thereby exceeded the amount of the measure temporarily authorised in the opening decision by approximately LVL 11 million.

## 2. FACTS

### 2.1. The beneficiary — MLB

- (11) On 19 March 1993, MLB was established by the Latvian government as a State-owned bank. The Ministry of Finance of the Republic of Latvia is the holder of 100 % of the bank's shares.
- (12) MLB is a medium-sized bank in Latvia offering retail bank services. MLB has a dual role, meaning that it operates both as a development bank and a universal commercial bank <sup>(3)</sup>.

<sup>(1)</sup> In particular, the Commission expressed doubts as to the remuneration of aid instruments, the discontinuation of MLB's commercial activities, the restoration of long-term viability of the economic activities of the MLB group, the orderly wind-down of unsold commercial activities and compensatory measures.

<sup>(2)</sup> OJ C 195, 19.8.2009, p. 9.

<sup>(3)</sup> For further details about MLB see recitals 22-42 of the opening decision.

- (13) MLB and its subsidiaries make up the MLB group. All of the bank's subsidiaries are involved in activities of commercial nature. The main ones are as follows:
- SIA 'Riska investiciju sabiedriba', a special purpose vehicle ('RIS');
  - SIA 'Hipolizings' ('Hipolizings'), which provides leasing services (primarily vehicle leases) with a market share of 5 % as of 30 June 2011, financed exclusively by MLB through a loan facility of LVL 49 million;
  - IPS 'Hipo Fondi' <sup>(1)</sup> ('Hipo Fondi'), which is an asset management company that manages a State-compulsory funded-pension scheme (second pillar) fund with LVL 34 million under management (approximately 4 % market share), 51 % owned by the bank's subsidiary RIS; Hipo Fondi operated as a standalone entity, but benefited from MLB's branch network, sales force and IT support;
  - SIA 'Hipoteku bankas Nekustama Ipasuma Agentura' ('HipoNIA'), which is a non-performing asset <sup>(2)</sup> management company managing an asset portfolio, financed exclusively by MLB.
- (14) In line with the transformation plan described in recitals 45 to 95 of the opening decision, MLB is being transformed into a full development bank (i.e. a bank supporting structural, economic and social policies on behalf of the State, in accordance with its public mission). To that end, it is being stripped of its commercial activities.
- (15) Latvia appointed an independent external advisor to prepare a concept for development institutions in Latvia. On 11 February 2011, the first draft 'Report on Optimization of the System of Development Financial Institutions in Latvia' was submitted to the Commission and the International Monetary Fund (IMF).
- (16) The draft report recommends, amongst other matters, the creation of a single development institution ('SDI') while recognizing the need to ensure its independence by establishing it by a special law and by creating independent decision-making bodies. In that context, the draft report identifies the need to design the functional structure of the SDI from scratch, based on a full review of existing programmes and their functional and staffing needs, in particular in respect of risk assessment and management functions.
- (17) Furthermore, it emphasises the need for State interventions through indirect instruments (individual and portfolio guarantees, venture capital, mezzanine funds etc.), while moving away from large direct lending and leaving direct interventions only as an option for a few very specific and justified cases (micro-lending, farmers, etc.).
- (18) According to the draft report, indirect channelling of State-supported lending would increase access to the potential beneficiaries of such programmes and improve both distribution cost-efficiency and cooperation with the commercial banking sector.

## 2.2. The restructuring strategy: sale by MLB of its commercial activities

- (19) In line with the July 2010 Supplemental Memorandum of Understanding ('sMoU'), an independent advisor was to draw up the MLB transformation plan. That advisor was instructed to prepare scenarios on transforming the bank in order to allow either for assets and liabilities related to development financing to be split off and for the

<sup>(1)</sup> Hipo Fondi is a standalone asset management company with independent accounting and management. A sizable share of the company ([42-43] %) belongs to active shareholders.

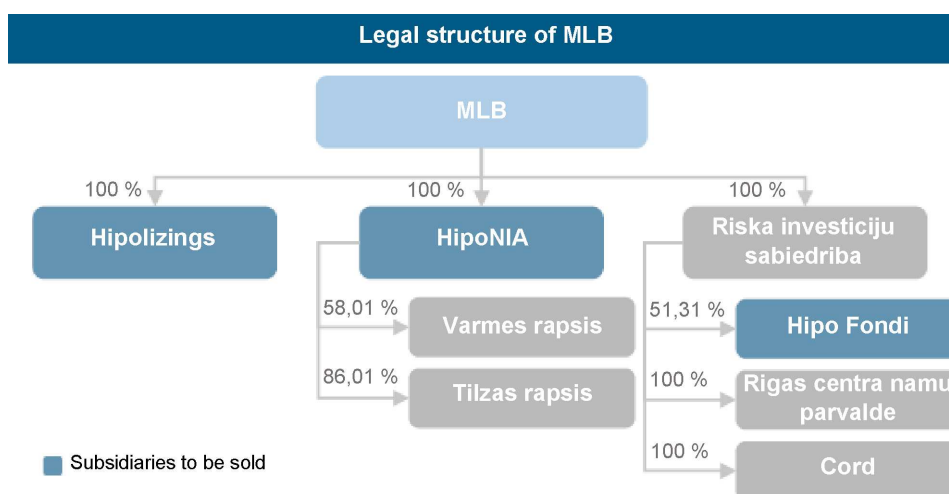
<sup>(2)</sup> They primarily consist of loans and real estate.

bank with its commercial activities to be privatised or for the bank to be transformed so that commercial activities could be sold leaving the development segment behind.

