Bericht

der unabhängigen Untersuchungskommission

zur transparenten Aufklärung der Vorkommnisse rund um die Hypo Group Alpe-Adria

Abstract

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Contents

A. MANDATE 1

B. RESULTS 1
1. Assumption of unlimited liabilities by the Land of Carinthia 1
2. Sale of HBInt to Bayerische Landesbank (BayernLB) 3
3. Nationalisation of HBInt 6
4. Modus operandi after nationalisation 12

C. SYNOPSIS OF THE ABSTRACT 16

A. Mandate

59 On 25 March 2014, the Council of Ministers of the Republic of Austria decided to install an "Independent Commission of Inquiry for the Transparent Investigation of the Events Surrounding the Hypo Group Alpe-Adria". The Commission of Inquiry (Manuel Ammann, Carl Baudenbacher, Ernst Wilhelm Contzen, Irmgard Griss, Claus-Peter Weber) took up its work on 1 May 2014. It has established the relevant facts based on the assessment of documents that were provided to the Commission, of publicly available sources and through the questioning of selected respondents. The facts were evaluated on the basis of professional criteria.

B. Results

1. Assumption of unlimited liabilities by the Land of Carinthia

60 Kärntner Landesholding initially was the sole shareholder of Hypo Alpe-Adria-Bank International AG (HBInt); after the entry of Grazer Wechselseitige Versicherung AG (GRAWE) in 1992, Kärntner Landesholding remained the majority shareholder. HBInt was the holding company of the Hypo Group Alpe-Adria (HGAA); Hypo Alpe-Adria Bank AG (HBA) was the Austrian subsidiary of HBInt. Since the establishment of the bank, the Land of Carinthia was liable as a conditional deficiency guarantor for the liabilities of HBA and HBInt. For new commitments entered into during the transitional period until the expiry of the liabilities (3 April 2003 to 1 April 2007), the Land was only liable if the term did not extend beyond 30 September 2017. The liability of the Land formed the basis for the good rating of HBInt, allowing the bank to refinance itself at favourable conditions on the capital market and to expand rapidly. In 2008, HGAA was active in the banking and leasing business in 12 States with 384 offices, with a main focus on South East Europe. Its total assets of EUR 43.3 billion amounted to almost half of the assets of the entire Austrian mortgage bank sector. The number of employees increased to over 8,100. Both HBInt and its subsidiaries offered bonus systems which provided strong incentives for balance sheet growth and expansion.

HGAA expanded into States with different legal, economic and social systems, varying business cultures, different languages and a limited number of qualified employees. In these States, rule-of-law-structures were still being established. This obviously posed major challenges for the risk management and controlling systems. The management of the bank refrained from reacting to these challenges in an appropriate way. If, for instance, due to insufficient personal resources, it was not possible to build up effective risk management and control bodies, growth should have been adapted to the available resources, and the risk policy should have become more conservative. Although the risk management and control systems did not meet the requirements, the executive board and the supervisory board of HBInt adhered to a policy of unchecked growth. 61

It is not perceivable that the auditors, the banking supervision or the Land of Carinthia (Kärntner Landesholding) made use of the instruments at their disposal in such a way as to ensure a limitation of the risk. 62

Although the auditors periodically detected serious flaws, they failed to draw the necessary consequences. The audit reports and management letters repeatedly identified deficiencies in the risk management, the lending processes and in the treasury division. It is, however, not evident that the detected grievances played a role in the assessment of the adequacy of risk prevention. Furthermore, no appropriate consequences were drawn by the bank's management. Nevertheless, the audit certificate was always granted. Only in 2006, after the SWAP losses had become known, was the certificate withdrawn for the financial statements of the years 2004 and 2005. 63

The Austrian National Bank (OeNB) audited the HBInt every year prior to the nationalisation by order of the Financial Market Authority (FMA), but with differing emphases. The OeNB repeatedly identified serious shortcomings in the areas of risk management and controlling. Nevertheless, the intensity of the audits was not increased. Nor was the bank urged to address these shortcomings with the required determination. The banking supervision refrained from putting sufficient pressure on the management of HBInt so that the latter would either effectively improve the control systems or restrict growth. Violations of the Austrian Banking Act (BWG) could have been sanctioned. In view of the unforeseeable risk 64

for the public sector, any insufficient resources of the banking supervision should have been increased and used in a targeted manner.

