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COMMISSION DECISION

of 22.11.2015

**ON THE STATE AID
SA.39543 (2015/N)
implemented by Italy
Aid for the resolution of Banca Marche**

(Only the English version is authentic)

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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>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) – Italy
Resolution of Banca delle Marche S.p.A.**

Sir,

1. PROCEDURE:

- (1) In August 2014, the Commission learnt from the press about possible interventions to recapitalise Banca delle Marche S.p.A., a bank and the parent company of the banking group Banca Marche ("Banca Marche" or "the bank"). Consequently, on 18 August 2014, the Commission contacted Italy to ask for confirmation of the press information.
- (2) On 16 September 2014, Italy sent a report on the interventions approved by the Fondo Interbancario di Tutela dei Depositi ("FITD"), the Italian Deposit Guarantee Fund.
- (3) On 10 October 2014, the Commission sent a request for information to which Italy responded on 14, 17 and 19 November 2014.
- (4) The Commission sent letters to Italy on 18 December 2014, 27 February and 21 August 2015 asking for updates on the situation of the bank.
- (5) On 16 October 2015, Italy has informed the Commission about a possible restructuring plan for the bank.

- (6) On 20 and 21 October 2015, Italy submitted additional information.
- (7) On 11 November 2015, the Commission sent a further request for information.
- (8) On 12 and 13 November 2015, Italy informed the Commission of the forthcoming resolution of Banca Marche through the application of the bridge bank resolution tool in accordance with Articles 40 and 41 of the Bank Recovery and Resolution Directive ("BRRD")¹ and the asset separation tool provided in Article 42 of the BRRD.
- (9) Over the following days, the Commission received significant amounts of information and a detailed description of the resolution intervention.
- (10) On 20 November 2015, Italy notified the resolution of Banca Marche.
- (11) By letter dated 20 November 2015, Italy agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958² and to have the present decision adopted and notified in English.

2. BACKGROUND

2.1. Description of Banca Marche and the special administration

- (12) Banca Marche is a banking group based in Jesi which includes Banca delle Marche S.p.A., Cassa di Risparmio di Loreto Spa, Medioleasing Spa (a leasing firm), and other minor financial companies.
- (13) The main shareholders are Fondazione CR della Provincia di Macerata (22.5%), Fondazione CR di Pesaro (22.5%), Fondazione CR di Jesi (10.8%), Intesa Sanpaolo (5.8%) and Fondazione CR Fano (3.4%).
- (14) The commercial network of the bank is composed of 308 branches located in the Marche region and in other areas of Central Italy: Umbria, Emilia Romagna, Lazio, Abruzzo and Molise. The bank employs 2 530 people. The bank's business model is focused on lending to SMEs and retail clients and the funding is composed mostly of retail customers. The bank holds 0.52% of deposits at national level, with branches that make up a market share of 1%.
- (15) According to the latest published figures at the end of 2012, Banca Marche had total assets of EUR 22.7 billion, customer loans of EUR 17.3 billion and deposits of EUR 7.2 billion, total capital of EUR 960 million and Tier 1 capital of EUR 873 million.

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and EU No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190. Italian acts transposing the BRRD are decreto legislativo 16 novembre 2015, n. 180 and decreto legislativo 16 novembre 2015, n. 181.

² Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (16) The bank was placed under “Provisional Management” on 30 August 2013 after its consolidated own funds ratio as established in the Italian capital requirements regulation (6.64 %) decreased under the minimum requirement due to negative results. In June 2013, the bank unsuccessfully attempted to raise additional capital of up to EUR 400 million.
- (17) On 15 October 2013, the bank was placed under special administration³. That step was due to the finding of serious irregularities in the administration of the bank as well as serious breaches of law, financial losses and deficiencies in the direction and coordination. The governance bodies were also dissolved.
- (18) The special administration procedure was extended for a period of one year by means of Ministerial Decree of 13 October 2014 and lastly by Decision of the Bank of Italy ("BOI") of 13 October 2015 until 15 December 2015.
- (19) The special administrator’s activity was targeted to address the critical organizational issues by increasing prudence in credit risk provisioning and stopping any new lending activity. Moreover, the special administrator reduced operational costs by decreasing total assets by 30% and reducing risk weighted assets ("RWA") by 15%, thereby achieving important cost savings of around 10%.

2.2. The events triggering the resolution of Banca Marche

- (20) Since the first half of 2014, the special administrator had sought investors available to intervene in the group. All possible intervention measures involving private funds explored by the special administrator were ultimately unsuccessful.
- (21) The financial statements prepared by the special administrator at 30 September 2015 highlighted that the net equity of the bank had been substantially reduced to around EUR 13 million, a level deemed insufficient to fulfil the prudential own funds requirements.
- (22) According to the latest information provided by the special administrator, cash reserves are insufficient to cover potential outflows from the bank. In particular, the liquidity buffer has halved and amounted to only EUR 221 million on 18 November 2015 (1.4 % of assets) and provided insufficiently adequate safety margins to deal with the day-to-day operation of the system of payments (which require a buffer of no less than EUR 200 million). The situation is all the more critical in view of the presence of some large corporate customers whose withdrawal could lead to a negative liquidity position.

2.3. The resolution fund

- (23) Resolution under the BRRD involves public objectives according to Article 31 BRRD for which a financing arrangement needs to be put in place according to Article 100 BRRD, the resolution fund. That resolution fund was established by Italy as required by virtue of a legislative decree⁴ of 16 November 2015.

³ By decree of the Italian Ministry of Finance on proposal of Bank of Italy under Articles 70 (a) and 1 (b) and 98 of the Italian Banking Act – Testo Unico Bancario ("TUB").

⁴ Decreto legislativo (Dlgs) 180/2015

- (24) According to the relevant law, the resolution fund will acquire the necessary resources to finance the resolution of banks through ordinary⁵ and extraordinary⁶ compulsory contributions. Given the time limit for the acquisition of such contributions, a pool of banks will ensure the financing of the resolution fund to the amount necessary, for a limited period of time and under market conditions. The liability of the resolution fund towards the pool of banks will be guaranteed by Cassa Depositi e Prestiti.

2.4. The Bad Bank (asset management vehicle, "AMV")

- (25) The BOI as the resolution authority ("resolution authority") is in the process of setting up an AMV (in line with Article 42 BRRD). The AMV will be owned by the resolution fund and controlled by the resolution authority and is designed to take over non-performing assets from banks in resolution.
- (26) The AMV will be capitalised by the resolution fund as required.