- (20) After having analysed the financial situation of the bank, the independent advisor concluded in transformation plan produced in April 2011 ('the April 2011 transformation plan') that the best scenario would be to sell MLB's commercial assets in bundles in a timely manner.
- (21) On 1 November 2011, the Latvian government endorsed the sale strategy recommended in the April 2011 transformation plan, and specifically the sale of MLB's commercial segment in six bundles.
- (22) The entities belonging to the MLB group which were to be sold by means of a share deal as legal entities are shown in Chart 1.

Chart 1

**Overview of legal entities belonging to MLB group <sup>(1)</sup>**



Source: Latvian authorities

- (23) As at 31 August 2011, the assets and liabilities of MLB's commercial segment to be sold included:
- A commercial loan portfolio and shares in subsidiaries (HipoNIA, Hipolizings, and Hipo Fondi) of LVL 283,8 million;
  - Deposits amounting to LVL 356,1 million.
- (24) The sale process was carried out with the aid of a reputable external advisor. Initially, 121 potential purchasers were contacted. 98 of them received a teaser, of which 18 signed a non-disclosure agreement, 51 were not interested and 29 provided no answer. By 16 December 2011, at the end of the first phase of the sales process, nine initial offers were received. By 11 January 2012, during the second phase of the sales process, three potential purchasers submitted an improved offer, six maintained their initial offer and one new offer was received. All those potential investors were granted access to the data room. During that stage of the process, three potential purchasers withdrew from the process and one merely expressed an interest in parts of two

<sup>(1)</sup> Only subsidiaries with more than 50 % share are shown.

bundles (Bundles 2 and 3), but did not submit a specific offer. As a result, by 16 March 2012, final offers had been received from four potential investors, mostly for one of the bundles though one potential purchaser submitted an offer for three bundles.

## Bundles

(25) The sales strategy endorsed by the Latvian authorities on 1 November 2011 was to divide MLB's assets and liabilities initially into six separate bundles, in accordance with tested market interest. During the sales process Bundle 3 was further split into two separate bundles, 3A and 3B. The bundles were sold to separate buyers, with the remainder of MLB's assets and liabilities transferred to the development segment. The process has been completed and all the bundles were divested by 30 June 2013. The bundles are made up of:

1. Bundle 1 <sup>(1)</sup> and Bundle 2 <sup>(2)</sup> containing the majority of commercial loans and deposits, which have been sold. The process was materially completed on 24 November 2012. The remaining commercial terms will be settled during 2013 (compensation from the buyer [...]) <sup>(\*)</sup> (LVL [...]) and [...] in accordance with the terms of sales agreement (LVL [...]) with [...];
2. Bundle 5 which consists of Hipolizings, the leasing subsidiary of MLB, and which was sold on 1 August 2012, and Bundle 6 made up of second pillar pension plans, managed by Hipo Fondi, which was sold in November 2012. The sale of Hipo Fondi, which is the remaining shell company, will take place in 2013;
3. Bundle 3 consists of corporate performing loans related to real estate developers and construction. It was split into Bundles 3A and 3B in order to facilitate the divestment process, as it did not receive adequate market interest. Bundle 3A was sold to a private investor on 18 June 2013, and Bundle 3B was sold to the Latvian Privatization Agency (LPA) on 28 June 2013;
4. Bundle 4 <sup>(3)</sup> relating to HipoNIA was sold to the LPA on 28 June 2013.

(26) As regards the various sale options for Bundles 3B and 4, the Latvian authorities believed that the offers submitted by investors for them were inadequate and did not reflect the real intrinsic value of the assets they contained (as estimated by an independent reputable expert). To minimise the losses, the State decided to sell Bundles 3B and 4 to the LPA.

(27) As regards Hipo Fondi, given the offers received from investors it could have been sold either by means of a sale of a legal entity as a going concern, with all the assets managed by it, or by means of an asset sale. According to Latvia, the second option was chosen, since, amongst other reasons, a better price was offered for an asset deal. As a result almost all of the economic activity of Hipo Fondi was sold, namely, three pension plans 'Rivjera', 'Safari' and 'Jurmala'. Apart from those pension plans, Hipo Fondi also managed several private portfolios and closed-end funds. Some of them have already been closed and the remainder are being terminated. Hipo Fondi will remain purely as a shell company with no active actual business to manage. That remaining shell could have been liquidated or sold. A sales process was undertaken for that legal entity and the minority shareholder of Hipo Fondi <sup>(4)</sup> expressed interest in acquiring the shares [...]. The Latvian authorities decided to proceed with the sale to the minority shareholder because of the better financial outcome and faster resolution compared to liquidation. The Hipo Fondi sale is almost complete. The agreement on sale has been signed, but closing has not

<sup>(1)</sup> Bundle 1 consists of retail and small corporate performing loans, excluding exposure to real estate developers and construction, of approximately LVL 94,6 million in terms of net book value together with all retail and small corporate term and demand deposits of LVL 244 million.