65 The risk for the Land of Carinthia was incalculable due to its liability for all future obligations of HBInt and HBA. The liability of the Land reached its peak in 2007 with EUR 23 billion. A call on the Land as a conditional guarantor would quickly have exceeded its economic viability in an extraordinary way. From 2004 and 2011, the liability of Carinthia exceeded the Land's gross domestic product every year.

66 The dramatic increase of the liability as a consequence of the unchecked growth lead to higher revenues for the Land in form of guarantee commissions paid by HBInt and HBA; apart from that, the Land also received dividends. The Supervisory Commissioner of the Land was in a permanent conflict of interest: as the Land's Financial Officer he was interested in high revenues for the budget, whereas as a Supervisory Commissioner he was obliged to work towards a limitation of the risk.

67 The risks arising from the expansion inherent to the Land's liability were obvious and ultimately no longer sustainable for Carinthia. This constituted a clear case of moral hazard: the Land apparently reckoned that, should the risk materialise, the Federation (Republic of Austria) would step in. It therefore saw no reason to reduce the risk and to forego possible income. What is true for the Land also applies to HBInt. The bank too saw no need to restrict growth since – due to the liability of the Land – it was able to refinance itself at favourable conditions, and the amount of the guarantee commission did not adequately reflect the risk.

2. Sale of HBInt to Bayerische Landesbank (BayernLB)

68 The rapid growth aggravated HBInt's chronic lack of capital. In order to raise desperately needed capital, but also to gain urgently needed know-how, the bank's management aspired to enter into a strategic partnership with other banks. After such contacts failed to lead to the desired success, it was decided in 2005 to list HBInt on the stock exchange in the near future. In anticipation of the expected proceeds from the stock launch, Kärntner Landesholding issued a Pre IPO exchangeable bond of EUR 500 Mio. The reason behind this

being that the Land already by that date wished to establish the public special asset “Zukunft Kärnten” (Future Carinthia), for which the revenues from the exchangeable bond were needed. The bond had to be converted into shares or be repaid by 2008 at the latest.

When the SWAP losses became known in March 2006, any hope for a fast IPO was eroded. Both Kärntner Landesholding and HBInt found themselves under immense pressure to raise capital by other means: The Land had to repay the bond, whereas HBInt (also due to the SWAP losses) had to increase its capital. 69

In order to attract investors, HBInt was introduced to potential investors on road shows, and an open bidding procedure was carried out. Berlin & Co Capital S.à.r.l. prevailed in the bidding process since it offered a higher price than all the other interested parties. The reason a bidding procedure was held at all was the fact that neither Kärntner Landesholding nor the Insurance Company Grazer Wechselseitige Versicherung (GRAWE), at the time a minority shareholder, were prepared to finance the necessary capital increase of 250 Mio EUR. Had they been willing to act accordingly and had they subsequently been able to sell the shares to BayernLB, they could have realised the profit Berlin & Co Capital S.à.r.l. made through the resale of the shares. 70

The inquiry has not brought to light any facts indicating that BayernLB had already before the purchase by Berlin & Co Capital S.à.r.l. promised to acquire a majority of the shares of HBInt. Both the price paid by Berlin & Co Capital S.à.r.l. and by BayernLB was based on expert assessments of the corporate value which had used generally accepted valuation methods. The ranges of the corporate value in the expertises very much depended on how the future prospects of HGAA were assessed and which revenues were expected in the future. 71

The acquisition of the majority of the shares of HBInt by BayernLB was characterised by the fact that BayernLB wanted to have the bank “at all costs” and was even prepared, in addition to paying the purchase price of EUR 1,625 billion for 50 % plus 1 share, to “sponsor” Carinthia football with EUR 2,5 million in order to win Governor Dr Haider for the sale. BayernLB must have been convinced that it would profit from the HGAA network in South East Europe to a degree which made the deficiencies that had been discovered in the course of the due diligence test look negligible. This may also explain why, despite obvious defects, 72

BayernLB did not insist on concluding warranty agreements which are customary in these cases.

73 For Kärntner Landesholding, the acquisition of the majority of the shares by BayernLB meant that it lost its decisive influence on HBInt. Nevertheless, the Land remained liable for the debts which existed on 1 April 2007. Hence, the possibilities to work towards a limitation of the risk of the Land becoming liable - which admittedly had not been used in the past - were significantly weakened. The extent of the risk depended on the further development of the HGAA. This development – and not the financial strength of BayernLB – would determine whether HBInt would be in a position to fulfil its obligations at the time of their maturity and to prevent the liability of the Land from materialising.

