



# Bankruptcy of Eurostandard Bank AD, Skopje

## REPORT

Prepared by: Drago Kos

Ljubljana, 10 April, 2022



## DISCLAIMER

*This Report is based on the information, documents and the assistance provided by the client only. Therefore, it is provided solely for information purposes and does not constitute advice nor should it be regarded as such in any manner whatsoever, and is not intended to influence any person in making any decision. Although we have endeavoured to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.*

*To the extent permissible by law, company R.U.R., LLC, shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including for reasons of negligence, negligent misstatement or otherwise).*

## TABLE OF CONTENT

|   |     |
|---|-----|
| TABLE OF CONTENT .....  | 2   |
| EXECUTIVE SUMMARY .....   | 3   |
| 1 INTRODUCTION .....  | 6   |
| 2 INVOLVEMENT OF THE ESB IN THE INFORMAL LENDING SCHEME RUNNING THROUGH COMPANY CUBUS INŽINERING DOOEL.....   | 7   |
| 2.1 Receipt, disbursement and repayment of funds received by Cubus Inžinering from credits at Eurostandard Bank as well as credits in the course of 2011 .....                                | 10  |
| 2.1.1 <i>Contract on the approval of a short-term credit concluded between Eurostandard Bank and Cubus Inžinering in the amount of MKD 24,200,000.00 (“esb1”)</i> .....                       | 11  |
| 2.1.2. <i>Contract on the approval of a short-term credit, no. 1681, unknown date of conclusion, in the amount of MKD 2,500,000.00, credit sub-account number 01681/30-0005 (esb2)</i> .....  | 21  |
| 2.1.3. <i>Contract on the approval of a short-term credit, no. 1731, unknown date of conclusion, in the amount of MKD 2,400,000.00, credit sub-account number 01731/77-0005 (esb3)</i> .....  | 24  |
| 2.1.4. <i>Contract on the approval of a short-term credit, no. 1737, unknown date of conclusion, in the amount of MKD 28,000,000.00, credit sub-account number 01737/54-0005 (esb4)</i> ..... | 27  |
| 2.1.5. <i>Contract on the approval of a short-term credit, no. 1766, unknown date of conclusion, in the amount of MKD 1,000,000.00, credit sub-account number 01766/30-0005 (esb5)</i> .....  | 36  |
| 2.1.6. <i>Contract on the approval of a short-term credit, no. 1830, unknown date of conclusion, in the amount of MKD 29,000,000.00, sub-account number 01830/32-0005 (esb6)</i> .....        | 39  |
| 3 CHRONOLOGICAL DESCRIPTION OF THE RELEVANT EVENTS.....   | 54  |
| 4 RELEVANT LEGAL PROVISIONS ON BANKING IN NORTH MACEDONIA .....   | 83  |
| 5 ANALYSIS AND CONCLUSIONS .....  | 101 |
| 5.1. Informal lending scheme and wilful blindness of the NBSM .....   | 101 |
| 5.2. The NBSM measures in the ESB concerning the capital adequacy ratio.....  | 103 |
| 5.3. Relations between the NBSM and Komercijalna banka.....   | 114 |
| 5.4. Potential insider trading.....   | 115 |
| 5.5. The NBSM Governor’s public statements .....  | 116 |
| 6 GENERAL CONCLUSIONS.....  | 121 |
| 7 SOURCES .....   | 124 |

## EXECUTIVE SUMMARY

The Eurostandard Bank (hereinafter also referred to as: ESB) was established on 28 January 2001, and received licences to operate from the Governor of the National Bank of the Republic of North Macedonia (hereinafter referred to as: NBSM) on 14 August 2001, 16 December 2002, and 23 January 2004.

At the initiative of a representative of Komercijalna Banka, Skopje, in 2011 the ESB became part of an illegal lending scheme, in which several North Macedonian banks and companies had participated since 2004. The essence of the scheme, which most probably is still running today, is in financing companies that are not eligible for acquiring credits from banks, through a system of intermediary eligible companies, which acquire credits from the banks and immediately directly or indirectly transfer the money to the ineligible companies in the form of loans. The scheme is led and ran by the banks, which often falsify the relevant documentation and try to ensure that they do not suffer any losses in the scheme. The extent of the scheme and the increasing number of banks and companies involved has slowly led to a loss of control, especially for the smaller banks, which only participate in the scheme and do not manage it, as was the case with the ESB. The loss of control directly led to improper handling of credit portfolio and related risks, since for the participating banks those two features were less important than keeping the scheme alive and avoiding financial losses, which would be incurred if the scheme failed. Banks were not the only ones facing difficulties, many of the companies involved also suffered serious losses and even bankruptcies due to their involvement in the scheme.

The National Bank of the Republic of North Macedonia (NBSM) has refused to recognise and fight the existence of the scheme throughout the period from 2004 until today, although it has been aware of all of its components, at least since monitoring the ESB. When the ESB ran into serious problems, the NBSM formally mentioned improper handling of credit portfolio and related risks as reasons for the bad standing of the Bank. But the NBSM did not take the next steps: it neither started to deal with the illegal lending scheme that had caused the ESB's mishandling of credit portfolio and related risks, nor recognised that improper handling of credit portfolio and related risks in the ESB was a consequence of the poor quality of the activities on the part of the ESB management<sup>1</sup>, supervisors<sup>2</sup> and shareholders<sup>3</sup>. The NBSM only dealt with one consequence of the improper handling of credit portfolio and related risks: the falling capital

---

<sup>1</sup> Since it deliberately participated in the illegal lending scheme.

<sup>2</sup> Since through their supervisory duties they did not identify the ESB's participation in the illegal lending scheme.

<sup>3</sup> Since they did not know – at least not all of them – about the ESB's participation in the illegal lending scheme.

adequacy ratio. In doing that, it also incomprehensibly did not introduce its own administration of the ESB when the legal conditions for that mandatory step were fulfilled.

The NBSM engaged heavily in saving the ESB from the bankruptcy, at least formally; however, as it deliberately failed to recognise the roots of the problem and deliberately omitted to apply the measure of forced administration, provided by the Banking Law, its efforts were in vain.

The NBSM should have initiated the bankruptcy of the ESB as early as in August 2019, but it did not do it. Obviously, the NBSM understood very clear and mandatory provisions of the Banking Law on the introduction of the administration and initiation of the bankruptcy as its discretionary rights and waited until 12 August 2020 to initiate the bankruptcy. Strictly legally and according to its data on the ESB capital adequacy ratio on 30 June 2020<sup>4</sup>, the NBSM had to initiate the bankruptcy. However, it is unclear what the real capital adequacy ratio was on 30 June 2020, since in its decision of 12 August 2020 the NBSM did not elaborate on the calculation method, which led it to conclude that the capital adequacy ratio of the ESB on that day was -4.14<sup>5</sup>.

Given that the bankruptcy was not initiated in August 2019, there is a serious doubt whether the moment for the initiation of the bankruptcy on 12 August 2020 was chosen well. Despite extremely serious problems with its capital adequacy ratio, forced collection of debts in the ESB functioned much better before than after the bankruptcy and the prospects for the continuing efficiency in that area for the second half of 2020 were also very good. In addition, there was a high probability that the ESB would finally be taken over by a credible investor. However, given that the NBSM had some very bad experience with the previous ESB owners, it is not difficult to understand the high level of distrust and almost hostile treatment of the potential investor by the NBSM Governor when dealing with such important information. Still, allowing the ESB to operate for some more months to see whether the Bank's situation would really improve – or not, would neither have harmed the depositors nor endangered the integrity of the North Macedonian banking sector.

Trying to understand why the bankruptcy of the ESB had to be initiated in August 2020 when it had not been initiated in a much worse situation in August 2019, would lead to speculations. Therefore, it is better to only mention the consequences of the NBSM's decision to initiate the bankruptcy on 12 August 2020:

- depositors have less chance to recover their deposits after the bankruptcy was initiated,

---

<sup>4</sup> Which was the reason for the bankruptcy.

<sup>5</sup> The margin for the introduction of bankruptcy is the capital adequacy ratio of +2.

- the part of the illegal lending scheme operating in the North Macedonian banking system through the ESB most probably won't be investigated at all,
- the illegal lending scheme running through the ESB has stopped, however, there are no obstacles for it to continue running through other North Macedonian banks,
- debtors of the ESB have a better chance of avoiding forced repayment of their debts,
- the identity of the biggest debtors in the illegal lending scheme but also in the legal crediting schemes will remain unknown, also due to the purchases of companies<sup>6</sup> previously serving as important intermediaries in the illegal lending scheme,
- there is a serious risk that the bankruptcy procedure will take many years before it is completed,
- omissions of the NBSM in dealing with the ESB and its favourable treatment of one of the other banks<sup>7</sup> will be forgotten.

---

<sup>6</sup> E.g. Galafarm.

<sup>7</sup> Komercijalna banka.

## 1 INTRODUCTION

1. The aim of this Report is to analyse circumstances and conditions which led to the decision of the Governor of the NBSM to initiate the bankruptcy of Eurostandard Bank on 12 August 2020. In the pursuit of this aim, the most important activities, events and documents, their legal importance and their consequences before and – to the extent possible – after the bankruptcy are described.
2. The Report contains the following parts:
  - In Chapter 2, involvement of the ESB in the informal lending scheme running through company Cubus Inžinering DOOEL is described in detail;
  - in Chapter 3, the chronological order of known and relevant facts is given;
  - in Chapter 4, the most important legal provisions of the Banking Law of North Macedonia concerning measures for the banks in problems are presented;
  - in Chapter 5, the most important information concerning five crucial topics: the existence of an informal lending scheme in the North Macedonian banking sector, the NBSM measures in the ESB concerning its capital adequacy ratio, relations between the NBSM and Komercijalna banka, potential insider trading in the ESB and two important NBSM Governor's public statements after initiating the bankruptcy of the ESB – are analysed in depth, with a view to identifying the real reasons and causes of the bankruptcy of the ESB on 12 August 2020;
  - in Chapter 6, some general conclusions based on the findings of previous chapters are presented.
3. With the exception of the content of Chapter 2, findings of this Report have to be supplemented with additional documentation in possession of the ESB bankruptcy trustee and the NBSM before being used in any legal proceedings. However, that does not affect the credibility of the Report's conclusions.



## 2 INVOLVEMENT OF THE ESB IN THE INFORMAL LENDING SCHEME RUNNING THROUGH COMPANY CUBUS INŽINERING DOOEL

4. The Company for Construction, Transport and Export-Import Mediation Cubus, d.o.o., Partizanski Odredi Blvd., No. 151, Porta / Vlae-B-3 / M3, Skopje, Karpos, Reg. No. 4273958<sup>8</sup>, and the Company for Construction, Trade and Services Cubus Inžinering, d.o.o., export-import, Kozle Str. No. 97, Skopje – Karpos, Reg. No. 6080235<sup>9</sup>, submitted for inspection some documents both in hard copy and in digital format, which indicated suspicions regarding business fraud to the detriment of both companies.
5. Some of the documents pertain also to the cash flows from financing activities between Komercijalna Banka, Cubus Inžinering and Eurostandard Bank AD Skopje.
6. While reviewing the documentation, statements were obtained from some natural persons connected to the specific business events. Such statements are presented in boxed text, in green font, so as to distinguish them from the findings based on the documentation review.
7. In order to better understand the events, certain findings from another review of documentation are presented, which do not pertain directly to the business operations of Eurostandard Bank AD Skopje with Cubus Inžinering, but rather show a wider perspective of the business operations of Komercijalna Banka and other commercial banks.
8. Based upon the submitted documentation and the gathered data, it can be concluded that, as early as in October 2004, Komercijalna Banka managed an illegal lending scheme with certain legal entities, which in that specific month also included the company Cubus. On an undetermined date, in the period between 15.09.2004 and 20.10.2004, Zlatko Todorov, the Director of the company Cubus, at the initiative and insistence of Sasa Tvrtković, the Director of the Department for Construction, Transport and Other Lending Activities within Komercijalna Banka, consented to enable Komercijalna Banka to use the business account of the company Cubus, No. 300000000066287, in such a manner that Komercijalna Banka could disburse to said account for the benefit of Cubus fictitious purpose loans for working capital, whereupon a portion of these funds would be used for lending to other clients of Komercijalna Banka, determined by the bank itself. The said clients did not meet the bank's requirements for granting direct credits.

---

<sup>8</sup> Hereinafter referred to as: the company Cubus.

<sup>9</sup> Hereinafter referred to as: the company Cubus Inžinering.