<sup>(2)</sup> Bundle 2 consists of large corporate performing loans, excluding exposure to real estate developers and construction, of approximately LVL 27,4 million in terms of net book value with all large corporate term and demand deposits of LVL 103 million.

<sup>(\*)</sup> Confidential information; the omissions are shown as [...].

<sup>(3)</sup> Bundle 4 consists of HipoNIA shares and intra-group loan from MLB to HipoNIA of LVL 41,3 million; upon the sale, the assets of HipoNIA will mainly consist of non-performing loans ('NPLs').

<sup>(4)</sup> The minority shareholder of Hipo Fondi which is acquiring the shell company is not related to the buyer of the assets formerly managed by Hipo Fondi.

yet taken place as the acquisition is being reviewed by the Latvian supervisor, the Financial and Capital Market Commission (FCMC). Hipo Fondi does not hold registered intellectual rights, and the registered trademark 'hipo' and related rights are held by MLB. MLB as a part of agreement with the buyer has not objected to the use of term 'hipo' in the HipoFondi name.

- (28) As regards the sale of HipoNIA, MLB transferred capital amounting to LVL [...] to HipoNIA on 20 June 2013. That recapitalisation was needed because the transfer of HipoNIA from MLB to the LPA took place at [...] to book value, with the difference amounting to LVL [...]. That difference was [...] by MLB as it was a precondition both for the State treasury to grant the loan to HipoNIA and for the LPA to acquire HipoNIA's shares. The total net [...] to MLB from the transaction is LVL [...] (i.e., [...] to net book value, after provisions, at the moment of initiation of the transaction).

Table 1

### Overview of Bundles and the terms of their sale

in LVL 000	Content	Current Status	Investor	Gross Book value	Net Book value	Final Price/ Long Term Economic Value	Gross Disc- out	Net Disc- out	Gross Loss	Net Loss
Bundle 1	Retail and small corporate performing loans	Sold	SwedBank	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bundle 2	Large corporate performing loans	Sold	Swedbank	[...]	—	—	[...]	—	[...]	—
Bundle 3A	Corporate performing loans related to real estate developers and construction	Sold	Investor 2	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bundle 3B		Under process	Privatization Agency	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bundle 4	HipoNIA: non-performing asset management company	Under process	Privatization Agency	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bundle 5	Hipolizings: leasing company (vehicles...)	Sold	Swedbank	[...]	—	[...]	[...]	—	[...]	—
Bundle 6	Hipo Fondi: asset management for State compulsory pension fund	Sold	SEB Bank	—	—	[...]	—	—	[...]	[...]

Source: Latvian authorities

- (29) The total amount generated by the sales process has been marginally better than foreseen in the base scenario at base case discounts in the sales strategy, if gross discounts from the sales strategy are applied to the gross book values. There has been a loss of LVL 53,1 million compared to the expected loss of LVL 56,8 million.

#### Securities business termination

- (30) MLB is terminating custody service agreements with its clients. It will dismantle related IT infrastructure and reallocate or lay off employees.
- (31) MLB will also in practice fully terminate its securities business. It will retain only the accounts of approximately 100 clients, none of whom can be reached (mainly because most are dead). As the bank cannot legally sell off immediately securities of those inactive clients, MLB intends to 1) obtain a licence to operate those clients' securities accounts and 2) revoke the full banking licence that also covered custody services.

### 2.3. The restructuring strategy: creation of the SDI

- (32) The remaining commercial activities after the sale are expected to be transferred to the development segment: they include, amongst others, liquid assets of LVL 20,3 million; other assets of LVL 7,6 million; demand deposits of LVL 5,9 million and term deposits of LVL 1 million; other liabilities of LVL 1,7 million; and outstanding equity of LVL 19,2 million.
- (33) After the sale of the commercial activities, as of 30 June 2013 MLB is expected to consist solely of development activities. It will hold assets of around LVL 222,3 million.
- (34) In the sMoU, Latvia provided the following commitments to the Union and the IMF:
- (a) After divesting the commercial assets of MLB, Latvia will merge the development part of MLB with other State institutions to create the SDI. The SDI would implement State aid programmes through financial instruments currently handled by the MLB, the Latvian Guarantee Agency, the Rural Development Fund and the Environment Investment Fund <sup>(1)</sup>.
  - (b) The SDI will not be permitted to attract private deposits. It will avoid direct lending, except where concessional programmes are already approved, or in instances where the lending is: (i) associated with the delivery of products not offered by the commercial banks or non-bank financial institutions; (ii) dependent on highly specialized knowledge that commercial banks or non-bank financial institutions do not possess; or (iii) of too small a volume or too risky to be of interest to commercial banks or non-bank financial institutions.
  - (c) MLB will not start any new direct loan programmes until the action plan for the SDI is approved; all funding that MLB has been allocated for the implementation of national financial engineering instruments has to be safeguarded and transferred fully to the SDI once it is set up. To improve professional monitoring and transparency once the SDI is set up, a Consultative Council chaired by the Ministry of Finance and comprised of members from key Ministries, social partners, the Association of Commercial Banks and renowned international financial institutions with expertise in development activities will be established.
  - (d) Once the commercial parts of MLB have been sold or transferred to the LPA, the bank will not be allowed to attract any new private deposits. The FCMC will ensure compliance with that commitment.