3. DESCRIPTION OF THE MEASURES

3.1. The resolution actions

- (27) In view of the bank's situation, the BOI as resolution authority has determined the conditions for resolution laid down in Article 32(1) BRRD, i.e. (i) financial institution failing or likely-to-fail, (ii) no alternative private measures and (iii) a public interest in resolution, to be fulfilled.
- (28) The resolution authority has stated that resolution is necessary and proportionate to achieve (i) continuity of essential functions, (ii) protection of depositors and (iii) preserve financial stability (resolution objectives according to Article 31 BRRD). The resolution authority also considers that national insolvency proceedings are not able to achieve these objectives to the same extent.
- (29) Pursuant to Article 36 BRRD, the resolution authority has carried out a provisional valuation with a view to determining the resolution measures, revealing further losses of EUR 1 445 million and leading to a capital shortfall of EUR 1 432 million. Subordinated debt with a nominal value of EUR 428 million is insufficient to cover losses and recapitalise the bank.
- (30) Based on the results of the provisional valuation, the resolution authority has decided to transfer all assets and liabilities (apart from remaining equity and subordinated debt) from the bank to a bridge bank and subsequently to transfer non-performing loans ("NPL") from the bridge bank to the AMV.
- (31) The portfolio of NPL to be transferred is made up of the entire loan portfolio in the worst category of NPL, namely exposures in default ("*Sofferenze*"). Although the current figures are provisional subject to a final valuation, Italy commits that the gross book value of the portfolio to be transferred is not greater than EUR 4 552 million, consisting of EUR 414 million of retail loans (EUR 94 million uncollateralised and EUR 320 million collateralised) and EUR 4 139 million of corporate exposures (EUR 1 068 million uncollateralised and EUR 3

⁵ Under article 82 of Dlgs 180/2015.

⁶ Under article 83 of Dlgs. 180/2015.

071 collateralised). Those loans are currently held on the book at EUR 2 140 million.

- (32) According to the provisional valuation, the bridge bank will receive assets and liabilities resulting in a negative net equity value of EUR 1 005 million. This includes a write down of the net book value of the *Sofferenze* portfolio from EUR 2 140 million to EUR 916 million. That negative equity value will be compensated in cash by the resolution fund. The bridge bank will be owned by the resolution fund and controlled by the resolution authority.
- (33) Subordinated liabilities eligible for write-down pursuant to Article 59 BRRD will be fully written down. The remaining subordinated debt of EUR 178 million of the entity entering resolution will not be transferred to the bridge bank, but will be left in this residual entity ("residual entity") to be liquidated. In return for making up the negative net value of the bridge bank, the resolution fund will retain a senior claim of EUR 1 005 million in the residual entity, as illustrated in the tables below.

Residual entity (EUR million)		Bridge bank (at setup) (EUR million)	
Assets	Liabilities	Assets	Liabilities
	Loan from resolution fund 1 005	Other transferred assets 12 352	Liabilities 14 273
	Subordinated debt 178	<i>Sofferenze</i> 916	
	Own funds (after losses) -1 183	Cash resolution fund 1 005	Own funds 0

- (34) The resolution authority will then proceed to transfer the NPL to the AMV. Although there is currently no exact date for when the transfer is going to be implemented, Italy has committed to start the sales process for the bridge bank no later than 30 January 2015. By then, the implementation of the asset transfer will have to be finalised.
- (35) The NPL will be transferred for their net book value according to the provisional valuation corresponding to EUR 916 million. In return for those NPL, the bridge bank will receive debt securities from the AMV with the same notional amount. The resolution fund will guarantee these debt securities in the full amount.
- (36) Finally, a further EUR 1 041 million will be injected by the resolution fund into the bridge bank in cash, bringing up the total cash injected to EUR 2 046 million and resulting in own funds of EUR 1 041 million for the bridge bank, corresponding to a CET1 value of around 9% of RWA.

3.2. The measures

- (37) The actions taken by the resolution fund to resolve Banca Marche can be summarised as follows:

- 1) *Measure 1*: capital injections from the resolution fund to (a) cover the negative equity of the bridge bank of EUR 1 005 million and (b) recapitalise the bridge bank with a further amount of EUR 1 041 million resulting in a total capital contribution of EUR 2 046 million;
- 2) *Measure 2*: transfer of impaired assets from the bridge bank to the AMV up to the amount of EUR 916 million.

3.3. Commitments by Italy

- (38) Italy commits not to provide any additional capital or liquidity support to the bank, the residual entity or the bridge bank.
- (39) The bridge bank will be managed in a prudent manner with the objective of being divested by 30 April 2016. The sale process will be open, transparent, non-discriminatory and competitive, taking place on market terms and with the aim to maximize the sale price. The sale procedure for the bridge bank will be launched no later than 30 January 2016. Italy commits to notify to the Commission the result of the sale procedure to allow its assessment under the European Union State aid framework. The name "Banca delle Marche" cannot be transferred to the buyer of the bridge bank.
- (40) If the bridge bank is not sold by 30 April 2016, it will be orderly wound down in line with the provisions of Article 41 BRRD. No later than two years after the date of the present decision, the bridge bank will become subject to ordinary insolvency proceedings and its banking license will be revoked.
- (41) No claim of shareholders and holders of subordinated debt or any hybrid instruments of the bank or the residual entity may be transferred to the bridge bank in the future.
- (42) The bridge bank will apply strict executive remuneration policies in line with the 2013 Banking Communication⁷.
- (43) The bridge bank will refrain from advertising referring to State support and from employing any aggressive commercial strategies given that in the absence of that State support, the bank would no longer be present in the market.
- (44) The bridge bank will not price deposits above market average and will not grant credit or other loan business below market average.
- (45) An application will be filed for the removal of the banking licence of the residual entity no later than 20 December 2015 and the residual entity will enter into liquidation proceedings no later than 30 June 2016.
- (46) Italy commits to provide the Commission with the definitive valuation carried out pursuant to Article 36(10) BRRD.

⁷ 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.

4. POSITION OF ITALY

- (47) Italy accepts that Measures 1 and 2 constitute State aid and requests the Commission to verify their compatibility with the internal market on the basis of Article 107(3)(b) TFEU on the Functioning of the European Union ("TFEU"), as they are necessary in order to remedy a serious disturbance in the Italian economy.
- (48) By letter dated 21 November 2015, the BOI stated that the situation of the bank threatened financial stability and that an urgent intervention was therefore necessary to avoid a serious disturbance in the economy of Italy. The BOI pointed out that liquidation under ordinary insolvency would not be in the public interest as it would put financial stability at risk, interrupt the provision of critical functions, affect the protection of depositors and destroy value. Moreover, the BOI stated that in case of regular liquidation of the bank, the Italian Deposit Guarantee Scheme ("DGS") would be called on to immediately reimburse covered deposits. This would put significant additional stress on the banking system given the need to collect those amounts from the contributors to the DGS, the Italian banks.
- (49) In addition, Italy submits that the measures are compatible with the 2013 Banking Communication and the Impaired Assets Communication⁸.
- (50) Italy submitted commitments.

5. ASSESSMENT OF THE MEASURE

5.1. Existence of aid

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

5.1.1. Existence of aid in Measure 1 – capital injection from the resolution fund to the bridge bank

- (52) The Commission considers the contribution from the resolution fund to be State aid within the meaning of Article 107(1) TFEU. That view is not contested by Italy.
- (53) In line with established case-law⁹, the Commission considers that the intervention by the resolution fund – even if financed through private contributions – involves State resources.

⁸ 25.02.2009 Communication from the Commission on the Treatment of Impaired Assets in the Community Banking sector OJ C 72, 26.03.2009, pages 1-22

⁹ See Case C-345/02 *Pearle and others* EU:C:2004:448, paragraphs 37 and 38. That approach was applied in Commission decision in the State aid case NN 61/2009 – "Rescue and restructuring of Caja Castilla-La Mancha", Spain, 29.06.2010, C(2010)4453 corr., recitals 96-118.