9. As for the loans between the company Cubus<sup>10</sup> and various borrowers, loan contracts were drafted so as to show that such contracts were concluded by the company Cubus with the borrowers, while no contractual commissions were paid by the borrowers to the transaction account of Cubus. If in certain bank statements during the period of repayment of the loan principal there was an entry also for a repayment interest, such interests were not based on a loan contract, but rather constituted bank interests that belonged to Komercijalna Banka based upon disbursing funds originating from approved credits. Zlatko Todorov, the Director of the company Cubus, only signed the transfer orders and additionally also the credit contracts, and in many cases an unidentified person also forged his signatures on these documents, with Zlatko Todorov not even having an opportunity to keep up to date with the events in due time.
10. It is beyond any doubt that Sašo Tvrtković as the Director of the Department for Construction, Transport and Other Lending Activities within Komercijalna Banka, i.e. as a middle-rank manager, was unable to arrange the aforementioned functioning of the illegal lending system of Komercijalna Banka on his own, in view of the fact that the bank, on the one hand, by means of its control mechanisms was supposed to have immediately detected the obvious abuse of loan funds, and on the other hand it was supposed to prevent or at least additionally sanction the transactions for a non-purpose disbursement of funds, in line with the loan contracts, while it failed to do so throughout all the years under review.
11. In order to ensure the functioning of the described system of illegal lending of funds of Komercijalna Banka, it was necessary to have established cooperation between various organisational units of the bank and, therefore, it may be concluded that the illegal lending system was endorsed by the entire bank, while Sašo Tvrtković conducted the operations with external participants. The involvement of the entire bank in such a manner of operating is confirmed by numerous extremely fast credit approvals, which also applies to the approval of credits in cases in which neither a credit application nor the documentation required for making a decision related thereto has been submitted to Komercijalna Banka. The conclusion that the entire bank stands behind the illegal operations of money lending is also substantiated by the fact that throughout all these years the bank did not reject any of the numerous transfer orders with the forged signature of Zlatko Todorov and that many payments based on a transfer order were made outside of the working hours for corporate clients.

---

<sup>10</sup> Actually with Komercijalna Banka.

12. During the review of the documentation, it was established that Sašo Tvrtković entirely managed the funds of the bank credits and the transactions involving such funds from and to the transaction account of the company Cubus. In that context, he was also entirely in charge of the inflow of funds from other participants in the lending scheme to the transaction account of the company Cubus, as well as the servicing of the liabilities of Cubus towards Komercijalna Banka as per the credit contracts. The documents and the data gathered in the course of the review of the documentation do not point to the fact that Cubus was able to individually manage that sort of business operations.
13. For the purposes of the functioning of the illegal lending system, Komercijalna Banka concluded with the company Cubus twelve credit contracts aimed at approving earmarked funds for financing its working capital which was partially or entirely used for illegal loans and was, therefore, partially or entirely forged. There are also 37 “virtual” contracts on loans between the company Cubus and other participants, concluded with a view to formally cover the transactions between them.
14. In view of the fact that further engagement of the company Cubus, and especially the numerous credit contracts between this company and Komercijalna Banka, could draw attention, especially the attention of the National Bank of the Republic of Macedonia, in 2006, Tvrtković forced Zlatko Todorov to make available to him the corporate account of his other company, Cubus Inžinering, and resign from it in all capacities, so as to avoid the connection between the company Cubus and Cubus Inžinering becoming too conspicuous. Until May 2007, such illegal credits went through the corporate accounts of both companies – Cubus and Cubus Inžinering, and from May 2007 onwards only through the business accounts of Cubus Inžinering. In order to additionally cover up the distribution of illegal financing, Sašo Tvrtković started including also other banks in the system, among them Eurostandard Bank AD, as well as other banks and companies, which resulted in him gradually starting to lose control over the entire system.
15. In the period from 2006 to 31.12.2011, somebody forged 17 signatures of Lenče Krstevska, the Director and the new owner of the company Cubus Inžinering, on the transfer orders, 3 signatures on the credit contracts and 1 signature on the loan contract. In that period also 18 fictitious credit contracts were executed between the company Cubus Inžinering and Komercijalna Banka, 10 fictitious credit contracts between the company Cubus Inžinering and other banks, as well as 44 fictitious loan contracts between trade companies. Furthermore, no credit contracts were signed regarding 54 transactions between trade companies conducted by Komercijalna Banka. In the period from 03.05.2006 to 19.03.2010, such manner of dealing occurred in 13 cases, while from 19.03.2010 to

31.12.2011 none of the 41 transactions were covered by a credit contract, which points to the fact that Komercijalna Banka finally lost control over the described system.

## **2.1 Receipt, disbursement and repayment of funds received by Cubus Inžinering from Eurostandard Bank credits as well as credits in the course of 2011**

16. In addition to the credits approved by Komercijalna Banka, Stopanska Banka and Sparkasse Bank, in the course of 2011, the company Cubus Inžinering also received credits approved by Eurostandard Bank, on the basis of the following:

- Contract on the approval of a short-term credit in the amount of MKD 24,200,000.00, with the designation "esb1";
- Contract on the approval of a short-term credit, no. 1681, unknown date of conclusion, in the amount of MKD 2,500,000.00, credit sub-account number 01681/30-0005, with the designation "esb2";
- Contract on the approval of a short-term credit, no. 1731, unknown date of conclusion, in the amount of MKD 2,400,000.00, credit sub-account number 01731/77-0005, with the designation "esb3";
- Contract on the approval of a short-term credit, no. 1737, unknown date of conclusion, in the amount of MKD 28.000.000,00, credit sub-account number 01737/54-0005, with the designation "esb4";
- Contract on the approval of a short-term credit, no. 1766, unknown date of conclusion, in the amount of MKD 1,000,000.00, credit sub-account number 01766/30-0005, with the designation "esb5";
- Contract on the approval of a short-term credit, no. 1830, unknown date of conclusion, in the amount of MKD 29.000.000,00, credit sub-account number 01830/32-0005, with the designation "esb6".

17. At the company Cubus Inžinering there are neither any documents about the opening of their transaction account no. 370011100201333, with Eurostandard Bank, nor any credit applications or any credit contracts, and therefore there is no knowledge as to the credit processes from the submission of the applications to the disbursement of funds or as to the contents of the documents. Based on the submitted documentation and the explanations gathered during the review, it has not been

ascertained who actually opened<sup>11</sup> the transaction account of the company Cubus Inžineriing with Eurostandard Bank, whether any related credit applications have been submitted or who signed the credit contracts. Therefore, it is obvious that in terms of the opening of the accounts and all the related operations somebody else – contrary to Article 14 of the Law on the Prevention of Money Laundering and Financing of Terrorism - made the arrangements with Eurostandard Bank<sup>12</sup>.

### **2.1.1 Contract on the approval of a short-term credit concluded between Eurostandard Bank and Cubus Inžineriing in the amount of MKD 24,200,000.00<sup>13</sup> (“esb1”)**

18. At the company Cubus Inžineriing there is neither a credit application nor a credit contract<sup>14</sup>, so nothing is known about the credit process from the submission of the application to the disbursement of funds.

19. The disbursement of credit funds in accordance with Contract “esb1” constitutes the start of the refinancing, which took place in three parts. The first part of the refinancing started with the disbursement of funds by Cubus Inžineriing from the credit of Eurostandard Bank as per Contract “esb1”, which were used for servicing the contractual liabilities of the company Cubus Inžineriing towards Komercijalna Banka. In the second part of the refinancing, Komercijalna Banka primarily released the first tranche of the credit as per Contract on the approval of a long-term credit, No. 02-1630-341 dated 28.01.2011, in the amount of MKD 48,500,000.00, sub-account number 02-462-3204492.5<sup>15</sup>, while the funds were used for the payment of a fee for building land for the benefit of the State Budget, in line with the approved purpose of the spending. In the third part of the refinancing, Komercijalna Banka released the second tranche of the credit as per Contract “29”<sup>16</sup>, while the funds were used for the repayment of a credit as per Contract “esb1” of Eurostandard Bank, which means they were a non-purpose disbursement. The entire scheme of such financing has been elaborated in greater detail below.

According to the statement given by Zlatko Todorov, the entire scheme was conceived and executed by Saša Tvrtković.

---

<sup>11</sup> Cubus Inžineriing failed to do so.

<sup>12</sup> Most probably Sašo Tvrtković, on behalf of Komercijalna Banka.

<sup>13</sup> In the documentation of the company Cubus Inžineriing, as well as in the tables and the text of this report, the contract is marked with the designation “esb1”, which was used for marking the loan in the company Cubus Inžineriing.

<sup>14</sup> Hereinafter referred to as: Contract “esb1”.

<sup>15</sup> In the documentation of the company Cubus Inžineriing, as well as in the tables and the text of this report, the contract is marked with the designation “29”, which was assigned to the credit in the company Cubus Inžineriing.

<sup>16</sup> Refer to the contract details below

20. 100% of the credit under the Contract “esb1” of Eurostandard Bank was used for the needs of other beneficiaries and 0% for the needs of the company Cubus Inžineri. The credit was entirely repaid with the funds from the credit based on Contract “29” received from Komercijalna Banka on 31.01.2011.

**Table 1:** Presentation of the portion of the disbursed credit principal, amortization schedule by credits in accordance with the portions, source of funds for credit repayment from the account of Cubus Inžineri

| <b>CREDIT:</b>   | <b>Designation at Cubus Inž:</b> |
|--|----------------------------------|
| Contract on the approval of a short-term credit, no other data are known                     | esb1                             |
| Credit principal   | 24,000,000.00                    |
| Credit principal with interest   | 24,142,879.00                    |
| Portion of the disbursed credit principal – company Cubus Inžineri                           | 0.00                             |
| %  |                                  |
| Portion of the disbursed credit principal – other beneficiaries                              | 24,000,000.00                    |
| %  | 100.00%                          |
| <b>OVERVIEW OF LIABILITIES ARISING FROM THE CREDIT CONTRACTS (principal + interest)</b>      |                                  |
| Liabilities of the company Cubus Inžineri in relation to the portion of the disbursed credit | 0.00                             |
| Liabilities of other beneficiaries in relation to the portion of the disbursed credit        | 24,142,879.00                    |
| Total:   | 24,142,879.00                    |
| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE ACCOUNT OF CUBUS INŽINERINING</b>           |                                  |
| Credit funds KB  | 24,142,879.00                    |
| Total:   | 24,142,879.00                    |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERINING IN MKD</b>                                       |                                  |
| Damage arising from the remaining debt   | 0,00                             |
| Damage arising from paid interest  | 142,879.00                       |
| Total:   | 142,879.00                       |

21. An unsigned, unstamped draft request was made available for the analysis for the approval of a long-term credit in the amount of MKD 48,500,000.00, with a repayment deadline of five years and a one-year moratorium, which the company Cubus Inžinering supposedly addressed to Komercijalna Banka on 29.12.2010. From the application it is obvious that Cubus Inžinering needed financial assets to pay for the building land fee, for the second part of the business facility at the address of Naum Naumovski Borce Str. No. 40, as well as for the first part of the business facility at the address of Naum Naumovski Borce Str. No. 40 in Skopje.
22. It is also unclear whether any documents were enclosed to the application. If an application with the same content had been submitted to Komercijalna Banka, without any enclosed documentation, it would have been considered as lacking in content and deemed ineligible for decision-making on the approval of a credit and its contents were partially untrue, as demonstrated below.

During the review of the documentation, Zlatko Todorov explained that the contents of the application of the company Cubus Inžinering regarding the approval of a loan were always orally conveyed by Sašo Tvrtković, usually on the telephone, either to Lence Krstevska or to him directly. Even in cases when the company Cubus Inžinering needed credit funds for their business operations, the decision as to the contents of the loan application was always made by Tvrtković.

23. On 28.01.2011, the lenders, Komercijalna Banka, represented by Sašo Tvrtković, the Director of the Department for Construction, Transport and Other Lending Activities, and Gordana Čorluka, an independent employee in charge of customer relations, on one side, and the borrower, Cubus Inžinering, represented by Lence Krstevska, on the other side, concluded a Contract on the approval of a long-term credit, No. 02-1630-341<sup>9</sup> on the basis of which the bank approved to the company Cubus Inžinering a credit in the amount of MKD 48,500,000.00.
24. On the basis of the photocopy of the said Contract ("29"), the following conclusions can be made:
- the Contract was concluded on the basis of the Framework Revolving Credit Contract (Contract on the Establishment of a Framework Revolving Credit – limit) dated 01.04.2008, No. 02-1630-437, in the amount of EUR 2,100,000.00, as well as Annex No. 1 concluded on 22.12.2009 under No. 02-1630-2458 in the amount of EUR 3,600,000.00, as well as the Decision on the approval of a long-term credit, dated 28.01.2011, adopted by the Credit Board of the bank. Contract "29" constitutes a part of the Framework Revolving Credit Contract No. 02-1630-437 and Annex No. 1 dated 22.12.2009, No. 02-1630-2458 (Article 1.);

- the credit is intended for financing fixed assets in the amount of MKD 24,000,000.00 and financing working assets in the amount of MKD 24,500,000.00 (Article 4, paragraph 1); the disbursement of funds for financing fixed assets shall be made on the basis of the submitted documentation (Article 4, paragraph 2); the deadline for the disbursement of credit funds shall be six months, from the first disbursement (Article 4, paragraph 3);
- a repayment deadline of sixty months has been agreed from the date of the depletion of the credit funds, which also includes a twelve-month moratorium (Article 5);
- the credit shall become due and payable after the expiry of the moratorium (Article 6, paragraph 1); the repayment shall be effectuated in 48 equal monthly instalments (Article 6, paragraph 2); the first instalment shall become due and payable one month after the maturity date of the credit (Article 6, paragraph 3);
- a long-term interest rate of 13% a year has been agreed, in a decursive manner (Article 7, paragraph 1); the interests shall be calculated according to the proportional method (Article 7, paragraph 2); the calculation and the payment of interest to the bank shall be effectuated on a monthly basis, in the accounting periods and on the maturity date of the instalment or the credit (Article 7, paragraph 3);
- for the purposes of protecting its obligations arising from the contract, the borrower shall submit the following to the bank: two transfer orders (PP30 form) and a real estate mortgage (Article 13, paragraph 1); the borrower shall be obliged to replace the payment instrument disbursed by the bank with the new payment instrument (Article 13, paragraph 3); and
- the borrower consents for the credit to become due and payable if the funds are not used as per the purpose for which the credit has been approved (Article 21, paragraph 1, line 1) and if it does not allow the bank to control the purposeful use of the funds (Article 21, paragraph 1, line 3).