<sup>(1)</sup> Pursuant to the sMoU, the Latvian authorities had to present an action plan by 30 June 2013 regarding that merger. However, progress has been slow, especially as the Economics and Finance Ministries were unable to agree which institution would be responsible for overseeing the SDI.

#### 2.4. Description of the measures covered by the present decision

- (35) As regards MLB's development activities, the Commission notes Latvia's intention to optimise the system of development financial institutions by consolidating them in the SDI. In the opening decision, it was anticipated that MLB would carry out development activities only until the set-up of the SDI which was to take place by 31 December 2012. However, that process has been delayed and it is still on-going. Since the Latvian authorities have not finalised the SDI project, this decision only covers the commercial part of MLB. As a consequence, the development part of MLB will be assessed in a separate final decision.
- (36) In the opening decision the following measures granted by Latvia to the commercial part of MLB were approved temporarily as rescue aid:
- (a) a recapitalisation measure of LVL 70,2 million granted on 23 March 2010,
  - (b) a recapitalisation measure of LVL 50 million granted at the end of 2011 (granted as a liquidity measure to be converted into capital),
  - (c) a standby liquidity facility of up to LVL 250 million,
  - (d) guarantees to international creditors of the commercial segment of MLB up to LVL 32 million, and
  - (e) liquidity support of up to LVL 60 million for the solvent liquidation of the bad assets within HipoNIA.
- (37) Latvia submitted information on the use of that State support for the liquidation of the commercial segment of MLB, amended so as to take into account the implementation of the sales strategy.
- (38) The overall amount of capital needed from the measure described in point (b) of recital 36 was lower than initially planned, at LVL 25 million instead of LVL 50 million, as the Latvian authorities decided that MLB would operate without a banking licence, which diminished the amount of required capital. The LVL 25 million capital increase took place in June 2012 <sup>(1)</sup>.
- (39) The standby liquidity facility of up to LVL 250 million described in point (c) of recital 36 was temporarily approved and made available to MLB as from 1 January 2012 until the completion of the sale process, to be available in case of emergency liquidity events. As of 30 May 2013, the liquidity support used had been substantially lower than the maximum amount foreseen (LVL 50 million), because there was no run on deposits and the transformation process had gone smoothly. There is currently an outstanding balance of LVL 25 million, which is expected to be repaid by 31 December 2013.
- (40) The guarantees of up to LVL 32 million described in point (d) of recital 36 were to be provided to international creditors of MLB in relation to its commercial segment. As the sale of the commercial segment and transformation of MLB into a development bank could have been considered as a default event according to their contracts, that measure was needed to guarantee liabilities in case those international creditors had required the prepayment of loans to MLB. However, the amount of guarantees required for the commercial part has been lower than the LVL 32 million expected as only some international creditors required additional safety measures. As of 30 May 2013, the level of guarantees forecast to be needed was LVL 12,4 million.
- (41) The liquidity support to HipoNIA described in point (e) of recital 36 has turned out to be higher than the amount temporarily approved by the Commission, at LVL 71 million instead of LVL 60 million. The increase was required as a part of Bundle 3 was not sold in the market but instead was transferred to HipoNIA, thus increasing the necessary amount of funding. That liquidity support is expected to be repaid by 31 December 2018.

<sup>(1)</sup> The total recapitalisation of 2010 and 2012, respectively, amounts therefore to LVL 95,2 million (70,2 million plus LVL 25,0 million).



- (42) Latvia has thus asked the Commission to approve the increase of the liquidity support by LVL 11 million. In that context, Latvia argued that the overall amount of the aid needed for phasing out the commercial segment of MLB is lower than the amount of aid temporarily approved.

Table 2

### Overview of State aid approved vs. State aid granted

(situation as at May 2013)

<b>Liquidity support to MLB</b>	
Amount preliminarily approved by the Commission on 26 January 2012	<b>LVL 250,0 million</b>
Amount granted in December 2011	<b>LVL 50,0 million</b>
<b>Liquidity support to HipoNIA</b>	
Amount preliminarily approved by the Commission on 26 January 2012	<b>LVL 60,0 million</b>
Amount granted in June 2013	<b>LVL 71,0 million</b>
<b>Guarantees</b>	
Amount preliminarily approved by the Commission on 26 January 2012	<b>LVL 32,0 million</b>
Amount granted in June 2012	<b>LVL 12,4 million</b>
<b>Capital</b>	
Amount preliminarily approved by the Commission on 26 January 2012	<b>LVL 70,2 + 50,0 million</b>
Amount granted in June 2012	<b>LVL 70,2 + 25,0 million</b>
<b>Total State aid</b>	
<b>Amount preliminarily approved by the Commission on 26 January 2012</b>	<b>LVL 462,2 million</b>
<b>Current estimation of the amount of the aid measures</b>	<b>LVL 228,6 million</b>

### 2.5. Grounds for initiating the procedure

- (43) The Restructuring Communication <sup>(1)</sup> sets out the State rules applicable to the restructuring of the financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis has to:

- include sufficient own contribution by the beneficiary (burden-sharing);
- contain sufficient measures limiting the distortion of competition;

<sup>(1)</sup> Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, (OJ C 195, 19.8.2009, p. 9).

— lead to a restoration of the viability of the bank or demonstrate how it can be wound-up in an orderly fashion.