74 At first, BayernLB continued to follow the set course of unchecked growth. The balance sheet total grew from EUR 31 billion at the end of 2006 to EUR 43,3 billion at the end of 2008. At the time of the nationalisation, the balance sheet amounted to a total of EUR 41 billion, with secured debts of EUR 20,1 billion. The risk of the Land being held liable thus increased further, since the serious deficiencies in the risk management and of the control bodies were in no way rectified.

75 The price of EUR 809 million obtained from the sale of the shares held by the Land is thereby put into perspective in a decisive way. With the sale of the majority of the shares to BayernLB, the problems of shortage of capital and of lacking know-how were only seemingly resolved. To be sure, HBInt won a financially strong majority owner who would provide the bank with the necessary capital and who also possessed the know-how which was needed in order to bring the risk management and the control bodies on a standard that corresponded to the business volume; Kärntner Landesholding received the necessary means to repay the exchangeable bond.

76 The circumstances of the purchase of the majority shares by BayernLB were not decisive for the persistence of the problems. A major reason was that the Land of Carinthia continued to be liable for the debts of HBInt and HBA. At the time of the sale of the shares the secured liabilities amounted to EUR 23 billion. This meant that when HBInt needed fresh capital because of a sharp increase of write-downs, BayernLB could call on the responsibility of the Republic of Austria, even though HBInt was now the Austrian subsidiary of a Bavarian bank.

3. Nationalisation of HBInt

77 BayernLB continued on the path of growth until September 2008. After a capital increase by EUR 600 million in 2007, which was effected by BayernLB and GRAWE, and a further capital increase of EUR 700 million in 2008, which was underwritten almost entirely by BayernLB, HBInt on 15 December 2008 requested that the Republic of Austria subscribe EUR 1,45 billion participation capital. In an expertise commissioned by the BMF, the OeNB had to assess whether HBInt was fundamentally sound or distressed. The OeNB came to the conclusion that HBInt was "not 'distressed' in the meaning of immediately necessary rescue measures". With this, the OeNB did not fulfil its task. The BMF failed to demand an unambiguous assessment and granted HBInt participation capital in the amount of EUR 900 million under the conditions for fundamentally sound banks. Had the qualification been "distressed", the level of interest would have been higher. In particular, such a qualification would have led to HBInt having to develop a restructuring plan already at this stage. By providing the participation capital on the terms for a sound bank, another opportunity to urge the bank to resolve its structural problems was missed.

78 The BMF took the decision to nationalise HBInt on 14 December 2009 after consulting with the Federal Chancellor's Office, and based on recommendations and actions of others. When evaluating these measures, principles such as those developed for business decisions with the business judgment rule are relevant. According to these principles, it must be analysed whether the necessary procedure in the specific situation was complied with, whether the decision was taken on an appropriate information basis and whether the decision was made free of conflicts of interest.

79 The crucial question in this context is whether the BMF gathered the necessary information in good time and whether the decision to nationalise the bank was based on sufficient preparation.

80 Acute problems of HBInt became evident when the half-year financial report 2009 exposed that the loan loss provisions had already reached the extent estimated for the entire calendar year. The Finanzmarktbeteiligung AG des Bundes (FIMBAG) also emphasised in a statement sent to the BMF on 22 July 2009 the "dramatically increased" need for value adjustments as well as the unrealistic forecast assumptions of HBInt. The European

Commission in its decision of 12 May 2009 to open State aid proceedings due to the aid granted in form of participation capital had made it clear that it did not classify HBInt as "sound". On 15 May 2009, OeNB indicated that it would have classified HBInt as "distressed" had it not had to have taken into account the capital increase carried out by BayernLB in December 2009.

81 In view of the unexpectedly high loan loss provisions which became apparent in July 2009, it should have been clear for the BMF that new capital could be required. Moreover, the OeNB had in an analysis of 25 May 2009 indicated that HBInt – in light of the financial situation of BayernLB – was compelled to tap other funding sources apart from those of BayernLB.

82 It must have been clear to the BMF that the situation of HBInt was significantly worse than previously assumed. Based on information given by the chairman of the executive board, Mr. Pinkl, the BFM had to assume that BayernLB would not solely provide for the necessary re-capitalisation. In any event, at this point in time strategic considerations on further proceedings should have been made and recorded in writing.