25. The contract was signed by Sašo Tvrtković and Gordana Čorluka on behalf of the lender, and by Lenče Krstevska on behalf of the borrower. The receipt stamp of Komercijalna Banka has been affixed in the upper right corner of the first page of Contract “29”, under which the registry number and the contract date have not been recorded.

26. Contract “29” is partially fictitious in view of the fact that the actual aim of the contracting parties was not exclusively the financing of the working capital of the company Cubus Inžinering, since a part of



this contract was intended for the refinancing of the contractual liabilities towards Komercijalna Banka, not related to the working capital of Cubus Inžinering.

27. After concluding Contract "29" for transaction account no. 300000002248011, Komercijalna Banka issued two bank statements to Cubus Inžinering with attached photocopies of mostly hand-filled and signed transfer orders, the contents of which are described below in more detail:

a) A photocopy of the Statement on changes and balance of the account of Komercijalna Banka dated 28.01.2011, no. 12, in which an outflow in the amount of MKD 16,500.00 is stated under number 2 for the purpose of (code 262) "bank fee" to the transaction account of the receiving party, Komercijalna Banka, no. 3000000000000133; under number 6, an outflow in the amount of MKD 392,500.00 is stated for the purpose of (code 262) "fee for the disbursement of a long-term loan" to the transaction account of the recipient, Komercijalna Banka, no. 3000000000000133; under number 9, an outflow in the amount of MKD 4,800,000.00 is stated for the purpose of (code 262) "payment of interest for a short-term credit" to the transaction account of the recipient, Komercijalna Banka, no. 3000000000000133; under number 9, an outflow in the amount of MKD 9,623,381.00 is stated for the purpose of (code 0) "fee for arrangement of building land on Naum Naumovski Borče 40" to the transaction account of the recipient, State Budget, no. 100000000063095; under number 11, an outflow in the amount of MKD 14,435,072.00 is stated for the purpose of (code 0) "fee for arrangement of building land on Naum Naumovski Borče 40" to the transaction account of the recipient, State Budget, no. 100000000063095; under number 12, an outflow in the amount of MKD 17,800,000.00 is stated for the purpose of (code 262) "payment of interest for a long-term credit" to the transaction account of the recipient, Komercijalna Banka, no. 3000000000000133; under number 13, an inflow in the amount of MKD 350,000.00 is stated for the purpose of (code 469) "Disbursement of funds on the basis of a loan to a natural person" from the transaction account of the originator, the company Prototip, no. 3000000001338151, at Komercijalna Banka; under number 14 an inflow in the amount of MKD 24,058,453.00 is stated for the purpose of (code 461) "disbursement from sub-account no. 02-462-3204492.5" from the transaction account of the originator, Komercijalna Banka, no. 3000000000000133; and under number 15 an inflow in the amount of MKD 24,200,000.00 is stated for the purpose of (code 460) "credit" from the transaction account of the originator, Eurostandard Bank, no. 100000000037002. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that on 28.01.2011 at the order of the originator, the company Cubus Inžinering, a transfer was made from its

transaction account no. 300000002248011 in the amount of MKD 16,500.00, to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of payment of the bank fee. The order was signed by Lenče Krstevska. The transfer order was processed at Komercijalna Banka at 16:58, by the bank teller Jasna Andonovska;

- a photocopy of the Transfer Order, from which it can be concluded that on 28.01.2011 at the order of the originator, the company Cubus Inžinering, a transfer was made from its transaction account no. 300000002248011 in the amount of MKD 392,500.00, to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of payment of the bank fee. The order was signed by Lenče Krstevska. The order was processed at Komercijalna Bank and verified with the payment operations stamp number 004;
- a photocopy of the Transfer Order, from which it can be concluded that on 28.01.2011 at the order of the originator, the company Cubus Inžinering, a transfer was made in the amount of MKD 4,800,000.00 from its transaction account no. 300000002248011 to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of payment of the bank fee. The order was signed by Lenče Krstevska. The order was processed at Komercijalna Banka and verified with the payment operations stamp number 004; and
- a photocopy of the Transfer Order, from which it can be concluded that on 28.01.2011 at the order of the originator, the company Cubus Inžinering, a transfer was made in the amount of MKD 17,800,000.00 from its transaction account no. 300000002248011, to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of payment of the bank fee. The order was signed by Lenče Krstevska. The order was processed at Komercijalna Bank and verified with the payment operations stamp number 004.

The inflow in the amount of MKD 24,200,000.00 from Eurostandard Bank refers to the disbursement of the credit principal, regarding which we have not received any documentation and which represents the start of the refinancing.

Of the paid-in outflows in the total amount of MKD 23,009,000.00, Komercijalna Banka, on 28.11.2013, for an unknown reason, reallocated a total amount of MKD 22,868,921.50 for the

purposes stated bellow. It is not clear how the bank reallocated the remaining MKD 140.078,50. A total amount of MKD 22,868,921.50 was reallocated as follows:

- MKD 631,849.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-281 dated 23.02.2009, in the amount of MKD 25,000,000.00, sub-account number 02-420-2224439.0, designation "14";
- MKD 250,000.00 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-1319 dated 15.07.2009, in the amount of MKD 10,000,000.00, sub-account number 02-420-2225418.2, designation "16";
- MKD 530,753.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-1809 dated 24.09.2009, in the amount of MKD 21,000,000.00, sub-account number 02-420-2225823.4, designation "17";
- MKD 751,894.50 for the payment of regular interest and interest in arrears on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-2528 dated 30.12.2009, in the amount of MKD 30,000,000.00, sub-account number 02-420-2226741.1, designation "19";
- MKD 233,987.00 for the payment of regular interest and interest in arrears on the credit received under the Contract on the approval of a short-term credit, no. 02-163-2527 dated 30.12.2009, in the amount of MKD 14,000,000.00, sub-account number 02-420-2226742.0, designation "18";
- MKD 254,384.00 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-344 dated 26.02.2010, in the amount of MKD 10,000,000.00, sub-account number 02-1630-344, designation "21";
- MKD 100,191.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-374 dated 02.03.2010, in the amount of MKD 6.000.000,00, sub-account number 02-420-2227280.6, designation "22";
- MKD 1,148,109.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-544 dated 19.03.2010, in the amount of MKD 46,000,000.00, sub-account number 02-420-2227438.8, designation "23";
- MKD 76,879.50 for the payment of regular interest on the credit received under the Contract

on the approval of a short-term credit, no. 02-1630-657 dated 29.03.2010, in the amount of MKD 4,600,000.00, sub-account number 02-420-2227503.1, designation "24";

- MKD 244,436.00 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, the number is not stated, dated 20.05.2010, in the amount of MKD 9,800,000.00, sub-account number 02-420-2227978.9, designation "25";
- MKD 117,722.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, the number is not stated, dated 25.06.2010, in the amount of MKD 4,600,000.00, sub-account number 02-420-2228281.0, designation "26";
- MKD 176,342.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, the number is not stated, dated 22.09.2010, in the amount of MKD 7,000,000.00, sub-account number 02-420-2228948.2, designation "28";
- MKD 1,771,648.50 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-1216 dated 14.09.2007, in the amount of EUR 500.000,00, sub-account number 02-462-3201253.5, designation "05";
- MKD 4,474,425.00 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1640-5498 dated 13.04.2007, in the amount of EUR 1,144,370,00, sub-account number 02-462-3201413.9, designation "01";
- MKD 2,192,253.00 for the payment of regular interest, interest in arrear and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-447 dated 20.04.2007, in the amount of EUR 1,000,000.00, sub-account number 02-462-3201435.0, designation "02";
- MKD 4,903,842.50 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-507 dated 10.04.2008, in the amount of EUR 1,000,000.00, sub-account number 02-462-3202066.0, designation "08";
- MKD 2,521,525.00 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-1660 dated 15.10.2008, in the amount of EUR 500.000,00, sub-account number 02-462-

3202562.9, designation “11”;

- MKD 1,936,306.00 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-170 dated 03.02.2009, in the amount of MKD 23,000,000.00, sub-account number 02-462-3202922.5, designation “13”, and
- MKD 392,500.00 for the payment of a one-time compensation – fees before credit disbursement, management and assessment under the Contract on the approval of a long-term credit, no. 02-1630-341, dated 28.01.2011, in the amount of MKD 48,500,000.00, sub-account number 02-462-3204492.5, designation “29”.

The inflow in the amount of MKD 24,058,453.00 from Komercijalna Banka refers to the disbursement of the first tranche of the credit under Contract “29” and represents the start of the second part of the refinancing.

The outflows in the amount of MKD 9,623,381.00 and MKD 14,435,072.00 in the total value of MKD 24,058,453.00, both for the benefit of the State Budget, were used for the payment of the fee for building land which is in accordance with the purpose defined in the respective contract.

The Loan Contract related to the inflow in the amount of MKD 350,000.00 from the company Prototip has not been available.

- b) A photocopy of the Statement on changes and balance of the account dated 31.01.2011, Komercijalna Banka, no. 14 in which an outflow in the amount of MKD 24,342,879.00 is stated under number 8 for the purpose of (code 262) “credit closure” to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 9 an inflow in the amount of MKD 24,441,547.00 is stated for the purpose of (code 461) “disbursement from sub-account no. 02-462-3204492.5” (from the transaction account of the originator, Komercijalna Banka, no. 300000000000133).

The inflow in the amount of MKD 24,441,547.00 from Komercijalna Banka refers to the disbursement of the second tranche of the credit under Contract “29” and represents the start of the third part of the refinancing.

28. The transfer order in the amount of MKD 24,342,879.00 for the benefit of Eurostandard Bank was available. The outflow refers to the repayment of the credit principal and the payment of interest on

the credit under the Contract “esb1”. From the bank statement issued by Komercijalna Banka, no. 14 dated 31.01.2011, it can be concluded that the funds from the inflow in the amount of MKD 24,441,547.00 earmarked funds received as credit under Contract "29", from Komercijalna Banka, were entirely used to finance the outflow, which is a violation of Article 4 of Contract "29", and the penalty for such violation is defined in paragraph 1, line 1, of Article 21.<sup>17</sup> The transaction related to the misappropriation of funds was executed from the transaction account in Komercijalna Banka on the same day as the disbursement of the funds, which means that the bank had complete control over the purpose of the spending and was able to prevent or subsequently sanction such transaction for misappropriation of funds, yet the bank failed to do so. The latter also indicates that the refinancing was agreed upon by two banks, and the interest in that was on the part of Komercijalna Banka.

29. The refinancing ended with the settlement of liabilities towards Eurostandard Bank, and the respective transactions are summarized and presented in the following table:

**Table 2:** Statement from the transaction account no. 300000002248011

| <b>Table 2: Statement of transaction account no. 300000002248011 in Komercijalna Banka</b> |     |                                       |   |                   |                   |
|--|-----|---------------------------------------|---|-------------------|-------------------|
| Date   | No. | Owner of the TA                       | Purpose   | Outflow (Debited) | Inflow (Credited) |
| 28.01.2011   | 12  | Eurostandard Bank<br>100000000037002  | Credit disbursement<br>“esb1”                     |                   | 24,200,000.00     |
| 28.01.2011   | 12  | Komercijalna Banka<br>300000000000133 | Payment of a bank fee                             | 16,500.00         |                   |
| 28.01.2011   | 12  | Komercijalna Banka<br>300000000000133 | Payment of a bank fee                             | 392,500.00        |                   |
| 28.01.2011   | 12  | Komercijalna Banka<br>300000000000133 | Payment of interest                               | 4,800,000.00      |                   |
| 28.01.2011   | 12  | Komercijalna Banka<br>300000000000133 | Payment of interest                               | 17,800,000.00     |                   |
| 28.01.2011   | 12  | Komercijalna Banka<br>300000000000133 | Disbursement from sub-account<br>02-462-3204492.5 |                   | 24,058,453.00     |
| 28.01.2011   | 12  | State Budget<br>100000000063095       | Payment of a fee                                  | 14,435,072.00     |                   |

<sup>17</sup> The loan shall become due and payable if the borrower fails to use the funds in accordance with the purpose for which the loan was approved (Article 21, paragraph 1, line 1)

|            |    |                                       |  |               |               |
|------------|----|---------------------------------------|--|---------------|---------------|
| 28.01.2011 | 12 | State Budget<br>100000000063095       | Payment of a fee                                     | 9,623,381.00  |               |
| 31.01.2011 | 14 | Komercijalna Banka<br>300000000000133 | Disbursement<br>from sub-account<br>02-462-3204492.5 |               | 24,441,547.00 |
| 31.01.2011 | 14 | Eurostandard Bank<br>100000000037002  | Credit repayment                                     | 24,342,879.00 |               |

**2.1.2. Contract on the approval of a short-term credit, no. 1681, unknown date of conclusion, in the amount of MKD 2,500,000.00, credit sub-account number 01681/30-000518 (esb2)**

30. At the company Cubus Inžinering there is neither a credit application nor a credit contract<sup>19</sup>, so nothing is known about the credit process from the submission of the application to the disbursement of funds or about the content of the documents.