- (44) In the opening decision, the Commission temporarily approved the rescue aid, considering that the measures described in recital 36 were appropriate as they aimed at eliminating the threat to the Latvian economy stemming from the problems of MLB. The Commission also considered that those measures were necessary and were the best value options for the Latvian government to phase out the commercial activities of the bank. Nevertheless the Commission had doubts that the aid was proportionate and requested further information in that respect.

#### Safeguards against undue distortion of competition — Discontinuation of commercial activities

- (45) According to the sales strategy, most of the economic activities of the commercial segment of MLB were to be discontinued and sold in bundles and the subsidiaries Hipolizings and Hipo Fondi were to be sold separately from the bank, which the Commission viewed positively.
- (46) As regards winding down in an orderly fashion, the Commission concluded that more information was needed on the compatibility of the aid for discontinuation of the commercial activities of MLB. In particular, the Commission requested the Latvian authorities to provide precise milestones envisaged for the sale of activities as well as further information regarding the activities that could not be sold.
- (47) As regards the economic activities that were to be continued, only two entities, namely Hipolizings and Hipo Fondi, were to be sold as standalone legal entities. Nevertheless, in light of their limited market presence <sup>(1)</sup> and their timely sale by the bank, the Commission preliminarily concluded that the aid measures were adequate.

#### Restoring long-term viability of economic activities of MLB group

- (48) In the opening decision, the Commission requested the Latvian authorities to provide additional information to ensure that entities that would remain on a stand-alone basis (Hipolizings and Hipo Fondi) would be viable after the sale. More specifically, the Commission wanted to know who would provide the infrastructures or funding they required in the place of MLB after the sale.

#### Orderly wind down of unsold commercial activities

- (49) Although the sales strategy provides information about the conditions for an orderly winding down of commercial activities, the Commission raised doubts in the opening decision that sufficient safeguards had been put in place against undue distortion of competition.
- (50) The Commission in particular invited the Latvian authorities to terminate the sales in a timely manner and to propose additional measures to ensure that the bank priced its commercial products in an unattractive fashion and capped advances on existing loans.

### 3. COMMENTS FROM INTERESTED PARTIES

- (51) The Commission did not receive any comments from interested parties.

<sup>(1)</sup> Hipolizings has a market share of 5 % in the leasing market and Hipo Fondi has a market share of 4 % in the second level pension management market.

#### 4. COMMENTS ON THE OPENING DECISION BY LATVIA

- (52) On 5 April 2012, Latvia submitted comments on the opening decision and later complemented its position through regular submissions of information until June 2013 <sup>(1)</sup>.
- (53) Overall, Latvia is of the opinion that all criteria for compatible State aid have been met with regard to MLB because: (i) the commercial segment has been liquidated; (ii) the remaining development segment operates within a strict product range (remit), and (iii) the remaining institution will have its licence revoked and thus not compete with commercial banks on funding.
- (54) As regards MLB's *development segment*, Latvia submitted extensive information <sup>(2)</sup>. Nonetheless, Latvia clarified that no definitive agreement had been reached as yet on the creation of the SDI, which is supposed to take over MLB's development segment. Latvia stated that a joint action plan on the establishment of the SDI by the Ministries concerned and the external expert was due on 2 August 2013, and that the work would continue throughout 2013. However, the final date for SDI's creation is still unclear.
- (55) For that reason, Latvia requested that the State aid assessment of the creation of the SDI be treated in a separate procedure and not within the procedure on MLB's commercial segment.
- (56) As regards *safeguards against undue distortions of competition*, Latvia believes that the arrangements put in place ensure that there is no direct competition between MLB's commercial segment and other commercial banks. MLB stopped new lending activity as of November 2009. On the deposit side, active management of the deposit base was originally needed to avoid additional State aid in the form of liquidity support until the completion of the sale. Deposits related to MLB's commercial segment were eventually sold as a part of Bundles 1 and 2, while payment card operations and the automatic teller machine network have been dismantled.
- (57) HipoNIA, which has acquired loan portfolios from MLB, does not provide additional financing to any of its clients. In particular, given the state of those loans (almost all are overdue by more than 90 days and restructuring attempts had already been made) almost all cases result in HipoNIA repossessing the property.
- (58) As regards the *commercial segment*, Latvia submitted a full timetable for the sale or liquidation of assets, set out the key milestones of the process and informed the Commission of progress made and the actual dates of sales agreements. Latvia submitted that all balance sheet positions related to the commercial segment will have been eliminated by January 2014.
- (59) Latvia provided a detailed overview of the State aid amounts actually granted to MLB's commercial segment (namely, liquidity support to MLB of LVL 50 million, State guarantees of LVL 12,4 million, capital measures of LVL 95,2 million and liquidity support of LVL 71 million to HipoNIA). Latvia underlined that the total aid needed by MLB for its commercial part is lower than originally assumed (and approved on a temporary basis in the opening decision).
- (60) According to Latvia, none of the aid measures directly benefits the commercial activities which will be continued by Hipolizings and Hipo Fondi after they have been sold. MLB's core business was split up into three bundles and sold in the form of an asset sale. None of those bundles constitutes an undertaking within the meaning of Article 107(1) of the Treaty; hence Latvia considers that the economic activity is not continued after the sale, nor will the bundles benefit from the State aid received prior to the sale.
- (61) Latvia takes the view that only the sale of Bundle 4 (Hipolizings) may constitute a continuation of economic activity. However, Hipolizings will form a very small part of the group to which its buyer belongs (less than 0,1 %) and [...]. [...]. The sale will ensure the entity's long-term viability and will not endanger the viability of the buyer. Moreover, Hipolizings has only a very small market share of 5 %. In addition, it only profited to

<sup>(1)</sup> Main submissions received on 15 April 2013 and 3 June 2013.