83 Despite several requests, such a strategy paper was not submitted to the Inquiry Commission. The investigation has furthermore not shown that the BMF contacted the minority shareholders. Only one thing is certain: the FMA tried to obtain commitments from BayernLB concerning the re-capitalisation of HBInt, but was not given any clear information. It is also a fact that on 20 November 2009, telephone conversations were held between Finance Minister Pröll and the Bavarian State Minister Fahrenschon addressing the raising of capital.

84 It has furthermore been established that on 23 November 2009, BayernLB proposed to the BMF that the Republic of Austria should purchase its shares in HBInt. At this point at the latest, the Federation should have prepared negotiations with the Free State of Bavaria, but also with the minority shareholders, on the basis of own goals. The Federation therefore cannot argue that it lacked sufficient time.

85 In order to prepare the negotiations in a targeted manner, it would have been necessary to draw up a strategy paper analysing the strengths and weaknesses of the position of all the involved actors and to develop scenarios which the Federation for its part could have

proposed and followed. In spite of the importance of the forthcoming negotiations, neither was the necessary information procured in good time nor were alternative scenarios to insolvency developed. While it is the case that the Financial Procurator's Office as the representative of the Federation directed questions at FMA and OeNB, these did not primarily aim at obtaining information relevant for the development of a negotiating position of the Federation. The request sent to the FMA concerned solely the issue of which measures of supervision had been taken in the past. While the question to the OeNB included the economic situation of HBInt and the impact of an insolvency, it focused insofar on the past as the OeNB was invited to give its view on the causes of the deterioration of the assets. The question of the Financial Procurator's Office was only insofar relevant for the negotiation strategy of the Federation as information concerning the current state of HBInt could be expected from the OeNB. The OeNB referred to the flaws in the lending process, the monitoring of the borrowers, the valuation of the securities, and in the creation of risk provisions. The OeNB report of 23 November 2009 was of particular significance in this context, as it contains an extensive list of serious deficiencies in all key areas. The BMF knew of the existence of this report.

86 There is no evidence that this information was used. Despite the serious shortcomings described in the reports of the OeNB and despite the fact that no due diligence test had been carried out, the Federation renounced any guarantee for a certain state of HBInt. With this, the Federation took a very high risk. A possible contestation of the contract on the ground of deception – which was not expressly excluded in the stock purchase contracts – does not constitute a full-fledged substitute, since it is subject to conditions which go beyond defects of the purchased item.

87 Had the representatives of the Federation properly processed the available information, they would also have recognised that and to what extent the negotiating position of BayernLB was weakened by the outstanding claims against HBInt. According to the statements made at the executive board meeting of BayernLB on 28 and 29 November 2009, the refinancing lines accounted for EUR 5 billion; the data of HBInt of 7 December 2009 named a sum of EUR 3.5 billion; the OeNB assumed in a statement in December 2009 that there were liquidity lines of EUR 3 billion; at the time of nationalisation, the lines were said to have accounted for EUR 3.7 billion. The aggregate risk exposure of BayernLB therefore

amounted, purchase price and past capital increases included, to between EUR 6 billion and EUR 8,2 billion.

88 With the termination of the loan on 11 December 2009 and the offsetting of mature claims of HBInt, BayernLB attempted to reduce its risk by EUR 600 million. The termination and the offsetting aggravated the liquidity situation of HBInt, which had already been decisively weakened by deposit outflows. These outflows had been triggered by the ongoing negative media coverage. Nothing indicates that the Federation pursued a communication strategy or at least attempted to cooperate with HBInt and BayernLB in developing such a strategy. The conflict of interest of the CEO of HBInt must also be considered here. On the one hand, he should have done everything possible to prevent the catastrophic media coverage for the bank. On the other hand, the consequences of this media coverage contributed to bringing BayernLB closer to its goal of achieving a takeover by the Republic of Austria. Furthermore, the CEO had hedged himself against any possible negative impacts on his executive board contract.

89 In the share purchase agreement between the Republic of Austria and BayernLB, the bank expressly recognized the validity of the termination and of the set-off. There were, however, legal points which call this decision into question. BayernLB had terminated the loan based on the Master Loan Agreement (credit framework agreement dated 30 January 2008) without specifying which contractual grounds for termination it regarded as being fulfilled. Without effective termination, no offsetting position would have existed. The set-off would, in the event of insolvency, have been contestable under § 30 IO (Insolvency Act) for preferential treatment.