31. From the bank statement of Eurostandard Bank issued to the client, it can be concluded that transaction account no. 370011100201333 was opened for the company Cubus Inžinering. Documentation on the opening of the transaction account was not available because it does not even exist at the company Cubus Inžinering.

According to Zlatko Todorov, he does not know who arranged the opening of the account and the loan from Eurostandard Bank.

32. After concluding Contract “esb2”, Eurostandard Bank issued the following bank statements to Cubus Inžinering referring to transaction account no. 370011100201333:

- a) a photocopy of Bank Statement no. 1 on changes and balance of the account dated 06.04.2011, Eurostandard Bank, in which the inflow in the amount of MKD 2,500,000.00 MKD is stated under number 1 for the purpose of (code 000) “credit disbursement under sub-account 01681/30-0005”

<sup>18</sup> In the documentation of the company Cubus Inžinering and in the tables and the text of this report, the contract is marked with the designation “esb2”, which was assigned to the loan in the Company Cubus Inžinering.

<sup>19</sup> Hereinafter referred to as: Contract “esb2”.



from the transaction account of the originator, Eurostandard Bank, no. 100000000037002; under number 2, the outflow in the amount of MKD 25,000,000.00 is stated for the purpose of (code 262) "credit fee 1681" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 3, the outflow in the amount of MKD 400,000.00 is stated for the purpose of (code 262) "loan" to the transaction account of the recipient, company Cubus Inžineriing, no. 300000000066287, with Komercijalna Banka. under number 4, the outflow in the amount of MKD 500,000.00 is stated for the purpose of (code 262) "work contract" to the transaction account of the recipient, the company Rabotnički, no. 300000003175234, with Komercijalna banka.

The inflow in the amount of MKD 2,500,000.00 from Eurostandard Bank refers to the disbursement of the credit principal under the Contract on short-term credit no. 1681 with an unknown date of conclusion designated "esb2".

The transfer order in the amount of MKD 25,000.00 for the benefit of Eurostandard Bank was not available.

The transfer order in the amount of MKD 400,000.00 for the benefit of the company Cubus and the Loan Contract were not available.

The transfer order in the amount of MKD 500,000.00 for the benefit of the company Radnički and the Work Contract were not available from the bank statement of Eurostandard Bank, no. 1 dated 06.04.2011, it can be concluded that the funds from the inflow in the amount of MKD 2,500,000.00 from Eurostandard Bank were used to finance the outflow.

b) a photocopy of Bank Statement no. 2 on changes and balance of the account on 07.04.2011, Eurostandard Bank, in which the outflow in the amount of MKD 420,000.00 is stated under number 30 for the purpose of (code 262) "loan" to the transaction account of the recipient Cubus, no. 300000000066287 with Komercijalna Banka.

The transfer order in the amount of MKD 420,000.00 for the benefit of the company Cubus and the Loan Contract were not available. From the statement of Eurostandard Bank, no. 1 dated 06.04.2011 and no. 2 dated 07.04.2011, it can be concluded that funds from the inflow in the amount of MKD 2,500,000.00 from Eurostandard Bank were used to finance the outflow.

c) a photocopy of Bank Statement no. 3 on changes and balance of the account on 11.04.2011,

Eurostandard Bank, in which the outflow in the amount of MKD 22,000.00 is stated under number 11 for the purpose of (code 262) "loan" to the transaction account of the recipient, the company B-Kings Solutions, no. 300000002701583 with Komercijalna Banka.

The transfer order in the amount of MKD 22.000,00 for the benefit of the company B-Kings Solutions and the Loan Contract were not available. From the statement of Eurostandard Bank, no. 1 dated 06.04.2011 and no. 2 dated 07.04.2011, it can be concluded that funds from the inflow in the amount of MKD 2,500,000.00 from Eurostandard Bank were used to finance the outflow.

33. 100% of the credit under Contract "esb2" was disbursed for the needs of the company Cubus Inžineriing. Until 31.12.2011 no repayment of principal or interest had been made on the credit under Contract "esb2". There is no information in the documentation whether and how the credit under Contract "esb2" was repaid. Cubus Inžineriing has not suffered any damage arising from this credit.

**Table 3:** Presentation of the share of the disbursed credit principal, the credit amortization schedule with shares, the source of funds for credit repayment from the account of Cubus Inžineriing and a damage assessment

| <b>LOAN:</b><br>Contract on short-term credit, no.1681, unknown date of conclusion            |  | <b>Designation at Cubus Inz:<br/>esb2</b> |
|---|--|---|
| Credit principal  |  | 2,500,000.00                              |
| Credit principal with interests   |  | 2,500,000.00                              |
| Share of the disbursed credit principal - company Cubus Inžineriing                           |  | 2,500,000.00                              |
| %   |  | 100.00%                                   |
| Share of the disbursed credit principal – other beneficiaries                                 |  | 0.00                                      |
| %   |  | 0.00%                                     |
| <b>OVERVIEW OF THE LIABILITIES ARISING FROM THE CREDIT CONTRACT (principal + interest)</b>    |  |   |
| Liabilities of the company Cubus Inžineriing in relation to the share of the disbursed credit |  | 2,500,000.00                              |
| Liabilities of other beneficiaries in relation to the share of the disbursed credit           |  | 0.00                                      |
| Total:  |  | 2,500,000.00                              |
| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE CUBUS INŽINERING ACCOUNT</b>                 |  |   |

|  |  |  |             |
|--|--|--|-------------|
| <b>Total:</b>  |  |  | <b>0.00</b> |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERING IN MKD</b> |  |  |             |
| Damage arising from the remaining debt               |  |  | 0.00        |
| Damage arising from paid interest                    |  |  | 0.00        |
| Balance  |  |  | 0.00        |

### **2.1.3. Contract on the approval of a short-term credit, no. 1731, unknown date of conclusion, in the amount of MKD 2,400,000.00, credit sub-account number 01731/77-0005<sup>20</sup> (esb3)**

34. At the company Cubus Inžinering there is neither a credit application nor a credit contract<sup>21</sup>, so nothing is known about the credit process from the submission of the application to the disbursement of funds or about the content of the documents.

35. After concluding the Contract "esb3", Uni Bank and Eurostandard Banka issued bank statements to Cubus Inžinering, Uni Bank for transaction account no. 240010001662948, and Eurostandard Banka for transaction account no. 370011100201333. The contents of the statements were as follows:

- a) a photocopy of Bank Statement no. 6 on changes and balance of the account with Eurostandard Bank on 28.04.2011, in which the inflow in the amount of MKD 2,400,000.00 is stated under number 1 for the purpose of (code 000) "credit disbursement under sub-account 01731/77-0005" from the transaction account of the originator, Eurostandard Bank, no. 100000000037002; under number 2, the outflow in the amount of MKD 24,000.00 is stated for the purpose of (code 262) "credit fee 1731" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 3 the outflow in the amount of MKD 2,300,000.00 is stated for the purpose of (code 262) "transfer of fund" to the transaction account of the recipient, the company Cubus Inžinering, no. 240010001662948 with Uni Bank.

The inflow in the amount of MKD 2,400,000.00 from Eurostandard Bank refers to the disbursement of the credit principal under Contract "esb3".

<sup>20</sup> In the documentation of the company Cubus Inžinering and in the tables and the text of this report, the contract is marked with the designation "esb3", which was assigned to the credit in the company Cubus Inžinering.

<sup>21</sup> Hereinafter referred to as: Contract "esb3".

The transfer order in the amount of MKD 24,000.00 for the benefit of Eurostandard Bank was not available.

The transfer order in the amount of MKD 2,300,000.00 to the transaction account with Uni Bank refers to the transfer of the credit funds to a transaction account with another bank.

From the statement of Eurostandard Bank no. 6 dated 28.04.2011, it can be concluded that funds from the inflow in the amount of MKD 2,400,000.00 from Eurostandard Bank were used to finance the outflow.

b) a photocopy of Bank Statement no. 6, on changes and balance of the account with Uni Bank, no. 240010001662948 dated 28.04.2011, in which the inflow in the amount of MKD 2,300,000.00 is stated under number 1 for the purpose of (code 262) "transfer of funds" from the transaction account of the originator, the company Cubus Inžinering, no. 370011100201333 with Eurostandard Bank; and under number 2, the outflow in the amount of MKD 2,272,491.50 is stated for the purpose of (code 510) "liabilities under credit no. 450-0-540" to the transaction account of the recipient, Uni Bank, no. 2400000000000126.

The inflow in the amount of MKD 2,300,000.00 refers to the transfer of credit funds from the transaction account of the company with Eurostandard Bank.

36. The transfer order in the amount of MKD 2,272,491.50 for the benefit of Uni Bank was not available. The outflow refers to the payment of interest on the credit under the Contract on the approval of a credit to the legal entity, no. 09-10522 dated 19.02.2009, in the amount of MKD 90,000,000.00, sub-account number 450-0-518 designation "ub3". From the statement of Uni Bank no. 6 dated 28.04.2011, it can be concluded that the funds from the inflow in the amount of MKD 2,300,000.00 were used to finance the outflow.

37. All transactions are presented in the following table 4:

**Table 4** – Transactions in the transaction account no. 370011100201333

| Statement of transaction account no. 370011100201333 with Eurostandard Bank |     |                 |         |                     |                     |
|---|-----|-----------------|---------|---------------------|---------------------|
| Date  | No. | Owner of the TA | Purpose | Outflow/<br>Debited | Inflow/<br>Credited |

|   |     |                                      |                                       |                     |                     |
|---|-----|--------------------------------------|---------------------------------------|---------------------|---------------------|
| 23.04.2011  | 6   | Eurostandard Bank<br>100000000037002 | Credit<br>disbursement<br>1731        |                     | 2,400,000.00        |
| 23.04.2011  | 6   | Eurostandard Bank<br>100000000037002 | Payment of credit<br>fee              | 24,000.00           |                     |
| 23.04.2011  | 6   | Cubus Inžineri<br>240010001662948    | Transfer of funds                     | 2,300,000.00        |                     |
| <b>Statement of transaction account no. 240010001662948 with Uni Bank</b> |     |                                      |                                       |                     |                     |
| Date  | no. | Owner of the TA                      | Purpose                               | Outflow/<br>Debited | Inflow/<br>Credited |
| 28.04.2011  | 6   | Cubus Inžineri<br>370011100201333    | Transfer of funds                     |                     | 2,300,000.00        |
| 28.04.2011  | 6   | Uni Bank<br>240000000000126          | Payment of<br>interests 450-0-<br>540 | 2,272,491.50        |                     |

38. 100% of the credit under Contract “esb3” were disbursed for the needs of other beneficiaries and 0% for the needs of the company Cubus Inžineri. Until 31.12.2011, no repayment of principal or interest had been made on the credit (esb3). The estimated damage arising from this Loan Contract for Cubus Inžineri amounts to at least MKD 2,400,000.00, i.e. EUR 39,024.00.

**Table 5** – presentation of the share of the disbursed credit principal, the credit amortization schedule with shares, the source of funds for credit repayment from the account of Cubus Inžineri, a damage assessment

|  |  |
|--|--|
| <b>CREDIT:</b><br>Contract on the approval of a short-term credit, no. 1731                    | <b>Designation at<br/>Cubus Inz:</b><br>esb3 |
| Credit principal   | 2,400,000.00                                 |
| Credit principal with interest   | 2,400,000.00                                 |
| Share of the disbursed credit principal - company Cubus Inžineri                               | 0.00   |
| %  | 0%   |
| Share of the disbursed credit principal – other beneficiaries                                  | 2,400,000.00                                 |
| %  | 100.00%                                      |
| <b>OVERVIEW OF THE LIABILITIES ARISING FROM THE CREDIT CONTRACT<br/>(principal + interest)</b> |  |
| Liabilities of the company Cubus Inžineri in relation to the share of the<br>disbursed credit  | 0.00   |

|   |              |
|---|--------------|
| Liabilities of other beneficiaries in relation to the share of the disbursed credit | 2,400,000.00 |
| Total:  | 2,400,000.00 |
| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE CUBUS INŽINERING ACCOUNT</b>       |              |
| Total:  | 0.00         |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERING IN MKD</b>                                |              |
| Damage arising from the remaining debt  | 2,400,000.00 |
| Damage arising from paid interest   | 0.00         |
| Total:  | 2,400,000.00 |

**2.1.4. Contract on the approval of a short-term credit, no. 1737, unknown date of conclusion, in the amount of MKD 28,000,000.00, credit sub-account number 01737/54-0005<sup>22</sup> (esb4)**

39. At the company Cubus Inžinering there is neither a credit application nor a credit contract<sup>23</sup>, so nothing is known about the credit process from the submission of the application to the disbursement of funds or about the content of the documents.

40. With the approval of the credit under Contract "esb4", refinancing was initiated, which was implemented in two parts. In the first part, Eurostandard Bank approved the credit under Contract "esb4" and transferred the credit amount to the transaction account of Cubus Inžinering with Eurostandard Bank. The funds were transferred to the company's transaction account with Komercijalna Banka on the same day for the purposes of servicing the due and payable liabilities arising from the concluded loan contracts. In the second part, Komercijalna Banka approved a credit under Contract "30" and transferred the funds to the transaction account of Cubus Inžinering, which settled its liabilities under Contract "esb4" from the transaction account with Komercijalna Banka. The refinancing is presented in more detail below.

<sup>22</sup> In the documentation of the company Cubus Inžinering, as well as in the tables and the text of this report, the contract is marked with the designation "esb4", which was assigned to the credit in the company Cubus Inžinering.