<sup>(2)</sup> The information on the development segment is not reproduced in detail because it is not the subject of the present decision.

a limited extent and indirectly from the aid granted to MLB: its existing contractual arrangements did not have to be terminated unexpectedly and, like the other companies owned by the bank, it did not have to be sold by a distressed owner. Considering the very limited amount of aid for Hipolizings, Latvia believes that after the sale and full integration with its buyer Hipolizings will not benefit from aid.

- (62) As regards the shell company Hipo Fondi sold to a private investor, Latvia undertakes that [...].
- (63) Regarding the transfer of assets from MLB to HipoNIA and its subsequent sale, Latvia agrees with the Commission's preliminary findings, set out in the opening decision, that the transfer does not involve aid.
- (64) With regard to the 2012 capital increase for the commercial segment, Latvia clarified that that increase took place in two parts: the first one was linked to the sale of Bundles 1, 2, 3, 5 and 6 while the second one was linked to the sale of Bundle 4. The amount of capital was kept to the minimum and calculated to ensure regulatory capital adequacy for the commercial segment following the losses from the sale.
- (65) As regards the standby liquidity facility granted in the context of restructuring, Latvia submitted that the support to the commercial segment was of a temporary nature to ensure the orderly sale. Its small scale and temporary nature reduced the potential distortions of competition to the minimum, according to Latvia.
- (66) Finally, Latvia undertook to submit monitoring reports on MLB's restructuring, including the wind-down of unsold commercial activities and an *ex post* valuation of the liquidation.

## 5. ASSESSMENT OF THE MEASURES

### 5.1. Existence of aid within the meaning of Article 107(1) of the Treaty

- (67) As set out in Article 107(1) of the Treaty 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, save as otherwise provided.

#### Beneficiaries of aid

- (68) As set out in recital 145 of the opening decision, when assessing the measures in order to determine whether they constitute State aid, it is necessary to distinguish between the present and future development bank activities of MLB, on the one hand, and the residual commercial activities pursued by MLB during the transition (phasing-out) period, on the other hand. Latvian authorities submitted the data demonstrating how the measures benefitted one segment or the other.
- (69) The scope of the present decision only covers measures granted to the commercial part of MLB. The terms of operation of the development part of MLB, which is expected to be continued by an as yet still to be established development institution will be assessed in a separate final decision.
- (70) As a result, the present decision will assess only the measures granted by Latvia benefitting the commercial part of MLB in so far as they are needed for the restructuring of the commercial segment of MLB.

- (71) It is recalled that to assess the measures benefitting the commercial segment of the bank, it is important to ascertain whether and to what extent the economic activity is continued or dissolved after the sale of the commercial assets and liabilities <sup>(1)</sup>. In that respect, the Commission finds that, with the sale of bundles 3A (to a private investor), 3B and 4 (to the LPA for gradual work out) by 30 June 2013, those economic activities of the former commercial part of MLB have been dissolved. It is also noteworthy that a large share of assets formerly managed by Hipo Fondi was sold separately from that company by means of an asset sale. The Commission considers that the sale in bundles, which allowed different buyers to bid for separate parts of commercial assets and liabilities of MLB, effectively contributes to the liquidation of the commercial activities of MLB. It is noteworthy that the bank attempted more than once to sell the unsold assets which are ultimately to be transferred to the LPA, repackaging the bundles and renegotiating the offers with the potential investors. Hence, MLB seems to have exhausted all available opportunities in the market to sell those worst quality assets at a reasonable price, i.e. a price higher than their long-term economic value as estimated by an external reputable consultant.
- (72) As regards MLB's ancillary activities of a commercial nature, Latvia also provided sufficient information that they have already been or will be terminated in the near term. The shell company Hipo Fondi, which will remain after the sale of the assets it managed, will be sold in the coming months, the securities business will be terminated, and RIS, which is a pure holding company currently holding shares in Hipo Fondi and two companies in insolvency, will be liquidated. It is planned that MLB's banking licence will be revoked by 31 December 2013.
- (73) As regards Hipolizings, it was sold as a legal entity by means of a share deal. Latvia submitted that Hipolizings did not directly benefit from any of the support granted to its parent company, MLB <sup>(2)</sup>. As regards the potential asset relief measure described in recitals 165 to 170 of the opening decision, it is recalled that before the sale of Hipolizings the worst assets of MLB were internally transferred to HipoNIA. In the opening decision the Commission concluded that such an internal transfer of assets could only constitute an asset relief measure in favour of Hipolizings and Hipo Fondi, if and to the extent that they benefitted from such transfers. Given Latvia's confirmation that no assets were transferred from Hipolizings to HipoNIA, it can be concluded that Hipolizings did not receive any asset relief directly benefitting its activities. However, as acknowledged by Latvia, it cannot be excluded that Hipolizings profited to a limited extent from the aid granted to MLB insofar as the existing contractual arrangements of Hipolizings did not have to be terminated unexpectedly, and it did not have to be sold by a distressed owner. Therefore, the Commission concludes that Hipolizings benefitted from the aid granted to MLB, albeit indirectly and hence to a very low degree.
- (74) As regards Hipo Fondi, the Commission notes that when it was sold to its minority shareholder it was merely a shell company. Latvia has confirmed that the remaining private portfolios and closed-end funds managed by Hipo Fondi have already been closed, are in the process of termination or will be wound up. Furthermore, Latvia has committed that [...].
- (75) In light of the foregoing, it can be concluded that Hipo Fondi will remain purely as a shell company with no actual business to manage at least for some time. Given that the shell company ends the activities formerly carried out by Hipo Fondi as MLB's subsidiary and does not undertake any new economic activities immediately, it can be concluded that there is no continuity between Hipo Fondi as an undertaking which was part of MLB group and the new entity, i.e. Hipo Fondi owned by new owner(s) and carrying out new economic activities, if any. Therefore, the shell Hipo Fondi company cannot be considered as benefitting from the aid previously granted to MLB.
- (76) As regards HipoNIA, it will contain assets of the former commercial segment of MLB in run-down mode and will operate only for a limited time. However, in line with the established case practice, measures aimed at winding down commercial activities may still constitute aid <sup>(3)</sup>.