- (54) The management and use of resolution fund resources is decided in accordance with the law with the aim to provide financial assistance to the application of resolution measures adopted by the resolution authority in furtherance of its public policy objectives. In the present case, the use of resolution fund resources has been triggered by the resolution measure adopted by the resolution authority. The Commission therefore considers that the measure is financed through State resources and is imputable to the State.
- (55) The Commission also notes that Measure 1 is selective in nature, since it ensures the effective application by the resolution authority of the resolution tools and powers with regard to the resolution of Banca Marche. The capitalisation under that measure is available only to the bridge bank.
- (56) The Commission considers that Measure 1 provides Banca Marche's activities with a clear advantage by keeping them alive through the transfer to the bridge bank. The decision taken by the resolution authority is taken by it in its capacity as a body fulfilling a public mandate rather than in the capacity of a market economy operator.¹⁰
- (57) Moreover, even if Measure 1 had to be assessed in the light of the conduct of a comparably situated market economy operator, under the current circumstances no private operator acting on the basis of market economy principles would participate in the bridge bank's capital as evidenced by the unsuccessful attempts of the special administrator to find private investors¹¹. In addition, due to the fact that the bridge bank is by definition a temporary institution with the goal to sell all its assets, no private operator would be willing to capitalise it. However, in order to maximise the value of the assets, the bridge bank is allowed to continue its business and compete with other private operators on the market.
- (58) The Commission finds that Measure 1 distorts competition as it allows the bridge bank to obtain the necessary capital to avoid insolvency.
- (59) The Commission finds that Measure 1 is also likely to affect trade between Member States as the financial services market is by its nature global, and some of the competitors of the bridge bank in Italy are subsidiaries or branches of foreign banks.
- (60) On the basis of the foregoing, the Commission finds that Measure 1 fulfils all the conditions laid down in Article 107(1) TFEU and qualifies as State aid to the bridge bank.

5.1.2. Existence of aid in Measure 2 – transfer of impaired assets from the bridge bank to the AMV

- (61) As assessed in recitals (52) to (54), the Commission considers the measures taken by the resolution authority using resources from the resolution fund to be imputable to the State and funded through State resources.

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

¹¹ See recital (20).

- (62) As assessed in recitals (58) and (59), any measure taken selectively in favour of the bridge bank has the potential to distort competition and affect trade.
- (63) According to information provided by Italy, the AMV is both capitalised by the resolution fund and controlled by the resolution authority and thereby fulfils the same conditions as measures implemented by the resolution authority directly.
- (64) Italy accepts that the transfer of the NPL portfolio described in recital (31) from the bridge bank to the AMV is occurring above market prices and therefore does provide an advantage to the bridge bank, but below real economic value and therefore compatible.
- (65) In general, NPL levels in Italy are high, at 17.3% of total lending in the banking system in 2014¹². Those high levels are driven partly by a lacklustre economic performance over the past years. They are also caused by a very cumbersome and slow legal insolvency procedure, as assessed in the 2015 country report published by the Commission,¹³ leading to extremely long work-out times¹⁴ for NPL. Italy has recently taken steps to reform the insolvency law¹⁵ to facilitate work-out and decrease significantly the delays which should have a further beneficial impact on NPL values.
- (66) For the impaired asset transfer from the bridge bank to the AMV, Italy [notified] to use transfer prices corresponding to 25% of gross book value for collateralised *Sofferenze* loans and 8.4% for uncollateralised *Sofferenze* loans. In addition, Italy has provided the Commission with the break-down of each collateralised and uncollateralised parts of the portfolio into retail loans and corporate loans¹⁶. While the Commission is generally not in favour of simple haircuts, it positively acknowledges the fact that the *Sofferenze* portfolio is transferred in its entirety. That element somewhat mitigates the inherent risk of adverse selection in the transfer of loans which could be induced by the use of simple haircuts.

Non-collateralised exposures

- (67) Regarding the transfer of uncollateralised *Sofferenze* loans, Italy has provided the Commission with significant amounts of data on historic recovery values on uncollateralised corporate loans extracted from the Italian credit register. Using that information, the Commission has been able to verify the combination of increasing levels of NPL inflow over the past few years coupled with a very slow court procedure, leading to a rapid rise of unresolved NPLs in the banking system.

¹² That figure compares to peak-values of 9.4% for Spain, 15.3% for Slovenia and 25.7% for Ireland. All figures from the World Bank online database.

¹³ Pp. 42/43, Commission Staff Working Document, Country Report Italy 2015 including an In-Depth Review on the prevention and correction of macroeconomic imbalances

¹⁴ The "work-out value" is defined as the percentage value of notional plus accrued interest received on a given defaulted loan engagement during the administrative insolvency procedure of the debtor. The period between the start of the administrative insolvency procedure and the time when the work-out value is received is defined as "work-out time".

¹⁵ DECRETO-LEGGE 27 giugno 2015, n. 83, Misure urgenti in materia fallimentare, civile e processuale civile e di organizzazione e funzionamento dell'amministrazione giudiziaria. (15G00098) (GU n.147 del 27-6-2015), Decreto-Legge convertito con modificazioni dalla L. 6 agosto 2015, n. 132 (in SO n. 50, relativo alla G.U. 20/08/2015, n. 192).

¹⁶ See recital (31)

- (68) The data provided by Italy allowed the Commission to assess both the negative correlation of recovery value with the work-out time (i.e. the longer the procedure takes, the less value on average there is to recover) as well as the evolution of work-out time for NPL depending on their age.
- (69) Using conservative and prudent assumptions about the work-out value of the NPL currently in the Italian banking system as well as the level of negative correlation assumed between recovery value and work-out time, the Commission comes to the conclusion that the market value for a portfolio of uncollateralised corporate *Sofferenze* exposures will not be greater than [0-10](*)%. That value should be considered an upper limit as it already takes into account significant upside from the legal reforms recently enacted in Italy to improve the work-out time.
- (70) Banca Etruria, another bank currently under special administration has recently managed to sell a portfolio of collateralised and uncollateralised loans of EUR 284 million in the market. Italy has provided detailed data on that transaction which occurred at the net book value of [10-20]%. In that transaction, the uncollateralised part of the portfolio was sold at the net book value of [0-5]%.
- (71) Neither the distribution of age or size of *Sofferenze* exposures in that portfolio marks it out as significantly different from the general market average established from the data provided by Italy. As there is no evidence that would allow the Commission to consider that the market price of the specific transaction would be significantly different from the general market price for uncollateralised *Sofferenze* exposures, the Commission considers the transaction to be comparable to the case at hand, providing [0-5]% as the only clear evidence for a market value.