<sup>23</sup> Hereinafter referred to as: Contract "esb4".

41. After concluding the Contract “esb3”, Eurostandard Bank and Komercijalna Bank issued bank statements to Cubus Inžinering, Eurostandard Bank for transaction account no. 370011100201333, and Komercijalna Bank for transaction account no. 300000002248011. The contents of the statements are described in more detail below:

- a) a photocopy of Bank Statement no. 7 on changes and balance of the account with Eurostandard Bank, dated 29.04.2011, in which the inflow in the amount of MKD 28,000,000.00 MKD is stated under number 1 for the purpose of (code 000) “credit disbursement under sub-account 01737/54-0005” from the transaction account of the originator, Eurostandard Bank, no. 100000000037002; under number 2, the outflow in the amount of MKD 79,000.00 is stated for the purpose of (code 000) “mortgage registration” to the transaction account of the recipient, Ministry of Finance of the RM, no. 100000000063095, and the NBRM; and under number 3, the outflow in the amount of MKD 140,000.00 is stated for the purpose of (code 262) “credit fee 1737” to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 4, the outflow in the amount of MKD 27,850,000.00 is stated for the purpose of (code 262) “transfer of funds” to the transaction account of the recipient, the company Cubus Inžinering, no. 300000002248011, with Komercijalna Banka.

The inflow in the amount of MKD 28,000,000.00 from Eurostandard Bank refers to the disbursed credit principal under Contract “esb4” and represents the first part of the refinancing.

The transfer order in the amount of MKD 79,000.00 for the benefit of the Ministry of Finance of the RM for the mortgage payment was not available.

The transfer order in the amount of MKD 140,000.00 for the benefit of Eurostandard Bank for payment of the fee was not available.

The transfer order in the amount of MKD 27,850,000.00 to the transaction account with Komercijalna Banka was not available. The outflow refers to the transfer of the credit amount to a transaction account with another bank.

From the statement of Eurostandard Bank, no. 7 dated 29.04.2011, it can be concluded that funds from the inflow in the amount of MKD 2,400,000.00 received under Contract “esb3”, as well as the funds from the inflow in the amount of MKD 28,000,000.00 received under Contract “esb4”, from Eurostandard Bank were used to finance the outflow.

- b) a photocopy of the Statement on changes and balance of the account with Komercijalna Banka no. 51, dated 29.04.2011, in which the outflow in the amount of MKD 6,400,000.00 is stated under



number 31 for the purpose of (code 262) "payment of interest on a short-term credit" to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133; under number 32, the outflow in the amount of MKD 19,200,000.00 is stated for the purpose of (code 262) "payment of instalment and interest on a long-term credit" to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133; and under number 33, the inflow in the amount of MKD 27,850,000.00 is stated for the purpose of (code 262) "transfer of funds" from the transaction account of the originator, company Cubus Inžinering, no. 370011100201333 with Eurostandard Bank. The photocopy of the Transfer Order, from which it can be concluded that on 29.04.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 370011100201333, made a transfer in the amount of MKD 6,400,000.00 to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of transfer of funds, is enclosed with the Bank Statement. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065.

42. The inflow in the amount of MKD 27,850,000.00 refers to the transfer of credit funds under Contract "esb4" from the transaction account with Eurostandard Bank. It is interesting that Sašo Tvrtković handled the transactions in such a manner that he first transferred the funds from the credit received from Eurostandard Bank to the transaction account of Cubus Inžinering with Komercijalna Banka and only afterwards the liabilities were settled from this account, instead of effectuating a direct payment transaction from the account with Eurostandard Bank. Thus, he managed to conceal from Komercijalna Banka, on the one hand, that Cubus Inžinering financed the payment of the liabilities with funds from new credits, and on the other hand, he seemingly increased the cash flow in the company's transaction account.
43. The outflows in the amount of MKD 6,400,000.00 and MKD 19,200,000.00, in the total amount of MKD 25,600,000.00, both for the benefit of Komercijalne Banka, on 28.11.2013, for an unknown reason, were reallocated by the bank for a purpose different than the one for which the payment was made on 29.04.2011, as follows:
- MKD 802,572.50 for the payment of regular interest, interest in arrears and bank fees on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-281 dated 23.02.2009, in the amount of MKD 25,000,000.00, sub-account number 02-420-2224439.0,

designation "14";

- MKD 316,712.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-1319 dated 15.07.2009, in the amount of MKD 10,000,000.00, sub-account number 02-420-2225418.2, designation "16";
- MKD 668,547.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-1809 dated 24.09.2009, in the amount of MKD 21,000,000.00, sub-account number 02-420-2225823.4, designation "17";
- MKD 915,616.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-2528 dated 30.12.2009, in the amount of MKD 30,000,000.00, sub-account number 02-420-2226741.1, designation "19";
- MKD 294,191.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, no. 02-163-2527 dated 30.12.2009, in the amount of MKD 14,000,000.00, sub-account number 02-420-2226742.0, designation "18";
- MKD 342,672.50 for the payment of regular interest and bank fees on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-344 dated 26.02.2010, in the amount of MKD 10,000,000.00, sub-account number 02-1630-344, designation "21".
- MKD 229,275.00 for the payment of regular interest, interest in arrears and bank fees on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-374 dated 02.03.2010, in the amount of MKD 6,000,000.00, sub-account number 02-420-2227280.6, designation "22".
- MKD 1,586,962.00 for the payment of regular interest, interest in arrears and bank fees on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-544 dated 19.03.2010, in the amount of MKD 46,000,000.00, sub-account number 02-420-2227438.8, designation "23".
- MKD 136,155.50 for the payment of regular interest, interest in arrears and bank fees on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-657 dated 29.03.2010, in the amount of MKD 4,600,000.00, sub-account number 02-420-2227503.1, designation "24".
- MKD 314,136.50 for the payment of regular interests on the credit received under the Contract on

- the approval of a short-term credit, the number is not stated, dated 20.05.2010, in the amount of MKD 9,800,000.00, sub-account number 02-420-2227978.9, designation "25";
- MKD 145,435.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, the number is not stated, dated 25.06.2010, in the amount of MKD 4,600,000.00, sub-account number 02-420-2228281.0, designation "26";
  - MKD 223,232.50 for the payment of regular interest on the credit received under the Contract on the approval of a short-term credit, the number is not stated, dated 22.09.2010, in the amount of MKD 7,000,000.00, sub-account number 02-420-2228948.2, designation "28";
  - MKD 1,814,960.00 for the payment of regular interest, interest in arrears and credit principal on the loan received under the Contract on the approval of a long-term credit, no. 02-1630-1216 dated 14.9.2007, in the amount of EUR 500,000.00, sub-account number 02-462-3201253.5, designation "05".
  - MKD 4,544,169.00 for the payment of regular interest, interest in arrears and credit principal on the loan received under the Contract on the approval of a long-term credit, no. 02-1640-5498 dated 13.04.2007, in the amount of EUR 1,144,370.00, sub-account number 02-462-3201413.9, designation "01".
  - MKD 2,243,565.00 for the payment of regular interest, interest in arrears and credit principal on the loan received under the Contract on the approval of a long-term credit, no. 02-1630-447 dated 20.04.2007, in the amount of EUR 1,000,000.00, sub-account number 02-462-3201435.0, designation "02".
  - MKD 4,960,399.50 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-507 dated 10.04.2008, in the amount of EUR 1,000,000.00, sub-account number 02-462-3202066.0, designation "08".
  - MKD 2,568,053.00 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-1660 dated 15.10.2008, in the amount of EUR 500,000.00, sub-account number 02-462-3202562.9, designation "11".
  - MKD 1,977,078.00 for the payment of regular interest, interest in arrears and credit principal on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-170

dated 03.02.2009, in the amount of MKD 23,000,000.00, sub-account number 02-462-3202922.5, designation "13".

- MKD 1,498,265.50 for the payment of regular interest on the credit received under the Contract on the approval of a long-term credit, no. 02-1630-341 dated 28.01.2011, in the amount of MKD 48,500,000.00, sub-account number 02-462-3204492.5, designation "29".

44. The first part of the refinancing ended with the settlement of the due and payable liabilities towards Komercijalna Banka. From the statement of Komercijalna Banka, no. 51 dated 29.04.2011, it can be concluded that funds from the inflow in the amount of MKD 27,850,000.00 from the transaction account in Eurostandard Bank were used to finance the outflow.

45. 100% of the credit under Contract "esb4" was used for the needs of other beneficiaries and 0% for the needs of the company Cubus Inžinering. The credit was repaid on 03.05.2011 with the credit funds received from Komercijalna Banka under Contract "30". The damage arising from this credit for Cubus Inžinering amounts to MKD 0,00.

**Table 6** – Presentation of the share of the disbursed credit principal, the credit amortization schedule with shares, the source of funds for credit repayment from the account of Cubus Inžinering, a damage assessment

| <b>CREDIT:</b><br>Contract on the approval of a short-term credit, no. 1737, unknown date of conclusion | <b>Designation at Cubus Inz: esb4</b> |
|---|---------------------------------------|
| Credit principal  | 28,000,000.00                         |
| Credit principal with interest  | 28,000,000.00                         |
| Share of the disbursed credit principal - company Cubus Inžinering                                      | 0.00                                  |
| %   |                                       |
| Share of the disbursed credit principal – other beneficiaries   | 28,000,000.00                         |
| %   | 100.00%                               |
| <b>OVERVIEW OF THE LIABILITIES ARISING FROM THE CREDIT CONTRACT (principal + interest)</b>              |                                       |
| Liabilities of the company Cubus Inžinering in relation to the share of the disbursed credit            | 0.00                                  |
| Liabilities of other beneficiaries in relation to the share of the disbursed credit                     | 28,000,000.00                         |
| Total:  | 28,000,000.00                         |

| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE CUBUS INŽINERING ACCOUNT</b> |               |
|---|---------------|
| Credit funds KB   | 28,000,000.00 |
| Total:  | 28,000,000.00 |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERING IN MKD</b>                          |               |
| Damage arising from the remaining debt  | 0.00          |
| Damage arising from paid interest   | 0.00          |
| Balance   | 0.00          |

46. On 03.05.2011, the company Cubus Inžinering submitted an application for the approval of a short-term credit in the amount of MKD 28,000,000.00 with a repayment period of one year, in full, from the time when the credit principal becomes due and payable. It is evident from the application that the company Cubus Inžinering needed financial resources for the working capital, for settling the current liabilities, initiation of the basic design – business facility at Naum Naumovski Borče no. 40 – block 2, i.e. for organizing the construction site, for excavation, drilling a well, etc. The application was signed by the director Lenče Krstevska.
47. The upper right-hand corner of the application bears the received stamp of the company Cubus Inžinering and two sections completed by hand – no. 0301-93 and date 03.05.2011.
48. It is not clear from the application whether it contains any attachments. The content of the application is incomplete and as such unsuitable for consideration, because it does not contain any data or attached documents, on the basis of which the decision maker, in this case the Credit Board of Komercijalna Banka, would approve the application in a manner consistent with the good banking practices and expertise. Furthermore, the content of the credit application is misleading as the funds from the credit were in fact intended for the second part of the refinancing, as can be seen below.

During the inspection of the documentation, Zlatko Todorov explained that the content of the credit application of the company Cubus Inžinering has always been verbally ordered by Sašo Tvrčković, usually by phone, either to Lenče Krstevska or to himself. Even in the case when the company Cubus Inžinering needed a credit for its business operations, the decision on the content of the credit application was always made by Tvrčković.

49. The Contract on the approval of a short-term credit, no. 02-1630-1640 dated 03.05.2011, in the amount of MKD 28,000,000.00, sub-account number 02-420-2230643.3<sup>24</sup> does not exist at the company Cubus Inžinering because it was not submitted to them and as a result, they are not familiar with its contents. Given the content of the application, it is presumed that Cubus Inžinering was granted an earmarked credit to finance its working capital.
50. After concluding Contract "30", Komercijalna Banka issued two bank statements to Cubus Inžinering for transaction account no. 300000002248011, with enclosed copies of the transfer orders, the contents of which are described in more detail, as follows:
- a) a photocopy of the Statement on changes and balance of the account with Komercijalna Banka, no. 59, on 03.05.2011, in which the outflow in the amount of MKD 33,753.50 is stated under number 4 for the purpose of (code 262) "credit interests" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 7, the outflow in the amount of MKD 140,000.00 is stated for the purpose of (code 262) "bank fee" to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133; under number 8, the outflow in the amount of MKD 28.000.000,00 is stated for the purpose of (code 262) "credit repayment" to the transaction account of the recipient, Eurostandard Bank, no.100000000037002; and under number 10 the inflow in the amount of MKD 28,000,000.00 is stated for the purpose of (code 460) "disbursement to sub-account no. 02-420-2230643.3" (from the transaction account of the originator, Komercijalna Banka, no. 300000000000133.
  - b) a photocopy of the Transfer Order, from which it can be concluded that on 03.05.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 140,000.00 to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of the payment of a bank fee. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp, the number of which is illegible.

The inflow in the amount of MKD 28,000,000.00 from Komercijalna Banka refers to the disbursement of the entire loan principal under Contract "30".

---

<sup>24</sup> In the documentation of the company Cubus Inžinering, as well as in the tables and the text of this report, the contract is marked with the designation "30", which was assigned to the credit in the company Cubus Inžinering.