90 Had the BMF informed itself about all these circumstances, the assumption that BayernLB would accept an insolvency of HBInt would have presented itself in a new light. At the very minimum the representatives of the Federation could have pointed to the impending losses of BayernLB and thereby strengthened their bargaining position. An examination of the loans granted by BayernLB from the viewpoint of equity replacement law would also have allowed the Austrian negotiators to assess the economic value of the benefits offered by BayernLB. The failures of the Federation thus lie in a lack of information gathering, a lack of

strategic planning and the lack of implementation of known information into a negotiation strategy.

It should finally be noted that in the share purchase agreement between the Republic of Austria and BayernLB, the liquidity was granted on the same terms as regarding the loan terminated on 11 December 2009. These terms arise from the Master Loan Agreement. They include the commitment of the borrower (HBInt) to carry out specified corporate restructuring only with prior written approval of the lender (BayernLB). Simultaneously, the Federation promised, in case of the "splitting up of the bank or of an economically comparable measure, after which the bank's viability is no longer guaranteed", to ensure the repayment of the at this point in time outstanding loans and credit lines of BayernLB. Due to this contract design, corporate restructuring was made dependent on the approval of BayernLB, even though under the share purchase agreement the Republic of Austria already guaranteed the repayment of credit to BayernLB. There is no evidence that the persons acting for the Federation were aware of this fact during the nationalisation negotiations, the setting up of the contract or the conclusion of the contract. 91

Unlike the BMF, which refrained from hiring external specialists of company and bankruptcy law, the executive board of BayernLB addressed the questions of equity replacement law and insolvency law, and created a fait accompli by terminating loans and setting-off claims of HBInt. Both measures, the termination of the loans and the setting-off, would have been contestable in case of insolvency, as threatened by BayernLB, and would have had to be reversed. The granting of liquidity in the amount of and at the conditions of the terminated loans in the purchase agreement was therefore in reality no concession. The same goes for BayernLB's waiver to claim EUR 300 million supplementary capital, since this supplementary capital would have also been lost in case of insolvency. 92

In the end, BayernLB only waived a loan of EUR 525 million, which perhaps would in any case have been deemed to replace equity and therefore would have been subject to a payoff ban. In insolvency proceedings, BayernLB would have received only the bankruptcy quota. This also holds true for all its deposits. Through this "waiver" BayernLB succeeded in saving the retained value of its claims against HBInt of several billion EUR. For the Republic of Austria 93

had guaranteed repayment in case the viability of HBInt should no more be ensured as a result of a splitting up or a comparable economic measure.

94 When BayernLB threatened to let the bank go into insolvency, more than EUR 6 billion were at stake. According to the report on the results of the executive board's meeting, the figure even exceeded EUR 8 billion. The Federation faced the risk of having to step in for the Land of Carinthia if the liability of at the time roughly EUR 20 billion would materialise. How much money the Land of Carinthia (de facto the Federation) would ultimately have had to contribute depended on the amount of the default after the collection of all the claims and the liquidation of all other assets of HBInt. As far as the loss of reputation is concerned, Austria's situation was in any case not worse than that of the Free State of Bavaria, the beneficial owner of BayernLB, and of Germany.

95 The Austrian negotiators contend that due to the liabilities of the Land of Carinthia, the Republic of Austria was compelled to buy the shares of HBInt. This argument is not compatible with the relatively low amount of money agreed on with the Land of Carinthia. When taking into account that the Land of Carinthia in 2009 roughly had EUR 667 million at its disposal in its Future Funds after obtaining EUR 809 million from the sale of the HBInt shares to BayernLB, the amount of money that was to be paid by the Land of Carinthia – conversion of EUR 50 million supplementary capital into participation capital and subscription of EUR 150 million participation capital by Kärntner Landesholding – was disproportionately low. This is particularly the case when considering that the Land's right to receive guarantee commissions had not been eliminated in the course of the nationalisation. The Land therefore received almost EUR 19.5 million in guarantee commissions for 2010 and was entitled to EUR 18 million for 2011. It is incomprehensible that the Land of Carinthia continued to accrue guarantee commissions even though it would not have been able to fulfil its obligations under the public liability and although HBInt was meanwhile owned by the Republic of Austria.