Collateralised exposures

- (72) Since the start of the financial crisis, the Commission has taken a large number of decisions involving the transfer of assets from financial institutions to asset management companies in both individual cases as well as at a systemic level in Ireland, Spain and Slovenia. In all those cases, the Commission has established both real economic value ("REV") as well as the market value of those assets as required under the 2009 Impaired Asset Communication¹⁷.
- (73) In all those cases, the overwhelming majority of the transferred loans were collateralised loans. The Commission notes that the market values established in its previous case practice ranged between 20% and 45% at an average of 29%. The Commission notes that the [notified] transfer price in this case (25% of gross book value) is below the average and at the lower end of the range of values found previously. At the same time, the Commission notes that such a low price is to be expected for a number of reasons.
- (74) A large proportion of collateralised *Sofferenze* NPL in the Italian banking sector is collateralised with real estate. Therefore, the state of real estate markets is an important driver for the prices of collateralised NPL in line with the

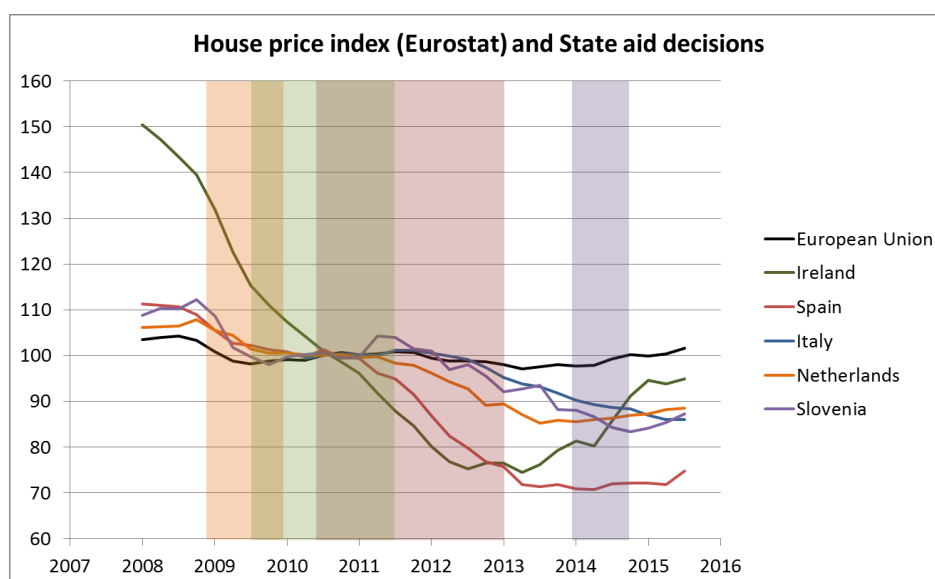
¹⁷ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1.

(*) Covered by the obligation of professional secrecy

Commission's previous experience in other jurisdictions. According to the House Price Index published by Eurostat¹⁸, the real estate market in Italy has lost 3% per year over the last five years and. Unlike other crisis markets, such as those in Ireland and Spain, it does not seem to have bottomed out yet.

- (75) Figure 1 shows the development of the House Price Index for selected Member States. The colour panels show the timing of State aid decisions related to impaired asset measures taken in the corresponding Member State (e.g. the House Price Index of Ireland is shown in green and the period between mid-2009 and mid-2011 when most State aid decisions regarding Ireland were taken is marked in green as well).
- (76) Figure 1 shows that for most of the Commission decisions taken during the financial crisis relating to impaired assets measures, the real estate market subsequently fell significantly further in the Member States concerned. However, Slovenia seems to be different from Spain, Ireland and Netherlands and the slow fall of real estate value seems to align the Italian case much more closely with Slovenia than with any of the other three countries.
- (77) The Commission also has market information that the consensus forecast for the real estate market in Italy is a further decline of 2% in 2015 and a stabilisation in 2016. The timing of this decision compared to the state of the real estate market seems to recall more the timing of the Slovenian decisions as can be seen from Figure 1 rather than those decisions taken in the other Member States.

Figure 1



- (78) Therefore, the Commission considers that there are no indications from either real estate market performance, NPL levels or from the timing of the decision that would suggest accepting a higher market price for collateralised loans in default than the one found in the assessment of the Slovenian cases. The Commission recalls that the market values as assessed by the Commission in the Slovenian decisions were the most conservative of all past case practice at around 20%.

¹⁸ Statistical Office of the European Communities (2015). EUROSTAT: House Price Index (HPI). Luxembourg: Eurostat

- (79) At the same time, the Commission points out that in the Slovenian cases, the portfolios transferred consisted mainly of defaulted corporate loans collateralised with commercial real estate. The Commission had evidence in Slovenia that residential real estate, which is the typical collateral for retail collateralised loans, had retained value better than commercial real estate.
- (80) That evidence is in line with the Commission's own market value assessments in Ireland and Spain where the majority of exposures was indeed collateralised with residential real estate and where market values were higher (on average 30% in Spain and 38% in Ireland) in spite of the significant stress taken into account in the assessment in view of both the macroeconomic situation as well as the downwards potential of the real estate market as demonstrated in Figure 1.
- (81) However, the portfolio of the bridge bank to be transferred consists mainly of corporate *Sofferenze* exposures (more than 90% of gross book value of the portfolio to be transferred). The Commission therefore considers that a market value of 20% in line with the Slovenian findings is a prudent benchmark to be considered as an appropriate market value.

Conclusion

- (82) In view of the above, the Commission considers safe harbour values for market transactions to be at 20% for collateralised and [0-5]% for uncollateralised *Sofferenze* exposures.
- (83) Therefore, the [notified] transfer values of 25% for collateralised and 8.4% for uncollateralised *Sofferenze* exposures provide the bridge bank with an advantage through Measure 2 which is equivalent to the difference between the transfer value and the established market value. For the portfolio to be transferred from the bridge bank, that difference amounts to EUR 202 million. Measure 2 is to be taken only in respect to the bridge bank, which means that it receives a selective advantage.
- (84) In light of the preceding elements, the Commission finds that the transfer of impaired assets from the bridge bank to the AMV as foreseen under the resolution scheme contains State aid in the meaning of Article 107(1) TFEU.

5.1.3. Beneficiary of the aid

- (85) The Commission has assessed in recitals (61) and (84) that Measures 1 and 2 fulfil the conditions of State aid and identified the beneficiary of the aid as the bridge bank.
- (86) Italy commits to selling the bridge bank by 30 April 2016. Any such sale of a credit institution during an orderly resolution procedure may entail State aid to the buyer, unless the sale is organised via an open, non-discriminatory and unconditional competitive tender where the assets are sold to the highest bidder.
- (87) In particular, when determining if there is aid to the buyer of the credit institution or parts of it, the Commission will examine whether: (a) the sales process is open, unconditional and non-discriminatory; (b) the sale takes place on market terms; (c) the credit institution or the government, depending on the structure chosen, maximises the sales price for the assets and liabilities involved. Where the

Commission finds that there is aid to the buyer, the Commission will assess the compatibility of that aid separately.

- (88) As recalled in point 82 of the 2013 Banking Communication¹⁹, if aid is granted to the economic activity to be sold (as opposed to the purchaser of that activity), the compatibility of such aid will be subject to an individual examination. Measures 1 and 2 constitute aid granted to the bridge bank to be sold, in this case. The Commission will assess the need for measures to limit distortions of competition brought about by the aid to that economic entity and will verify the viability of the entity resulting from the sale. In its viability assessment, the Commission will take into due consideration the size and strength of the buyer relative to the size and strength of the business acquired. The sale of the bridge bank is therefore not covered in the present decision and will be assessed separately when Italy notifies the sale of the bridge bank.