The transfer order in the amount of MKD 33,753.50 for the benefit of Eurostandard Bank was not available. The outflow refers to the payment of interests under Contract “esb4”.

The transfer order in the amount of MKD 28,000,000.00 for the benefit of Eurostandard Bank was not available. The outflow refers to the payment of the credit principal under Contract “esb4”, whereby the refinancing was completed.

51. The refinancing is summarized and presented at the following Table 7:

**Table 7 – Refinancing**

| Statement of transaction account no.<br>370011100201333 with Eurostandard Bank |     |                                       |  |                     |                     |
|--|-----|---------------------------------------|--|---------------------|---------------------|
| Date   | no. | Owner of the TA                       | Purpose  | Outflow/<br>Debited | Inflow/<br>Credited |
| 29.04.2011   | 7   | Eurostandard Bank<br>100000000037002  | Credit<br>disbursement no.<br>1737                       |                     | 28,000,000.00       |
| 29.04.2011   | 7   | Eurostandard Bank<br>100000000037002  | Bank fee   | 140,000.00          |                     |
| 29.04.2011   | 7   | Cubus Inžinering<br>300000002248011   | Transfer of funds  | 27,850,000.00       |                     |
| Statement of transaction account no. 300000002248011 with Komercijalna Banka   |     |                                       |  |                     |                     |
| Date   | no. | Owner of the TA                       | Purpose  | Outflow/<br>Debited | Inflow/<br>Credited |
| 29.04.2011   | 57  | Cubus Inžinering<br>370011100201333   | Transfer of funds  |                     | 27,850,000.00       |
| 29.04.2011   | 57  | Komercijalna Banka<br>300000000000133 | Payment of<br>interest                                   | 6,400,000.00        |                     |
| 29.04.2011   | 57  | Komercijalna Banka<br>300000000000133 | Payment of<br>interest                                   | 19,200,000.00       |                     |
| 03.05.2011   | 59  | Komercijalna Banka<br>300000000000133 | Disbursement to<br>sub-account<br>no.02-420-<br>230643.3 |                     | 28,000,000.00       |
| 03.05.2011   | 59  | Eurostandard Bank<br>100000000037002  | Payment of<br>interest                                   | 33,753.50           |                     |



|            |    |                                       |                  |               |  |
|------------|----|---------------------------------------|------------------|---------------|--|
| 03.05.2011 | 59 | Komercijalna Banka<br>300000000000133 | Bank fee         | 140,000.00    |  |
| 03.05.2011 | 59 | Eurostandard Bank<br>100000000037002  | Credit repayment | 28,000,000.00 |  |

**2.1.5. Contract on the approval of a short-term credit, no. 1766, unknown date of conclusion, in the amount of MKD 1,000,000.00, credit sub-account number 01766/30-0005<sup>25</sup> (esb5)**

52. At the company Cubus Inžinering there is neither a credit application nor a credit contract<sup>26</sup>, so nothing is known about the credit process from the submission of the application to the disbursement of funds or about the content of the documents. There is no documentation about this credit; only the description in Statement number 9 indicates that it is a credit. The credit was used for the needs of Cubus Inžinering.

53. After concluding Contract “esb5”, Eurostandard Bank issued a bank statement to Cubus Inžinering for transaction account no. 370011100201333, with enclosed copies of two transfer orders, the contents of which are described in more detail below:

- a) a photocopy of Bank Statement no. 9 on changes and balance of the account with Eurostandard Bank on 13.05.2011, in which the inflow in the amount of MKD 1,000,000.00 is stated under number 1 for the purpose of (code 000) “credit disbursement under sub-account 01766/30-0005” from the transaction account of the originator, Eurostandard Bank, no. 100000000037002; under number 2, the outflow in the amount of MKD 5,000.00 is stated for the purpose of (code 262) “credit fee 1766” to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 3 the outflow in the amount of MKD 950,000.00 is stated for the purpose of (code 262) “payment of a part of the second interim payment certificate no. 7 – 103/10” to the transaction account of the recipient, Mega-zam Inženering, d.o.o., Skopje<sup>27</sup>, no. 210063703140165 in Tutunska Banka. under number 5, the outflow in the amount of MKD 1,446,50 is stated for the purpose of (code 262) “interests to sub-account 01731/77-2011” to the transaction account of the recipient, Eurostandard Bank, no.100000000037002; under number 6,

<sup>25</sup> In the documentation of the company Cubus Inžinering, as well as in the tables and the text of this report, the contract is marked with the designation “esb5”, which was assigned to the loan in the company Cubus Inžinering.

<sup>26</sup> Hereinafter referred to as: Contract “esb5”.

<sup>27</sup> Hereinafter referred to as: Mega-zam company.

the outflow in the amount of MKD 18,082.00 is stated for the purpose of (code 262) "interest on the credit 01681/30-2011" to the transaction account of the recipient, Eurostandard Bank, no.100000000037002. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that, on 13.05.2011, at the order of the originator, the company Cubus Inžineriing, from its transaction account no. 370011100201333, a transfer was made in the amount of MKD 1,446.5 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of the payment of interest on the sub-account 01731/77-2011. The order was signed by Lenče Krstevska. The transfer order was processed in Eurostandard Bank.
- a photocopy of the Transfer Order, from which it can be concluded that, on 13.05.2011, at the order of the originator, the company Cubus Inžineriing, from its transaction account no. 370011100201333, a transfer was made in the amount of MKD 18,082.00 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of the payment of interest on the credit 01681/30-2011. The order was signed by Lenče Krstevska. The transfer order was processed in Eurostandard Bank.

54. The inflow in the amount of MKD 1,000,000.00 from Eurostandard Bank refers to the disbursed credit principal under Contract "esb5".

The transfer order in the amount of MKD 5,000.00 for the benefit of Eurostandard Bank was not available. The outflow refers to the payment of credit fee under Contract "esb5".

The transfer order in the amount of MKD 950,000.00 for the benefit of Mega-zam was not available. The outflow refers to the financing of the working capital of the company.

The outflow in the amount of MKD 1,446.50 for the benefit of Eurostandard Bank refers to payment of interest on the credit under Contract "esb5".

The outflow in the amount of MKD 18,082.00 for the benefit of Eurostandard Bank refers to payment of interest on the credit under Contract "esb5".

From the statement of Eurostandard Bank, no. 9, dated 13.05.2011, it can be concluded that funds from the inflow in the amount of MKD 1,000,000.00 from Eurostandard Bank were used to finance the outflow.

55. 100% of the credit under Contract “esb5” was used for the needs of the company Cubus Inžineriing.

The credit was repaid with mixed funds (own funds, credits and loans). According to the assessment, Cubus Inžineriing has not suffered any damage arising from this credit.

**Table 8** – Presentation of the share of the disbursed credit principal, the credit amortization schedule with shares, the source of funds for credit repayment from the account of Cubus Inžineriing, a damage assessment

| <b>CREDIT:</b><br>Contract on the approval of a short-term credit, no. 1766, unknown date of conclusion | <b>Designation at Cubus Inz: esb5</b> |
|---|---------------------------------------|
| Credit principal  | 1,000,000.00                          |
| Credit principal with interest  | 1,054,819.00                          |
| Share of the disbursed credit principal - company Cubus Inžineriing                                     | 1,000,000.00                          |
| %   | 100.00%                               |
| Share of the disbursed credit principal – other beneficiaries   | 0.00                                  |
| %   | 0.00%                                 |
| <b>OVERVIEW OF THE LIABILITIES ARISING FROM THE CREDIT CONTRACT (principal + interest)</b>              |                                       |
| Liabilities of the company Cubus Inžineriing in relation to the share of the disbursed credit           | 1,054,819.00                          |
| Liabilities of other beneficiaries in relation to the share of the disbursed credit                     | 0.00                                  |
| Total:  | 1,054,819.00                          |
| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE CUBUS INŽINERING ACCOUNT</b>                           |                                       |
| Mixed funds – other   | 1,054,819.00                          |
| Total:  | 1,054,819.00                          |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERING IN MKD</b>  |                                       |
| Damage arising from the remaining debt  | 0.00                                  |
| Damage arising from the paid interest   | 0.00                                  |
| Total:  | 0.00                                  |

**2.1.6. Contract on the approval of a short-term credit, no. 1830, unknown date of conclusion, in the amount of MKD 29,000,000.00, sub-account number 01830/32-0005<sup>28</sup> (esb6)**

56. In the company Cubus Inžinering there is neither a credit application nor a credit contract<sup>29</sup>, so nothing is known about the course of the credit process from the submission of application until the disbursement of funds or the content of the documents.
57. With the approval of the credit under Contract “esb6”, the refinancing was initiated, which was implemented in two parts. In the first part, Eurostandard Bank approved the credit under Contract “esb6” and transferred the funds from the credit to the transaction account of Cubus Inžinering in Eurostandard Bank. On the same day, the liabilities arising from Contract “ib9” were settled in Sparkasse Bank with funds from the credit under Contract “esb6”. In the second part, Sparkasse Bank approved a new “ib10” credit to Cubus Inžinering to its transaction account in Sparkasse Bank. On the same day, the liabilities arising from the credit under Contract “esb6” were settled in Eurostandard Bank with funds from the credit under Contract “esb6”. The refinancing is presented in more detail below.
58. This is another example of refinancing, closing a credit in one bank with a short-term credit from another bank, due to the possibility of re-approving the credit and extending the final payment deadline.
59. After concluding Contract “esb6”, Eurostandard Bank and Komercijalna Banka issued two bank statements to the company Cubus Inžinering, Eurostandard Bank for transaction account no. 370011100201333, and Komercijalna Banka for the transaction account no. 300000002248011; the contents of the statements are described in more detail below:
- a) a photocopy of Bank Statement no. 14 on changes and balance of the account with Eurostandard Bank on 30.06.2011, in which the inflow in the amount of MKD 29,000,000.00 is stated under number 1 for the purpose of (code 000) “credit disbursement under sub-account 01830/32-0005” from the transaction account of the originator, Eurostandard Bank, no. 100000000037002; under number 2, the outflow in the amount of MKD 28,700,000.00 is stated for the purpose of (code 262) “credit repayment” to the transaction account of the recipient, Sparkasse Bank, no.

---

<sup>28</sup> In the documentation of the company Cubus Inžinering, as well as in the tables and the text of this report, the contract is designated as Contract “esb6”, a designation which was assigned by the company Cubus Inžinering.

<sup>29</sup> Hereinafter: Contract “sb6”.

25099999999964; and under number 3, the outflow in the amount of MKD 290,000.00 is stated for the purpose of (code 262) "credit fee 1830" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002.

The inflow in the amount of MKD 29,000,000.00 from Eurostandard Bank refers to the disbursement of the credit under Contract "esb6", and at the same time the initiation of the first part of the refinancing.

The transfer order in the amount of MKD 28,700,000.00 for the benefit of Sparkasse Bank was not available. The outflow refers to the final repayment of the credit principal under Contract "ib9", and thus the first part of the refinancing was completed.

The transfer order in the amount of MKD 290.000,00 for the benefit of Eurostandard Bank was not available. The outflow refers to the payment of the bank fee.

From the statement of Eurostandard Bank, no. 14 dated 30.06.2011, it can be concluded that funds from the inflow in the amount of MKD 29,000,000.00 from Eurostandard Bank were used to finance both outflows.

b) a photocopy of Bank Statement on changes and balance of the account in Komercijalna Banka dated 30.06.2011, no. 87, in which the outflow in the amount of MKD 22,680.00 is stated under number 6 for the purpose of (code 262) "credit repayment" to the transaction account of the recipient, Stopanska Banka, no. 200000000099029; under number 7, the outflow in the amount of MKD 101,844.00 is stated for the purpose of (code 262) "credit repayment" to the transaction account of the recipient, Stopanska Banka, no. 200000000099029; under number 8, the outflow in the amount of MKD 1,054,819.00 is stated for the purpose of (code 262) "payment of principal and interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and inflow in the amount of MKD 1,130,000.00 is stated under number 9 for the purpose of (code 456) "payment (transfer) of funds of the legal entity from account one to account v", from the transaction account of the originator, the company Cubus, no. 300000000066287, in Komercijalna Banka. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that on 30.06.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 101,844.00 to the transaction account of the recipient, Stopanska Banka, no. 200000000099029, for the

purpose of credit repayment. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and was verified with the payment operations stamp, number 059; and

- a photocopy of the Transfer Order, from which it can be concluded that on 30.06.2011, on the order of the originator, the company Cubus Inženiring, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 1,054,819.00 to the transaction account of the recipient, Eurostandard Banka, no. 100000000037002, for the purpose of payment of credit and interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and was verified with the payment operations stamp number 065.

60. The outflows in the amount of MKD 22,680.00 and MKD 101,844.00 for the benefit of Stopanska Banka refer to a partial repayment of the credit principal under Contract "sb4".

61. The outflow in the amount of MKD 1,054,819.00 for the benefit of Eurostandard Bank refers to the repayment of the credit under Contract "esb6".

62. In terms the inflow in the amount of MKD 1,130,000.00 from the company Cubus, a wrong payment purpose code was used, since Cubus and Cubus Inženiring are not the same legal entity and, thus, the real purpose of the transfer is not clear.