96 Taking account of all these circumstances, the Inquiry Commission concludes that the responsible decision-makers of the Federation took the nationalisation decision without a sufficient information basis. Neither did they establish the facts in an appropriate manner, nor did they sufficiently examine the legal framework conditions. The Austrian negotiators

were therefore unable to develop alternative scenarios which could have formed a counterweight to the strategy of BayernLB and of the Free State of Bavaria. The opposite party was hence able to decisively determine the course and the outcome of the negotiations. This holds true for the nationalisation as such, but also for the conditions under which the nationalisation was carried out.

Against this background, the nationalisation cannot be qualified as an "emergency nationalisation", because it was – at least as regards its embodiment - not the only alternative. 97

4. Modus operandi after nationalisation

After the nationalisation there was no clear strategy. On the one hand, HBInt was to be restructured and then again privatised; on the other hand, the past was to be reappraised. At the same time, an approval by the European Commission of the aid given to HBInt in the State aid proceedings had to be achieved. From the outset the European Commission left no doubt that it had the greatest concerns about HBInt business model and that it expected the establishment of a winding-down unit. The creation of a winding-down unit would also have been the precondition for a participation of the European Bank for Restructuring and Development (EBRD) and the International Financial Corporation (IFC) in the restructuring. 98

Nonetheless, the political decision-makers refused to even consider a winding-down solution. The reason being that a winding-down unit owned by the State would have increased the public debt. With this, the political decision-makers accepted that the State aid proceedings took significantly longer than in comparable cases and that delaying a solution could in the end also give rise to even higher costs for the public. 99

Any restructuring of HGAA presupposed that the State aid proceedings would have been concluded with an approval of the State aid. The outcome of the State aid case was therefore decisive for the question which measures could be taken in order to reduce the burden for the public to a minimum. However, the political decision-makers do not seem to 100

have understood the significance of the State aid case. There is no other explanation for their lack of commitment.

101 A close contact with the competent services in the European Commission, in particular with the Competition Commissioner himself, would have been indispensable in order to obtain a quick decision and good conditions. As the example of other EU States whose banks have received State aid shows, such a modus operandi would not only have been absolutely common. The European Commission rather expects national Governments to cooperate in this way. The astonishment of Brussels over the lack of engagement of the Republic of Austria speaks for itself. There is also no evidence that the Federation sought competent legal advice and developed a strategy for the State aid proceedings. It appears that the Federation did not want to recognise that with the nationalisation it had assumed responsibility for the HBInt and thereby also for the State aid proceedings. An eventual inactivity or unwillingness of the organs of the bank to provide the necessary documentation could not, therefore, relieve the Federation of its obligations. On the contrary, it should have been stopped with appropriate measures.

102 Nor can the Federation be discharged by the fact that a State owned winding-down unit would have increased the public debt. The negative effects of a State owned bad bank for the size of the public debt should have been juxtaposed with the disadvantages of putting off a winding-down solution for the State aid proceedings and the prospect of a higher financial burden on the Federation. Such a balancing was apparently not undertaken. It is significant in this context that the opportunity of including EBRD and IFC in the restructuring of the South East Europe network, which was linked to the establishment of a bad bank, was not seized, even though the benefits were obvious. The fixation on the effects on the public debt precluded a solution which would have made it possible to maintain the South East European network as one of the few remaining assets of HBInt.

103 A further fundamental misjudgement concerned the reappraisal of the past. It is understandable that the Federation was interested in finding out what the reasons for the rapid deterioration of the assets of HBInt were. After all, HBInt had, at the time when the majority of the shares were sold to BayernLB, been valued EUR 3,2 billion. Already one year later it had to seek State aid. After another year, in 2009, the Federation assumed that the

bank could only be saved from the imminent insolvency by way of nationalisation. The prosecution of incorrect behaviour before the nationalisation under civil and criminal law is to be welcomed. Confronting with the past was therefore a legitimate goal.

The extent and the manner of the reappraisal were, however, not compatible with the overriding goal of continuing the functioning of HBInt and, at least according to the original plans, of restructuring and re-privatising the bank. The modus operandi of the responsible actors is without precedent. This holds true both when comparing what happened to other Austrian banks which received State aid and had to be restructured as well as when making an international comparison. After a very short period it became clear that the project "reappraisal of the past" massively hampered the continued operation of the bank and the necessary restructuring. Warnings of the banks' organs went unheard; the accusation that they wanted to cover up wrongful or even criminal conduct was unfounded, for both the supervisory and the executive board had taken over their duties only after the nationalisation. 104