6. COMPATIBILITY OF THE AID

6.1. Legal basis for the compatibility assessment

- (89) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State." The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications²⁰, as well as in the 2013 Banking Communication.
- (90) In view of the above the Commission considers that Measures 1 and 2 for the resolution of Banca Marche has to be examined under Article 107(3)(b) TFEU.
- (91) In the 2013 Banking Communication, the Commission acknowledged that Member States should encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability.
- (92) As mentioned in recital (28), the resolution authority states the ordinary insolvency procedure would not be apt to achieve the resolution objectives, and

¹⁹ 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.

²⁰ Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("*2008 Banking Communication*"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("*Recapitalisation Communication*"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication*"), OJ C 329, 7.12.2010, p. 7 and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*"), OJ C 356, 6.12.2011, p. 7.

especially the overarching objective of preserving financial stability, to the same extent as the Measures.

- (93) Since the resolution measures are aimed at ensuring the orderly winding down of the bank, the Commission considers that it must assess the compatibility of both Measures 1 and 2 by reference to the 2013 Banking Communication, and more specifically section 6 on liquidation aid.
- (94) Points 71 to 78 of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of an orderly winding down. Point 70 states that the Commission will assess the compatibility of measures aimed at resolving credit institutions on the same lines *mutatis mutandis* as set out in sections 2, 3 and 4 of the Restructuring Communication. Point 78 states that sections 3.1.2 and 3.1.3 must be complied with *mutatis mutandis*.
- (95) Therefore, the Commission considers that, in order for the notified aid measures to be compatible under Article 107(3)(b) TFEU, it must comply with the following criteria:
- (a) *Limitation of costs of winding down*: aid amounts should enable the credit institution to be wound down in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary credit institution continues to operate;
 - (c) *Own contribution (burden-sharing)*: appropriate own contribution to the costs of winding down should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity;
 - (d) *Restoring long-term viability*: the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.
- (96) Measure 2 entails an aided transfer of impaired assets from the bridge bank to the AMV up to an amount of EUR 916 million. As such, its compatibility must also be assessed under the Impaired Assets Communication, in addition to the criteria mentioned in recital (95) as aid for the winding down of the bridge bank. In the context of the present procedure, it is appropriate to examine the measures' compatibility with the 2013 Banking Communication and the Restructuring Communication before examining the compatibility of Measure 2 with the Impaired Assets Communication.

6.2. Compatibility of Measures 1 and 2 with the 2013 Banking Communication and the Restructuring Communication

Limitation of the costs of winding down

- (97) As described in section 3.1, the amount of aid needed has been determined by the outcome of a provisional valuation performed by the resolution authority, and will have to be confirmed by an independent final valuation under Article 36 BRRD.
- (98) In addition, the resolution fund becomes the only senior creditor of the residual entity²¹ and the exclusive beneficiary of the recovery of bad loans transferred to the AMV, since it is the only owner of the AMV²². The Commission notes that it is highly likely that the price for the transfer of bad loans is close to market value and definitely below the real economic value²³ implying that the management of the bad loans portfolio by the AMV is likely to provide some upside to the resolution fund.
- (99) Furthermore, the Commission notes that immediate bankruptcy as opposed to an orderly winding down would involve an immediate liquidation of all assets. However, the special administrator had already established that there was no party interested in an outright sale of the assets and liabilities of Banca Marche.
- (100) Furthermore, in order to limit the costs of winding down, Italy committed not to provide additional capital or liquidity support to the bank, the residual entity or the bridge bank. In addition, the bridge bank will not provide any additional capital or liquidity to the residual entity, except for a limited amount of resources necessary for the liquidation procedure of the residual entity.
- (101) In light of the above, the Commission can conclude that the costs of winding down have been reduced to the minimum.

Limitation of distortions of competition

- (102) The Commission recalls that the continued market presence of both residual entity and bridge bank might give rise to competition concerns.
- (103) However, Italy commits to applying for the withdrawal of the banking license of the residual entity no later than 20 December 2015 and to subsequently launch the national insolvency procedure for the residual entity no later than on 30 June 2016.
- (104) Moreover, the residual entity will not compete on the market or pursue any new activities. Due to the absence of assets, the residual entity will stop all activities at the moment of the transfer of its assets to the bridge bank.
- (105) Hence, the Commission considers that the distortions of competition stemming from the market presence of the residual entity during its orderly winding-down are limited.

²¹ See recital (33).

²² See recital (25).

²³ See recitals (64) to (84) and (128) to **Error! Reference source not found.**

- (106) With respect to the bridge bank, the Commission notes that the bridge bank has been established for a limited period of time (its "existence period"): it is either sold by 30 April 2016 or it will go into orderly winding down and, no later than two years after the date of adoption of this decision, will become subject to ordinary insolvency proceedings and its banking licence will be revoked.
- (107) Moreover, Italy commits that during the existence period of the bridge bank, a strict deposit and loan pricing policy will be implemented to ensure that the bridge bank remains in line with market averages in terms of pricing its products and does not enter into any aggressive commercial practice²⁴.
- (108) If a sale is unsuccessful by 30 April 2016, the bridge bank will immediately stop carrying out activities other than those that are consistent with managing the work-out of the loan book existing at 30 April 2016, will not develop any new activity or business, will not enter new markets and will not acquire new clients. It will conserve its banking license only as long as necessary for the work-out of the loan portfolio but in any case no longer than two years from the date of the present decision.
- (109) In light of the above, the Commission can conclude that distortions of competition stemming from the market presence of the bridge bank during its existence period are limited.

Own contribution (burden-sharing)

- (110) For resolution aid to be declared compatible, section 3.1.2 of the 2013 Banking Communication, to which its point 78 refers, explains that shareholders and subordinate debt holders have to contribute to a maximum to the cost of the intervention.
- (111) As mentioned in recital (33), Banca Marche's shareholders will be fully written down. Furthermore, the resolution authority will write down fully holders of capital instruments according to Article 59 BRRD. The remaining subordinated debt will not be transferred to the bridge bank but will remain in the residual entity.
- (112) Furthermore, the Commission recalls that the residual entity will not have any assets and that in any case, the resolution fund will receive a senior claim on the residual entity to the amount it contributed to covering the negative net equity value of the assets and liabilities transferred to the bridge bank. Therefore, that construction ensures that subordinated debt holders participate appropriately in the cost of the winding down.
- (113) The Commission notes positively that Italy commits that no future claim of shareholders and holders of subordinated debt or any hybrid instruments of the Bank or the residual entity may be transferred to the bridge bank.

²⁴ See recital (43).

- (114) As a result, the Commission concludes that shareholders and subordinated debt holders will have contributed to the maximum extent possible, thereby satisfying the burden-sharing requirement.

Restoring long-term viability

- (115) Italy has committed to notify to the Commission the sale of the bridge bank if a buyer is found. Hence 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 buyer²⁵.