63. From the bank statement of Komercijalna Banka no. 87 dated 30.06.2011, it can be concluded that the previous balance of the transaction account of the company Cubus Inženiring in the amount of MKD 133,621.00, entirely comprised of the company's own funds. After the inflow in the amount of MKD 1,130,000.00 from the company Cubus, the funds were mixed, so it is not possible to determine with certainty which funds were used to finance the outflow. We believe that the funds from the inflow from the company Cubus were used to fully finance the outflow in the amount of MKD 1,054,819.00 for the benefit of Eurostandard Bank, and partially the outflow in the amount of MKD 101,844.00 for the benefit of Stopanska Banka, while the other outflows made that day were financed from the company's own funds.

64. 100% of the credit under Contract "esb6" was used for the needs of other beneficiaries and 0% for the needs of the company Cubus Inženiring. The credit was repaid from the funds under Contract "ib10"

received from Investbank (Sparkasse Bank) and the company's mixed funds. The damage arising from the Credit Contract "esb6" for Cubus Inžineriing amounts to at least MKD 279,857.00, i.e. EUR 4,550.47.

**Table 9** – Presentation of the share of the disbursed credit principal, the credit amortization schedule with shares, the source of funds for credit repayment from the account of Cubus Inžineriing, a damage assessment

|   |                               |
|---|-------------------------------|
| <b>CREDIT:</b>  | <b>Designation Cubus Inz:</b> |
| Contract on the approval of a short-term credit, no. 1830, unknown date of conclusion         | esb6                          |
| Credit principal  | 29,000,000.00                 |
| Credit principal with interest  | 29,279,857.00                 |
| Share of the disbursed credit principal - company Cubus Inžineriing                           | 0.00                          |
| %   |                               |
| Share of the disbursed credit principal – other beneficiaries                                 | 29,000,000.00                 |
| %   | 100.00%                       |
| <b>OVERVIEW OF THE LIABILITIES ARISING FROM THE CREDIT CONTRACT (principal + interest)</b>    |                               |
| Liabilities of the company Cubus Inžineriing in relation to the share of the disbursed credit | 0.00                          |
| Liabilities of other beneficiaries in relation to the share of the disbursed credit           | 29,279,857.00                 |
| Total:  | 29,279,857.00                 |
| <b>SOURCE OF FUNDS FOR CREDIT REPAYMENT FROM THE CUBUS INŽINERING ACCOUNT</b>                 |                               |
| Credit funds IB   | 29,279,857.00                 |
| Total:  | 29,279,857.00                 |
| <b>DAMAGE ASSESSMENT FOR CUBUS INŽINERING IN MKD</b>  |                               |
| Damage arising from the remaining debt  | 0.00                          |
| Damage arising from the paid interest   | 279,857.00                    |
| Total:  | 279,857.00                    |

65. On 05.04.2011, the company Cubus Inžineriing submitted an application to Sparkasse Bank for the approval of a short-term credit, and from the said application it can be concluded that the company

Cubus Inžinering applied for a credit in the amount of MKD 29,500,000.00 for a period of five years. The application was signed by the director Lenče Krstevska.

During the review of the documentation, Zlatko Todorov explained that the content of the credit application of the company Cubus Inžinering was always orally ordered by Sašo Tvrtković, usually by phone, either to Lenče Krstevska or to himself. Even in the case when the company Cubus Inžinering needed a credit for its business operations, the decision on the content of the credit application was always made by Tvrtković.

66. It is not evident from the application whether any additional documentation was attached thereto.

The content of the application is incomplete and as such unsuitable for consideration because it does not contain any information or attached documents, on the basis of which the decision maker, in this case the Credit Board of Sparkasse Bank, would approve the application in a manner consistent with good banking practices and expertise.

67. On 17.05.2011, the creditor, Sparkasse Bank, represented by Srdjan Krstić, President of the Management Board, and the borrower, the company Cubus Inžinering, represented by the Director Lenče Krstevska, concluded a Contract on the use of a long-term credit number 7522, based on which the bank approved to Cubus Inžinering a long-term credit in the amount of MKD 29,500,000.00.

68. From the photocopy of the Contract ("ib10") it can be concluded, *inter alia*:

- that based on the Decision of the Credit Board of Sparkasse Bank, no. 7521 dated 17.05.2011, the bank approved a long-term credit to the borrower in the amount of MKD 29,500,000.00 for working capital (Article 1);
- that the credit was approved under the following conditions (Article 2, paragraph 1):
  - repayment period: no later than 03.11.2016, including the moratorium;
  - moratorium: 6 months;
  - credit repayment: in monthly annuities;
  - variable interest rate, based on the Bank's Decision on Interest Rates, which currently amounts to 11.00%, starting from the day of the disbursement of the funds, in a decursive manner, according to the conform method, until the full repayment of the credit;
- that the borrower must use the funds in accordance with the purpose for which the credit was approved (Article 4);
- that in the event of any misuse of funds the bank has the right to cancel the credit and collect interest



in arrears, in accordance with legal regulations and acts of the bank, from the date of the misuse until the payment (Article 10, paragraph 4);

- establishment of a lien on real estate to secure the contractual obligations: residential and commercial building at Kozle Street no. 93, Certificate of Title no. 44230 dated 10 March 2011, KM Karpos<sup>30</sup>, total area of 787 m<sup>2</sup> and estimated value in the amount of MKD 50,753,314.00 or EUR 824,958.00 (Article 13, paragraph 1); that in order to secure its obligations under the contract, the borrower must submit to the bank: a bill of exchange of the company Cubus Inžineriing (Article 13, paragraph 2), a bill of exchange of the company Cubus Inžineriing (Article 13, paragraph 3), twelve blank transfer orders PP 30 signed by the authorized signatories of Cubus Inžineriing (Article 13, paragraph 4) and twelve blank transfer orders PP 30 signed by the authorized signatories of the company Cubus (Article 13, paragraph 5);
- that the bank has the right to declare the credit due and payable without a court intervention, if the borrower does not use funds from the credit for the purpose for which it was approved (Article 20, paragraph, line 2) and if the borrower fails to allow the bank to conduct control over the intended use of the funds (Article 20, paragraph 1, line 3).

69. The contract was signed by an unknown person on behalf of the creditor and Lenče Krstevska, on behalf of the borrower.

70. The notary act ODU no. 753/2011 dated 20.06.2011 is attached to Contract "ib10", whereby the Contract on the disbursement of a long-term credit no. 7522 is concluded in the form of a notary deed.

71. Contract "ib10" is a fictitious contract intended for the second part of the refinancing (which was the actual will of the contracting parties), and not for financing the working capital of Cubus Inžineriing, as it seems from the contract.

72. After concluding Contract "ib10", Komercijalna Banka, Sparkasse Bank and Eurostandard Bank issued bank statements to the company Cubus Inžineriing, Komercijalna Banka for transaction account no. 300000002248011, Sparkasse Bank for transaction account no. 250001000252568, and Eurostandard Bank for transaction account no. 370011100201333; the statements were accompanied by photocopies of mostly hand-filled and signed transfer orders and their contents of which are described in more detail below:

---

<sup>30</sup> Under the Certificate of Title, line 29, parts of the building on which the lien is established are stated.

- a) a photocopy of Bank Statement no. 22 on changes and balance of the account with Sparkasse Bank dated 01.07.2011, in which the outflow in the amount of MKD 180,000.00 is stated under number 3 for the purpose of (code 220) “fee for credit no. 7522 dated 17.05.2011” to the transaction account of the recipient, Sparkasse Bank, no. 250999999999964; under number 4, the outflow in the amount of MKD 290,000,000.00 is stated for the purpose of (code 220) “closing of the credit” to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 5, the inflow in the amount of MKD 29,500,000.00 is stated for the purpose of (code 461) “disbursement a credit under credit contract 7522” from the transaction account of the originator, Sparkasse Bank, no. 250000000000111.

The inflow in the amount of MKD 29,500,000.00 from Sparkasse Bank refers to the disbursement of earmarked credit funds from the credit under Contract “ib10” and at the same time the second part of the refinancing.

The transfer order in the amount of MKD 180.000,00 for the benefit of Sparkasse Bank was not available. The outflow refers to the payment of a bank fee for the approval of the credit.

The transfer order in the amount of MKD 29,000,000.00 for the benefit of Eurostandard Bank was not available. The outflow refers to the repayment of the principal on the credit under Contract “esb6”. From the statement of Sparkasse Bank no. 22 dated 01.07.2011, it can be concluded that the earmarked funds from the credit from the inflow in the amount of MKD 29,500,000.00 were used by Sparkasse Bank to finance the outflow, which is in violation of Articles 1 and 4 of Contract “ib10”, regarding which a sanction is stipulated in Article 20, paragraph 1, line 2 of Contract “ib10”<sup>31</sup>. Sparkasse Bank could have prevented or subsequently sanctioned the use of funds for a purpose other than the one for which they were intended, but it failed to do so, which confirms the fact that the refinancing was agreed in advance between Eurostandard Bank and Sparkasse Bank and that it was in the interest of Sparkasse Bank.

With the outflow of funds for the benefit of Eurostandard Bank, the refinancing was completed. The transactions pertaining to the refinancing are summarized in Table 10 below:

**Table 10** – Bank statement of transaction account no. 370011100501333

|   |
|---|
| <b>Bank Statement of transaction account no. 370011100501333, Eurostandard Bank</b> |
|---|

<sup>31</sup> The Bank has the right to declare the loan fully due and payable without the mediation of the court, if the borrower does not use the credit funds for the purpose for which the credit was approved.

| Date   | No. | Owner of the TA                      | Purpose                                 | Outflow<br>/Debited | Inflow/<br>Credited |
|--|-----|--------------------------------------|---|---------------------|---------------------|
| 30.06.2011   | 14  | Eurostandard Bank<br>100000000037002 | Credit<br>disbursement<br>01830/32-0005 |                     | 29,000,000.00       |
| 30.06.2011   | 14  | Sparkasse Bank<br>250999999999964    | Credit<br>repayment                     | 28,700,000.00       |                     |
| 30.06.2011   | 14  | Eurostandard Bank<br>100000000037002 | Credit fee 1830                         | 290,000.00          |                     |
| <b>Bank Statement of transaction account no. 250001000252568, Sparkasse Bank</b> |     |                                      |   |                     |                     |
| Date   | No. | Owner of the TA                      | Purpose                                 | Outflow<br>/Debited | Inflow/<br>Credited |
| 01.07.2011   | 22  | Sparkasse Bank<br>250000000000111    | Credit<br>disbursement<br>7522          |                     | 29,500,000.00       |
| 01.07.2011   | 22  | Sparkasse Bank<br>250999999999964    | Credit fee 7522                         | 180.000,00          |                     |
| 01.07.2011   | 22  | Eurostandard Bank<br>100000000037002 | Credit<br>repayment                     | 29,000,000.00       |                     |

- b) a photocopy of Bank Statement no. 16 on changes and balance of the account with Eurostandard Bank dated 04.07.2011, in which the outflow in the amount of MKD 9,617.00 is stated under number 2 for the purpose of (code 262) "interest in arrears on sub-account 1766/30" to the transaction account of the originator, Eurostandard Bank no. 100000000037002. A photocopy of the Transfer Order is attached to the bank statement, from which it can be concluded that on 04.07.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 370011100201333, a transfer was made in the amount of MKD 9,617.00 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose

of the payment of interest in arrears on the sub-account 1766/30. The order was signed by Lence Krstevska. The order was processed in Eurostandard Bank.

The outflow in the amount of MKD 9,617.00 for the benefit of Eurostandard Bank refers to the payment of interest in arrears on the credit under the Contract on the approval of a short-term credit no. 1766, with an unknown date of conclusion, in the amount of MKD 1,000,000.00, sub-account number 01766/30-0005, designation "esb5".

c) a photocopy of Bank Statement no. 98 on changes and balance of the account with Komercijalna Banka dated 03.08.2011, in which the outflow in the amount of MKD 9,616.50 is stated under number 4 for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank no. 100000000037002; under number 6, the outflow in the amount of MKD 21,698.50 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 7, the outflow in the amount of MKD 22,602.50 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 9, the outflow in the amount of MKD 298,000.00 is stated for the purpose of (code 262) "interest on short-term credit, sub-account 02-420-2226741.1" to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that on 03.08.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 9,616.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of payment of interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka at 13:46hrs, by the clerk Slavica Nešova;
- a photocopy of the Transfer Order, from which it can be concluded that on 03.08.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 21,698.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of payment of interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka at 13:48hrs, by the clerk Slavica Nešova;
- a photocopy of the Transfer Order, from which it can be concluded that on 03.08.2011, at

the order of the originator, the company Cubus Inženiring, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 22,602.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of payment of interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka at 13:47hrs, by the clerk Slavica Nešova; and

- a photocopy of the Transfer Order, from which it can be concluded that on 03.08.2011, at the order of the originator, the company Cubus Inženiring, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 298,000.00 to the transaction account of the recipient, Komercijalna Banka, no. 300000000000133, for the purpose of payment of interest for the sub-account 02-420-2226741.1. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka at 13:50, by the clerk Slavica Nešova.

The outflow in the amount of MKD 9,616.50 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1766, with an unknown date of conclusion, in the amount of MKD 1,000,000.00, sub-account number 01766/30-0005, designation "esb5".

The outflow in the amount of MKD 21,698.50 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1731, with an unknown date of conclusion, in the amount of MKD 2,400,000.00, sub-account number 01731/77-0005, designation "esb3".

The outflow in the amount of MKD 22,602.50 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1681, with an unknown date of conclusion, in the amount of MKD 2,500,000.00, sub-account number 01681/30-0005, designation "esb2".