It was obvious that this kind of reappraisal of the past would have disastrous effects in several respects. Even the term "CSI Hypo" was highly harmful to the Bank's business interests, for it brought the Bank in connection with criminal activities. 105

The Financial Procurator's Office used its strong position in the Steering Committee in the reappraisal process in a way that during the entire activity of CSI Hypo decisions were barely taken. The interference of State civil servants in such a manner with the management of a bank is, also from an international perspective, unprecedented. The BMF should have stopped this in due time. 106

HBInt was also harmed by the enormous expenses which were caused by the reappraisal of the past. Employees could not perform their actual tasks to the necessary extent because they were busy providing information and making investigations. The operations were disrupted; the restructuring of loans was obstructed by the decision-making processes in the Steering Committee, if not made impossible. Moreover, the staff had a feeling of insecurity as a consequence of the Financial Procurator's Office critique that the reappraisal was not conducted with full commitment and that employees could be obliged to pay damages. 107

108 Besides the internal stress and costs, there were the costs for the external advisors. The reappraisal of the past opened an extremely profitable business segment, which so far had been unknown in its scope and its expansion possibilities. The external advisors made full use of it, as the total costs of more than EUR 60 million show. These costs were counterbalanced by only modest repayments. It is incomprehensible that the activity of the CSI should have strengthened the bargaining position of the Bank in receivables of EUR 130 million. Only EUR 2 million in legally awarded damages and almost EUR 26 million of actually repaid assets remain.

109 The appointment of the Commissioned Coordinator (Beauftragter Koordinator) in May 2012 clarified the situation which had become untenable due to the confrontation between the bank's organs and the Financial Procurator's Office. However, it also resulted in a further extension of the scope of the reappraisal. The Commissioned Coordinator took the view that business considerations should not play any role in the reappraisal of the past. It is unparalleled that a living, continuing bank declares the reappraisal of the past as the purpose of the company in its statutes.

110 There was therefore also no strategy after the nationalisation on how the interests of the Federation could best be preserved. Had such a strategy been developed, it would have become obvious that HGAA had to be restructured without further delay and that the State aid proceedings had to be conducted with unwavering commitment. lt would also have become apparent that a reappraisal of the past, which excluded economic considerations, only served individual interests and damaged the bank, thereby further increasing the financial burden on the Republic of Austria.

111 The Commission of Inquiry concludes that after the nationalisation, the responsible decision makers of the Federation took decisions without disposing of an adequate information basis and without having procured the required expertise: The State aid proceedings were not conducted with the necessary professional and political commitment; the decision on a winding-down solution was put off on the basis of inappropriate motives; the reappraisal of the past became an end in itself. The actions of the Republic of Austria as the now sole owner of HBInt could therefore result in increased costs for the public.

C. Synopsis of the abstract

The events surrounding HGAA are characterised by undesirable developments and mistakes on the level of the Land and of the Federation. The quick expansion of the bank was only possible due to the liability of the Land of Carinthia, without the latter having been able to fulfil the respective obligations. When the crisis became obvious, the responsible decision-makers refrained from adequately processing the necessary information, from examining the legal framework to a sufficient degree and from proceeding in a strategic way by developing alternative scenarios and making decisions based on those scenarios. 112

This began with the Land of Carinthia maintaining its liability for the debts of HBInt and HBA in spite of the rapid expansion abroad. The Land was responsible for a bank whose management tried to exploit the business opportunities in South Eastern Europe without being equipped with the necessary risk management systems and control mechanisms. It is not apparent that the auditors, the bank supervision and the Land of Carinthia (Kärntner Landesholding) made sufficient use of the opportunities open to them in order to work towards limiting the risks. 113

This continued with the decision of the Republic of Austria to purchase all shares of HBInt without sufficiently examining alternative scenarios and implementing them into a negotiating strategy. 114

And it ended - in relation to the investigation period - with the lack of a strategy for the time after the nationalisation: The State aid proceedings were not conducted with the necessary commitment; the decision on the establishment of a bad bank was delayed based on extraneous motives; the reappraisal of the past became an end in itself. 115

Against this background, the Land of Carinthia must be blamed for maintaining its liability thereby enabling the bank to expand abroad despite a lack of sufficient control systems. As regards the Federation, it must be held that the nationalisation cannot be referred to as „emergency nationalisation", because it was – at least as regards its embodiment – not the only alternative. And it cannot be conceded that as the sole owner of HBInt the Republic of Austria took its decisions for the benefit of the bank and of the public. 116