Conclusion

- (116) In line with the considerations above, the Commission considers that Measures 1 and 2 meet all the conditions and requirements of the 2013 Banking Communication and the Restructuring Communication, without prejudice to the specific requirements for Measure 2 with respect to its compatibility under the Impaired Assets Communication.

6.3. Compatibility of Measure 2 with the Impaired Assets Communication

- (117) Measure 2 has to be assessed under the criteria listed in the Impaired Assets Communication, as its purpose is to free the beneficiary bank from (or compensates for) the need to register either a loss or a reserve for a possible loss on its impaired assets. Those compatibility criteria comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management of the assets; (iv) a correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

Eligibility of assets

- (118) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility.
- (119) Whilst the Impaired Assets Communication cites as eligible assets those that have triggered the financial crisis (the Impaired Assets Communication explicitly refers to US mortgage-backed securities), it also allows for the possibility to 'extend eligibility to well-defined categories of assets corresponding to a systemic threat upon due justification, without quantitative restrictions'.
- (120) As regards the present case, the impaired assets measure is targeted at non-performing assets, more precisely the entire loan portfolio in the defaulted *Sofferenza* category. Those assets are therefore in line with the eligibility criteria of the Impaired Assets Communication.

²⁵ See recital (87) for further details.

Transparency and disclosure

- (121) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the asset relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. The Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.
- (122) Section 5.5 of the Impaired Assets Communication accepts that alternative methodologies for valuation may need to be employed to take account of specific circumstances related to, e.g. timely availability of relevant data, provided they attain equivalent transparency.
- (123) The Commission acknowledges that in this specific case, the transparency requirements have been challenging for the planned transaction. The Commission positively notes that the assets to be transferred have been clearly identified as defaulted loans in the *Sofferenze* category including a breakdown of each collateralised and uncollateralised parts of the portfolio into retail and corporate loans. No complex assets or structured products are being transferred.
- (124) The Commission further takes into consideration that the measure is implemented in resolution in the specific framework of a sale or orderly winding down commitment in a very short timeframe.
- (125) In light of those elements and in the context of the function of Measure 2 as a mechanism to allow the bridge bank to exit the market as a stand-alone operator within a very short period, the Commission considers that the transparency requirements can be regarded as fulfilled.

Valuation

- (126) Measure 2 will be implemented according to the preliminary valuation of the assets which has been performed by the BOI at 30 September 2015. Italy will provide the Commission with the results of the final valuation performed by the BOI²⁶.
- (127) The Commission concluded in recitals (61) to (84) that the [notified] transfer prices at 25% for collateralised exposures and 8.4% for non-collateralised exposures are above the market value. Italy does not dispute that fact.
- (128) The Commission does not have sufficient information about the portfolio to be transferred to pronounce itself conclusively on the precise value of the REV. However, it is possible to establish with reasonable confidence that the [notified] transfer value is lower than the appropriate REV of the portfolio and that the aid provided through the transfer can be compatible with the rules of the internal market.

²⁶ See recital (46)

- (129) For collateralised exposures, the Commission has in recitals (74) to (81) established that Slovenia can be considered an appropriate benchmark. All REV assessments for portfolio transfers in Slovenia established the REV at 27% or higher²⁷. Those values were established on portfolios of almost exclusively corporate loans in default. However, the portfolio to be transferred from the bridge bank contains some retail exposures which should serve to further increase the appropriate REV.
- (130) Taken together, the Commission considers with a high degree of confidence that a transfer value of 25% for collateralised *Sofferenze* exposures will be lower than the REV for that sub-portfolio.
- (131) For uncollateralised exposures, the Commission considers with reasonable confidence on the basis of the data provided by Italy and in line with the assessment provided in recitals (67) and (71) that the REV for the portfolio to be transferred should be between 8.5% and 9.7%.
- (132) As the [notified] transfer value of 8.4% is below the lower value in the established confidence band, the Commission considers with reasonable degree of confidence that a transfer value of 8.4% for uncollateralised *Sofferenze* exposures will be lower than the REV for that sub-portfolio.
- (133) Overall, the Commission concludes on the basis of the preceding considerations that the transfer values do not contain aid that would be incompatible because in excess of the REV of the assets, in line with the Impaired Assets Communication, and considers the requirements regarding valuation to be fulfilled.

Management of the assets

- (134) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of ensuring a clear functional and organisational separation between the beneficiary bank and the assets to be transferred, notably as to their management, staff and clientele.
- (135) The non-performing assets to be transferred from the bridge bank will be managed by the newly created AMV, which is fully independent from the bridge bank. It can therefore be concluded that the separate asset management is in line with the requirements of the Impaired Assets Communication.

Burden-sharing

- (136) As regards burden-sharing, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing.
- (137) As described in the recitals (110) to (113), adequate burden-sharing measures have been implemented.

²⁷ The Commission notes that the REV values established in other jurisdictions were higher than in Slovenia.

Conclusion on Measure 2

- (138) 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 Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication.

6.4. Conclusion on compatibility

- (139) The Commission considers that the resolution measures are compatible with the internal market within the meaning of Article 107(3)(b) TFEU.

6.5. Monitoring

- (140) Point 88 of the 2013 Banking Communication notes that the Commission must be in a position to monitor the resolution process and its impact on competition. In that regard, the Commission takes positive note of the commitment by Italy to establish a monitoring trustee to be appointed to ensure compliance with the commitments given which underpin the authorisation of the measures. The monitoring trustee will provide the Commission with a report at the beginning of March 2016 as regards the situation of the bridge bank. After this initial report and if the bridge bank is not sold, the monitoring trustee will provide a report by the end of May 2016 and half-yearly reports thereafter, to be provided within 30 days after the end of each six-month period until the bridge bank is fully wound down and liquidated.

7. COMPLIANCE OF THE RESOLUTION OF THE BANK WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

- (141) Although Italy has transposed the BRRD into national law²⁸, the Commission needs to assess whether the measure violates indissolubly linked provisions of the BRRD.
- (142) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held²⁹ "that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108 TFEU] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108]".³⁰
- (143) To ascertain whether a violation of a provision of Union law is indissolubly linked to the object of the aid, a relation of necessity has to be established. It means that the State aid measure has to be connected with a national measure in a way that necessarily breaches a specific provision of Union law which is relevant for the compatibility analysis under paragraphs 2 and 3 of Article 107 TFEU.

²⁸ "DECRETO LEGISLATIVO 16 novembre 2015, n. 180" and "DECRETO LEGISLATIVO 16 novembre 2015, n. 181"

²⁹ 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.

³⁰ Case 74/76 *Ianelli v Meroni* EU:C:1977:51 paragraph 14 (emphasis added).