<sup>(1)</sup> See recital 153 of the opening decision.

<sup>(2)</sup> See recital 60.

<sup>(3)</sup> See, for instance, Commission decisions of 25 October 2010 in case N 560/09 Aid for the liquidation of Fionia Bank (OJ C 76, 10.3.2011, p. 3) of 23 April 2010 in case N 194/09 Liquidation aid to Bradford & Bingley (OJ C 143, 2.6.2010, p. 22) and of 5 November 2008 in case NN 39/08 Liquidation aid to Roskilde bank (OJ C 12, 17.1.2009, p. 3).

- (77) As regards the undertakings which are buyers of the bundles, the Commission notes that, based on information submitted by Latvia, the sale process was carried out in an open and non-discriminatory manner, on market terms and with the aim to maximize the price for specific bundles.
- (78) As regards HipoNIA transfer at below market value, the Commission confirms the preliminary conclusion of the opening decision that its buyer, the LPA, cannot be considered as a beneficiary of the aid, since it does not carry out economic activities and is merely an agency of the Latvian State <sup>(1)</sup>.
- (79) On that basis, the Commission considers that no aid was granted to the undertakings which are buyers of MLB's commercial assets and liabilities.
- (80) In conclusion, after the sale of all the bundles consisting of the former commercial activities of MLB, which has been concluded by now, the aid measures only benefit those commercial activities of MLB continued after the sale by HipoNIA and Hipolizings.

#### Aid measures

- (81) As stated in recital 73, Hipolizings has benefitted (albeit only to a limited extent) from the aid granted to MLB. As mentioned above, its contractual arrangements did not have to be terminated unexpectedly and the company did not have to be sold by a distressed owner, which could have possibly led to a fire sale. The limited character of the advantage or the fact that it cannot be quantified does not alter the Commission's assessment in that respect.
- (82) Given that Hipolizings is active in the financial sector, any advantage from State resources benefitting its activities could affect intra-Union trade and distort competition. Therefore, the measures benefitting its activities must be regarded as liable to distort competition and affect trade between Member States. The advantage was provided through State resources and is selective since it only benefits one financial group.
- (83) In the light of the foregoing, the Commission concludes that the indirect advantage conferred on Hipolizings from the aid measures granted to MLB constitutes State aid within the meaning of Article 107(1) of the Treaty.
- (84) With regard to the liquidity measure granted to HipoNIA, which is maintained during the restructuring phase, albeit for a higher amount, it has already been established in the opening decision that the measure constitutes State aid. The Commission has no reason to change its previous assessment in light of the increased amount of liquidity support. The changed amount of the measure does not affect its qualification as aid. The Commission, therefore, concludes that the liquidity support of LVL 71 million to HipoNIA constitutes State aid.
- (85) As regards other aid measures granted to HipoNIA's parent company, MLB, the advantage stemming from them does not benefit HipoNIA. All those other aid measures granted to MLB had the aim and the effect of sustaining the activities of MLB for a longer period of time than would have been possible in the event of immediate insolvency and liquidation. When they were granted to MLB, HipoNIA was performing as the bad asset management company within the MLB group. Given that HipoNIA's activities were limited to the liquidation of assets without delay without any advances granted to the clients, it was an integral part of the liquidation process. Therefore, the indirect aid from other aid measures granted to MLB's commercial segment can be excluded in the case of HipoNIA.

#### 5.2. Compatibility of the aid with the internal market

- (86) As it was found in section 5.1 that the liquidity measure to HipoNIA and the indirect advantage conferred on Hipolizings from the aid measures granted to MLB constitute State aid within the meaning of Article 107(1) of the Treaty, their compatibility with the internal market should be assessed.

<sup>(1)</sup> See recital 158 of the opening decision.