- (144) In this decision, according to the information provided by Italy, the Commission has identified the use of at least the following provisions of the BRRD.
- (145) The Commission notes that the measures seem to correspond to the general principles governing resolution provided by Article 34 BRRD. Moreover, the Commission notes that the provisions of Measures 1 and 2 are in line with Article 34(1) BRRD. None of any remaining equity after the provisional valuation and none of the subordinated debt will be transferred to the bridge bank, but will instead be left in the residual entity to be liquidated. Therefore, the shareholders and subordinated debtholders bear 100% losses.
- (146) The Commission notes that the measures appear to be in line with the provisions of Article 32 BRRD specifying the conditions required to take a resolution action and Article 36(2) BRRD on the possibility to perform a provisional valuation for the purposes of resolution.
- (147) The Commission notes that the resolution measure is an application of the "bridge bank" tool provided by Articles 40 and 41 BRRD and of the "sale of business" tool laid out by Article 42 BRRD.
- (148) The Commission notes that a resolution fund has been set up in Italy and will cover the funding gap related to the transfer of assets and liabilities from the bank to the bridge bank. Therefore, the funding of Measures 1 and 2 appears to be in compliance with Article 100(5) BRRD on the requirement to establish and use resolution financing arrangements. According to Italy, the resolution fund will acquire the necessary resources to finance the resolution through the recourse to ordinary contributions for 2015 and the three years ex-post contributions in accordance Articles 103 and 104 BRRD.
- (149) Therefore, at the present stage, the Commission concludes that Measures 1 and 2 do not violate intrinsically linked provisions of the BRRD in the context of the State aid rules.
- (150) 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 BRRD provisions.

8. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) TFEU on the Functioning of the European Union.

The Commission notes that Italy agreed to have the present decision adopted and notified in English.

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

Italy hereby provides the following Commitments (the "Commitments") which are integral part of the resolution measures being applied to [•] (the "Bank"). The Commitments apply to the overall resolution measures applied to the Bank according to the resolution schemes (the "Resolution Schemes") decided by Bank of Italy and approved by the Minister of Economy and Finance and the Commission's decision (the "Decision").

DEFINITIONS

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

- (1) Bank: Banca delle Marche S.p.A.
- (2) Bridge Bank: the legal entity to which selected assets and liabilities are transferred on the basis of the Resolution Schemes.
- (3) Residual Entity: the legal entity resulting after the banking license of the Bank is revoked and where the remaining assets and liabilities of the Bank remain.
- (4) Decision: the decision of the European Commission authorizing the State aid measures.
- (5) Effective Date: the date of adoption of the Decision.
- (6) Existence Period: the Existence Period starts with the setup of the Bridge Bank. The Existence Period ends when the Bridge Bank is sold. If the Bridge bank is not sold, the Existence Period ends when the Bridge Bank is wound up entirely, or its banking license is revoked or it stops any banking activity, whichever occurs earlier.
- (7) Winding-down Period of the residual entity: the Winding-down Period starts with the setup of the Bridge Bank and it ends when the Residual Entity is wound up entirely, or its banking license is revoked or it stops any banking activity, whichever occurs earlier.

For the purpose of the Commitments, the singular of those terms shall include the plural (and vice versa), unless the Commitments provide otherwise.

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

With respect to the Bridge Bank, the Commitments apply throughout the Existence Period. With respect to the Residual Entity, the Commitments apply throughout the Winding-down Period.

COMMITMENTS RELATED TO THE BRIDGE BANK

- 1) The Bridge Bank will be managed in a prudent manner with the objective of being divested.
- 2) In order to sell the Bridge Bank an open, transparent, non discriminatory and competitive selling process will be conducted, that take place on market terms and with the aim to maximize the sale price. The name Banca delle Marche will not be transferred to the buyer.
- 3) The Resolution Fund will launch the sale procedure mentioned in point 2) no later than on 30 January 2016.
- 4) If the Bridge Bank is not sold by 30 April 2016, the commitments listed under a., b. and c. below apply:
 - a. The bridge bank will be orderly wound down. The Bridge Bank will not carry out activities other than those that are consistent with managing the work-out of the loan book existing at 30/04/2016 (including loan sales where appropriate to maximize recovery values and minimise capital losses).
 - b. The Bridge Bank will not develop any new activity or business, will not enter new markets and will not acquire new clients.
 - c. The Bridge bank will conserve its banking license only as long as necessary for the work-out of the loan portfolio. No later than 2 years after the date of the decision, the Bridge Bank will become subject to ordinary insolvency proceedings and its banking license will be revoked.
- 5) Italy commits to notify to the Commission the result of the sale procedure in advance of implementation to allow its assessment under the European Union State aid framework.
- 6) Italy will not provide any additional capital or liquidity support to the Bank, the Residual Entity or the Bridge Bank. In addition, the Bridge Bank will not provide any additional capital and/or liquidity to the Residual Entity, except for a limited amount of resources (e.g. personnel) necessary for the liquidation procedures of the residual entity

- 7) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the Bank or the Residual Entity may be transferred to the Bridge Bank.
- 8) Granting loans by Bridge Bank to enable borrowers to purchase shares or hybrid instruments of the Bridge Bank shall be prohibited, whoever those borrowers are.
- 9) The Bridge Bank 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 Bank after its set up. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, the Bridge Bank shall submit the proposed coupon or dividend payment to the Commission for approval.
- 10) The Bridge Bank shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the Bridge Bank on an individual customer or 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.
- 11) The Bridge Bank has to continue the further improvement of its risk management activities and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.
- 12) The Bridge Bank can only purchase investment grade securities or euro area sovereign securities.
- 13) The Bridge Bank will not price deposits above market average in a reasonable short period of time and will not grant credit or other loan business below market average.
- 14) The Bridge Banks will apply strict executive remuneration policies. The Bridge Bank will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than 15 times the national average salary in Italy or 10 times the average salary of employees of the bank.

- 15) Without prejudice of the powers of the resolution authority to transfer further assets from the Residual Entity to the Bridge Bank, 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.
- 16) The acquisition ban shall not apply to acquisitions that take place in the ordinary course of the 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 Bank for any acquisition is less than 0,01% of the balance sheet size of the Bridge Bank at the Effective Date of the Commitments, and where the cumulative purchase prices paid by the Bridge Bank for all such acquisitions starting with the Effective Date of the Commitments until the end of the restructuring period, is less than 0,025% of the balance sheet size of the Bridge Bank at the Effective Date of the Commitments.
- 17) Notwithstanding the acquisition ban, the Bridge Bank 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 doesn't apply to the mergers and acquisition of entities within the banking group.
- 18) The Bridge Bank shall manage the assets it receives with the objective of being divested, in a way that maximizes the net present value of these assets, including, if convenient, the sale to subsidiaries to third parties.
- 19) In order to facilitate the sale of the Bridge bank any initiative useful to maximize the value of the subsidiaries shall be carried out including, if convenient, the sale to third parties.
- 20) The Bridge Bank 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.
- 21) Bad loans of the Bridge Bank shall be transferred to an asset management company for an amount up to € 916 million.
- 22) Italy commits to provide the Commission with the definitive valuation carried out pursuant Article 36, par. 10, BRRD.

1. COMMITMENTS RELATED TO THE RESIDUAL ENTITY

- 23) The request for the withdrawal of the banking license of the Bank will be submitted not later than 20 December 2015 and the Residual Entity will enter into liquidation proceedings no later than 30 June 2016.