### 5.2.1. Legal basis for the assessment of compatibility

- (87) It has already been established in recitals 177 to 180 of the opening decision that the aid measures benefiting the commercial activities of MLB are to be assessed under Article 107(3)(b) of the Treaty and in particular Commission's Restructuring Communication.

### 5.2.2. Compatibility of the aid measure under the Restructuring Communication

Restoration of long-term viability of economic activities of MLB continued by Hipolizings after its sale

- (88) Point 17 of the Restructuring Communication confirms that a sale of (part of) the financial institution to a third party can help to restore its long-term viability.
- (89) Hipolizings has been sold to Swedbank Lizings, which is the largest leasing company in Latvia (22 % market share). It is closely integrated with general banking operations of Swedbank. As of 31 May 2013, Swedbank has its rating upgraded by Moody's to A1. The group's operations have a track record of adequate profitability (with return on equity ratio of 16,9 % at YE2012 and of 13,8 % at 1Q2013 <sup>(1)</sup>) with a core Tier 1 capital ratio exceeding 15 %. Hipolizings' activities make up a very small share of the assets of the Swedbank group (ca. 0,05 %).
- (90) In light of the foregoing, the Commission concludes that the economic activities of MLB continued by Hipolizings after its sale to Swedbank Lizings, as integrated into the Swedbank group, are viable.

Orderly wind-down of unsold commercial activities

- (91) Latvia confirmed that HipoNIA, which has acquired loan portfolios from MLB, does not provide additional financing to any of its clients. It further undertook to submit monitoring reports on the wind-down of unsold commercial activities and an *ex post* valuation of the liquidation.
- (92) The Commission notes positively the efforts undertaken by Latvia and MLB to sell all sellable commercial activities, unless to do so was less economically advantageous than running them down over time, as evaluated by a reputable external advisor.
- (93) In light of the foregoing, the Commission concludes that doubts raised in the opening decision have been allayed and the requirements of the Restructuring Communication in respect of orderly wind-down of business are met in the present case.

Aid limited to the minimum necessary/own contribution

- (94) It has already been concluded in the opening decision that the base case scenario contained in the sales strategy ensures the limitation of the aid needed for the phasing-out of the commercial activities of MLB to the minimum <sup>(2)</sup>. The actual execution of that plan does not change that assessment.
- (95) Further, it has also been concluded in the opening decision that, by means of a sale, the commercial activities of MLB are discontinued, which ensures that the bank contributes to the restructuring as much as possible with its own resources <sup>(3)</sup>.

<sup>(1)</sup> Source: [http://www.swedbank.com/idc/groups/public/@i@sbgj@gs@ir/documents/financial/cid\\_900555.pdf](http://www.swedbank.com/idc/groups/public/@i@sbgj@gs@ir/documents/financial/cid_900555.pdf).

<sup>(2)</sup> See recital 210 thereof.

<sup>(3)</sup> See recitals 211-212 thereof.

#### Avoidance of undue distortions of competition

- (96) As already set out in the opening decision, timely divestitures of MLB's subsidiaries separately from the bank as well as the splitting of the bank in several bundles prior to their sale mitigate undue distortions of competition caused by the aid. Therefore, they are viewed positively <sup>(1)</sup>.
- (97) As the sale has been concluded, the doubts raised in the opening decision as regards the pace of the sale have been allayed.
- (98) Since Latvia confirmed that no advances will be granted on the existing loans by HipoNIA, the doubts raised in the opening decision in that respect have also been allayed.
- (99) As regards Hipolizings, the Commission had preliminarily concluded in the opening decision that the measures to limit distortions of competition caused by the aid granted to it were adequate. Given Latvia's confirmation that Hipolizings has not benefitted from any direct aid, those preliminary findings of the Commission can now be confirmed. Moreover, Hipolizings [...] [...]. Indeed, in light of the limited market presence of Hipolizings (market share of 5 %) and limited aid granted to it, which is only indirect, the measures to limit distortions of competition mainly consisting of its timely sale by MLB are adequate.

#### 5.2.3. Conclusion on compatibility

- (100) In the light of the foregoing, the Commission finds that the MLB's transformation plan and its implementation to date in respect of commercial activities of MLB meet all the conditions laid down in the Restructuring Communication.

### 6. CONCLUSION

- (101) The Commission finds that liquidity support in the amount of LVL 71 million granted in June 2013 by Latvia for MLB (in the legal person of HipoNIA) and the indirect advantage conferred on Hipolizings from the restructuring measures granted to MLB constitute State aid within the meaning of Article 107(1) of the Treaty.
- (102) The Commission finds that Latvia has unlawfully implemented the additional liquidity support of LVL 11 million, in breach of Article 108(3) of the Treaty. However, the Commission finds that the measure together with the original liquidity support of LVL 60 million to HipoNIA is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.
- (103) The Commission also finds that the indirect advantage conferred on Hipolizings from the restructuring measures granted to MLB is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty,

HAS ADOPTED THIS DECISION:

#### Article 1

The State aid which Latvia granted to MLB in the form of liquidity support for HipoNIA amounting to LVL 71 million and the indirect advantage conferred on Hipolizings from the restructuring measures granted to MLB are compatible with the internal market.

<sup>(1)</sup> See recital 219 of the opening decision.



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*Article 2*

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 17 July 2013.

*For the Commission*  
Joaquín ALMUNIA  
Vice-President

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