2. MONITORING TRUSTEE

- 24) Full and proper implementation of all commitments will be monitored by a Monitoring Trustee independent from the Bank or the Bridge Bank, proposed by Italy, approved by the Commission and appointed and paid by the Bridge Bank; the Monitoring Trustee will have the duty to monitor the full compliance with the Commitments until the end of the Existence Period or the Winding-down Period, whichever occurs last.

ANNEX II - **Monitoring Trustee Annex**

1. MONITORING TRUSTEE

(1) Italy is to ensure that the full and correct implementation of the Decision and all the Commitments are continuously monitored by independent and sufficiently qualified Monitoring Trustee(s).

(2) The appointment, duties, obligations, replacement, discharge and reappointment of the Monitoring Trustee, as well as the Bridge Bank's duties and obligations in this context, must follow the conditions and procedures set out in this Annex.

(3) If in the course of implementing the Commitments there are reasons to assume that the Bridge Bank is reasonably likely to fail to meet any Commitment, it has to work out on its own initiative a plan with Remedial Actions that are apt to ensure that all targets will be met. The Remedial Actions have to be presented to the Monitoring Trustee who will analyse them and report to the Commission on its views concerning their adequacy.

(4) Italy and the Bridge Bank to ensure that during the implementation of the Decision, the Commission and the Monitoring Trustee have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustees may ask the Bridge Bank for explanations and clarifications. Italy and the Bridge Bank are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of the Decision and the Commitments.

2. APPOINTMENT OF THE MONITORING TRUSTEE

(5) The mandate of the Monitoring Trustee applies until the end of the Existence Period. At the end of the mandate, the Trustee will submit a final report to the Commission.

(6) The Monitoring Trustee may be natural person(s) or legal person(s) or institution(s).

(7) The Monitoring Trustee must be independent of the Bank, the Bridge Bank and the Residual Entity. The Monitoring Trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge, expertise and manpower that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest.

(8) The Monitoring Trustee is to be remunerated by the Bridge Bank in a way that must not impede the independent and effective fulfilment of its mandate.

(9) Italy will submit at least two proposals to the Commission for approval as Monitoring Trustee no later than four weeks after the date of adoption of the Decision. These proposals must contain sufficient information about the potential trustees to enable the Commission to verify whether they fulfil the requirements, and must in particular include the following:

a. the full terms of the proposed mandate with all the provisions which are necessary to enable the Monitoring Trustees to fulfil their duties; and

b. the draft of a work plan describing how the proposed trustee intends to carry out their assigned duties if s/he are appointed as the Monitoring Trustee.

(10) The Commission has the discretion to approve or reject the proposed persons and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Bridge Bank will appoint the person concerned as Monitoring Trustee or cause that person to be appointed, in accordance with the mandate approved by the Commission, or submit alternative proposal(s) to be reviewed and approved by the Commission. If more than one name is approved, Italy is free to decide which of the approved persons should be appointed as Monitoring Trustee. The Monitoring Trustees will be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

(11) If all the proposed persons are rejected, Italy shall submit the names of at least two different persons within two weeks of being informed of the changes or the rejection.

(12) If all further proposed persons are also rejected by the Commission, the Commission will nominate a Monitoring Trustee which the Resolution Fund will appoint, in accordance with a trustee mandate approved by the Commission.

3. DUTIES AND OBLIGATIONS OF THE TRUSTEE

(13) The Monitoring Trustee is to assist the Commission to ensure the Bridge Bank's compliance with the Commitments. The Monitoring Trustee is to carry out the duties under their mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the Commission. The Commission may, on its own initiative or at the request of Italy, issue orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments. The Bridge Bank is not entitled to issue instructions to the Monitoring Trustee.

(14) The duty of the Monitoring Trustees is to monitor full and correct compliance with the obligations set out in the Commitments, and full and correct implementation of the Decision. The Commission may, on its own initiative, or at the request of the Monitoring Trustee, issue any orders or instructions to the Monitoring Trustee or the Bridge Bank in order to ensure compliance with the Commitments attached to the Decision.

(15) The Monitoring Trustee shall:

a. propose to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments;

b. monitor the full and correct implementation of the Decision;

b. submit a draft written report on the Bridge Bank to the Commission, Italy, the Bridge Bank within thirty days after the date mentioned in Point 3 of the Commitment Annex and, if the Bridge Bank is not sold at the date mentioned in Point 4 of the Commitment Annex, within thirty days after such date and afterwards a half-yearly report within thirty days after the end of each semester. The Commission, Italy, the Bridge Bank can submit comments on the drafts within ten working days of receipt. Within five working days of receipt of the comments, the Monitoring Trustee is to prepare the final reports and submit them to the Commission and to Italy. Only afterwards the Trustee is to send a copy of the final reports to the Bridge Bank. If the draft reports or the final reports contain any information that may not be disclosed to the Bridge Bank, only a non-confidential version of the draft report or the final report is to be sent to it. Under no circumstances is

the Monitoring Trustee to submit any version of the report to Italy and/or the Bridge Bank before submitting it to the Commission;

c. the reports are to focus on compliance with the Commitments by the Bridge Bank, thus enabling the Commission to assess whether the Bridge Bank is being managed in accordance with the Commitments. If necessary, the Commission may specify the scope of the reports in more detail. In addition to these reports, the Monitoring Trustee is to report promptly in writing to the Commission if they have reasons to suppose that the Bridge Bank is failing to comply with the Commitments.

4. DUTIES AND OBLIGATIONS OF THE BRIDGE BANK

(16) The Bridge Bank is to provide and to require its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform his/her tasks under the mandate. The Monitoring Trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of the Bridge Bank that are necessary to fulfil the duties under the mandate. The Bridge Bank is to make available to the Monitoring Trustees one or more offices at their business premises and all employees of the Bridge Bank are to be available for meetings with the Monitoring Trustee in order to provide it with all the information it needs to perform its duties.

(17) The Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), if the Monitoring Trustee considers the appointment of such advisors is necessary or appropriate for the performance of his/her duties and obligations under the mandate, provided that any costs and other expenses incurred by the Monitoring Trustee are reasonable. Should the Bridge Bank refuse to approve the advisors proposed by the Monitoring Trustee, the Commission may approve their appointment instead, after hearing the bank's reasons. Only the Monitoring Trustee or the Commission are entitled to issue instructions to the advisors.

5. REPLACEMENT, DISCHARGE AND REAPPOINTMENT OF THE MONITORING TRUSTEE

(18) If the Monitoring Trustee terminates his/her mandate or there are any other significant grounds, such as a conflict of interest on the part of the Monitoring Trustee, the Commission can, after hearing the Monitoring Trustee, Italy and the Bridge Bank, require its replacement.

(19) If the Monitoring Trustee is removed, he/she may be required to continue in the function until a new Monitoring Trustee is in place to whom the previous Monitoring Trustee has effected a full handover of all the relevant information. The new Monitoring Trustee is to be appointed in accordance with the procedure referred to in section II of the present Annex.

(20) Besides replacement in accordance with paragraph (18) of the present Annex, the Monitoring Trustee is to cease its activities only after the Commission has discharged him/her from his/her duties. This discharge is to take place when all the obligations with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it is subsequently found that the relevant Commitments have not been fully and properly implemented.