The outflow in the amount of MKD 298,000.00, for the benefit of Komercijalna Banka, for an unknown reason, on 28.11.2013, was reallocated by the bank for a purpose different than the one for which the payment was made on August 3, 2011, as follows:

- MKD 465,50 for the payment of regular interests on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-281 dated 23.02.2009, in the amount of MKD

- 25,000,000.00, sub-account number 02-420-2224439.0, designation "14"; and
- MKD 297,534.50 for the payment of regular interests on the credit received under the Contract on the approval of a short-term credit, no. 02-1630-2528 dated 30.12.2009, in the amount of MKD 30,000,000.00, sub-account number 02-420-2226741.1, designation "19".

From the bank statement of Komercijalna Banka, no. 97 dated 01.08.2011, and no. 98 dated 03.08.2011, it can be concluded that the company's own funds were used to finance the outflow.

- d) a photocopy of Bank Statement no. 111 on changes and balance of the account with Komercijalna Banka dated 06.09.2011, in which the outflow in the amount of MKD 22,422.00 is stated under number 15 for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank no. 100000000037002; under number 16, the outflow in the amount of MKD 23,356.00 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 20, the outflow in the amount of MKD 320,000.00 is stated for the purpose of (code 262) "payment under the Credit Contract" to the transaction account of the recipient, the company Cubus, no. 300000000066287, with Komercijalna Banka. A photocopy of the Transfer Order is attached to the bank statement, from which it can be concluded that on 06.09.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 22,422.00 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for the purpose of payment of interest. The order was signed by Lence Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp no. 194.

The outflow in the amount of MKD 22,422.00 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1731, with an unknown date of conclusion, in the amount of MKD 2,400,000.00, sub-account number 01731/77-0005, designation "esb3".

The transfer order in the amount of MKD 23,356.00 for the benefit of Eurostandard Bank was not available for inspection. The outflow refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1681, with an unknown date of conclusion, in the amount of MKD 2,500,000.00, sub-account number 01681/30-0005, designation "esb2".

The transfer order in the amount of MKD 320,000.00 for the benefit of the company Cubus and the Credit Contract were not available for inspection.

From the bank statements of Komercijalna Banka, no. 105 dated 26.08.2011 and no. 111 dated 06.09.2011, it can be concluded that the company's own funds were used to finance the outflow.

e) a photocopy of the Bank Statement on changes and balance of the account with Komercijalna Banka dated 07.11.2011, no. 144, in which the outflow in the amount of MKD 44,120.50 is stated under number 3 for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 4, the outflow in the amount of MKD 45,958.50 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that on 07.11.2011, at the order of the originator, the company Cubus Inžineri, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 44,120.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065;
- a photocopy of the Transfer Order, from which it can be concluded that on 07.11.2011, at the order of the originator, the company Cubus Inžineri, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 45,958.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065.

The outflow in the amount of MKD 44,120.50 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1731, with an unknown date of conclusion, in the amount of MKD 2,400,000.00, sub-account number 01731/77-0005, designation "esb3".

The outflow in the amount of MKD 45,958.50 for the benefit of Eurostandard Bank refers to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1681, with an unknown date of conclusion, in the amount of MKD 2,500,000.00, sub-account number 01681/30-0005, designation "esb2".

From the bank statement of Komercijalna Banka, no. 144 dated 07.11.2011, it can be concluded that the company's own funds were used to finance the outflow.

f) a photocopy of the Bank Statement no. 171 on changes and balance of the account with Komercijalna Banka dated 27.12.2011, in which the outflow in the amount of MKD 21,698.50 is stated under number 8 for the purpose of (code 262) "interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 9, the outflow in the amount of MKD 22,422.00 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 10, the outflow in the amount of MKD 22,602.50 is stated for the purpose of (code 262) "interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; under number 11, the outflow in the amount of MKD 23,356.00 is stated for the purpose of (code 262) "payment of interest" to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002; and under number 14, the outflow in the amount of MKD 35,000.00 is stated for the purpose of (code 468) "loan" to the transaction account of the recipient, the company Cubus, no. 300000000066287 with Komercijalna Banka. The following is attached to the bank statement:

- a photocopy of the Transfer Order, from which it can be concluded that on 27.12.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 21,698.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065;
- a photocopy of the Transfer Order, from which it can be concluded that on 27.12.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 22,422.00 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was



processed in Komercijalna Banka and verified with the payment operations stamp number 065;

- a photocopy of the Transfer Order, from which it can be concluded that on 27.12.2011, at the order of the originator, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 22,602.50 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065;
- a photocopy of the Transfer Order, from which it can be concluded that on 27.12.2011, at the order of the recipient, the company Cubus Inžinering, from its transaction account no. 300000002248011, a transfer was made in the amount of MKD 23,356.00 to the transaction account of the recipient, Eurostandard Bank, no. 100000000037002, for payment of the interest. The order was signed by Lenče Krstevska. The order was processed in Komercijalna Banka and verified with the payment operations stamp number 065.

The outflows in the amount of MKD 21,698.50 and MKD 22,422.00 for the benefit of Eurostandard Bank refer to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1731, with an unknown date of conclusion, in the amount of MKD 2,400,000.00, sub-account number 01731/77-0005, designation "esb3".

The outflows in the amount of MKD 22,602.50 and MKD 23,356.00 for the benefit of Eurostandard Bank refer to the payment of interest on credit under the Contract on the approval of a short-term credit no. 1681, with an unknown date of conclusion, in the amount of MKD 2,500,000.00, sub-account number 01681/30-0005, designation "esb2".

The transfer order in the amount of MKD 35,000.00 for the benefit of the company Cubus and the Credit Contract was not available for inspection.

73. From the bank statement of Komercijalna Banka, no. 171 dated 27.12.2011, it can be concluded that the company's own funds were used to finance the outflow.

74. From the documented material of the company Cubus Inžinering, it is evident that the credits under the contracts with designations “esb1”, “esb4”, “esb5” and “esb6” were repaid to Eurostandard Bank and from the available material it is not evident whether the credits under the contracts with designations “esb2” and “esb3” were repaid. If these two credits were really not repaid, Eurostandard Bank incurred damages, as follows:
- on the credit under Contract “esb2” in the amount of MKD 2,500,000.00, which includes the credit principal without interest, and
  - on the credit under Contract “esb3” in the amount of MKD 2,400,000.00, which includes the credit principal without interests,
- which amounts to at least MKD 4,900,000.00 in total.
75. In view of the reviewed documents and the explanations received, it is possible to conclude that during the operation of Eurostandard Bank, which was involved in the dealings with Cubus Inžinering by Komercijalna Banka, a criminal offence of fraud was committed by Saša Tvrtkovic, representative of Komercijalna Banka, and by representatives of Eurostandard Bank who are as yet unidentified. Otherwise, it would not have been possible to open the transaction account no. 370011100201333 in Eurostandard Bank in the name of the company Cubus Inžinering without the cooperation of the legal representatives of the company Cubus Inžinering and without the submission of an adequate security, or to approve credits to this insolvent company.

### 3 CHRONOLOGICAL DESCRIPTION OF THE RELEVANT EVENTS

76. The Eurostandard Bank was established on 28 January 2001 and received licences to operate from the Governor of the NBSM on 14 August 2001, 16 December 2002 and 23 January 2004.
77. On 29 August 2018, the NBSM, in letter No. 17-23985/1, delivered a report of the on-site supervision executed during the period between 18 April 2018 and 7 June 2018, No. 17-23985/1, to the ESB and its Supervisory Board.
78. On 26 September 2018, the NBSM Governor adopted Decision No. 15-30458/1 on regular and additional correction measures for the ESB. One of the measures was a requirement for the ESB to increase its own funds to achieve the capital adequacy ratio of at least 15% by 31 March 2019. In order to stop further increase of the RWA<sup>32</sup>, the ESB was also required to stop issuing credits to the majority of legal and natural persons<sup>33</sup>, to decrease the exposure of “Krmzov” and “DM-OIL” group and banned from increasing the exposure of clients and connected persons to more than 5% of the ESB’s own funds. In addition, the ESB was required to introduce a number of good governance measures.
79. On 10 August, 2018, the company Geneks Kop, owned by Antonija Petruševski, a friend of Tomislav Perovski, the owner of the company Zoi Per, transferred to the account of the company Akademski Pečat 3 million MKD as a loan, which was immediately (on the same day) transferred to the account of the company Dianita. When the money was not returned after one year, Geneks Kop pressed charges against Akademski Pečat, won and managed to collect 1,5 million MKD from Akademski Pečat’s account. As a result of that, the company could not pay taxes, its account was blocked and thus the company was not eligible for the Covid-19 state aid. Meanwhile the company Dianita returned 1 million MKD, which immediately went to Geneks Kop.
80. On 31 December 2018, the ESB transferred 5.8 million MKD to the account of the company Gradsko Taksì Sonce without it having ordered or even known about this transaction. Immediately after that transfer, on the same day, a transfer of the same amount was made from Gradsko Taksì Sonce’s

---

<sup>32</sup> Risk Weighted Assets.

<sup>33</sup> There were some exceptions in relation to clients categorised with the highest rankings in the ESB and in the whole banking system respectively.

account to the account of the company Zoi Per, again without an order or any knowledge of the “payer” – owner of the account. The company Gradsko Taksi Sonce had no documentation<sup>34</sup> which could serve as the basis for the mentioned transactions. On 3 January 2019, the ESB contacted the company’s owner by phone and email and told him that he should not worry since the transaction is covered by a deposit, which the owner had never heard about before. The representative of the ESB allegedly stated that those were instructions of the NBSM. Following that discussion, the ESB falsified all the needed documents to cover up for the transaction, including signatures of the persons from Gradsko Taksi Sonce.

81. Also on 31 December 2018, the ESB transferred 5.8 million MKD to the account of the company Automotiv Popravki without it having ordered or even known about this transaction. Immediately after that transfer, on the same day, a transfer of the amount 5.5 million MKD was made from Automotiv Popravki’s account to the account of the company Zoi Per, again without an order or knowledge of the “payer” – owner of the account, and 299,000 MKD to the account of the company Gradsko Taksi Skopje. The company Gradsko Taksi Sonce had no documentation<sup>35</sup> which could serve as the basis for the mentioned transactions.

82. According to the ESB’s data, the Bank issued the following credits to the following companies<sup>36</sup> (which only served as intermediaries for the ESB’s loans to many other companies) in 2018:

- Multi Ofis: 29,775,086 MKD,
- OM TAM: 27,993,945 MKD,
- TROMAK: 3,876,000 MKD.

The company Multi Ofis served as an intermediary for the following companies to acquire loans: Centro Tobako, Galafarm 2, Helios, So-Ni Kavadarci, Teo Agro, Globalj Gradba, Mobas Strumica, Goreks, Helios Saks, Trans Šped and Fero Centar.

The company OM TAM served as an intermediary for the following companies to acquire loans: Krmzov MR, Galafarm 2, MMR Kompani, Konta Plan (a cession with Goreks), Goreks, Fero Centar and Euro Drvo Gevgelija.

---

<sup>34</sup> For example, a request for a loan, invoice,...

<sup>35</sup> For example, a request for a loan, invoice,...

<sup>36</sup> Owned by the same person.

The company TROMAK served as an intermediary for the following companies to acquire loans: Sara Inženiring, Eno Mak, Teuta Ram, Paragmatika and Minka da Strumica.

83. On 4 January 2019, the company Gradežnik Ohrid transferred 45,000,000 MKD to the account of the company Zoi Per. On the same day, the money was transferred to companies Multi Ofis (15,526,629.00 MKD), Goreks (4,892,219.00 MKD), Panevropa Ltd (17,540,194.00 MKD) and Galafarm (7,040,900.00 MKD) as loans despite the fact that the company Multi Ofis had not signed any loan contract with the company Zoi Per. The sum of 15,526,629 MKD was immediately transferred to the account of company Panevropa Ltd., from the account of the company Multi Ofis – without its knowledge and without any contract signed.

In October 2019, Zoi Per assigned the receivables without any compensation to the company Geneks Kop, established in June 2019. On the basis of that deal, on 18 February 2020, Geneks Kop pressed charges against Multi Ofis for repayment of 250,000 EUR. Just one day later, on 19 February 2020, Nikolče Petkovski, the CEO of the ESB, visited the owner of the company Multi Ofis and asked him to sign contracts dated 31 December 2019, according to which Multi Ofis would take over the debts of the debtor – the company Zoi Per towards the creditor – the company Gradežnik Ohrid. The owner of the company Multi Ofis is convinced that the company Zoi Per was used for the extraction of money from the bank without the knowledge of “participating” companies.

The case is in court now, with Multi Ofis claiming that they did not sign any contract and did not order any payments to Panevropa Ltd.

On 31 December 2019, three debt assumption agreements were signed. According to the first one, the company Galafarm 2 assumed the debt of 567,123.00 MKD of the debtor – the company Goreks towards the creditor – the company Multi Ofis. According to the second one, the company Galafarm 2 assumed the debt of 221,311.00 MKD of the debtor – the company Goreks towards the creditor – the company OM TAM. According to the third one, the company Multi Ofis assumed the debt of 15,801,144.00 MKD of the debtor – the company Zoi Per towards the creditor – the company Gradežnik.

84. In February 2019, a meeting took place between the NBSM Governor and Mr Trifun Kostovski, the ESB major shareholder, where Mr Kostovski was personally informed about the situation in the ESB and about the fact that the NBSM was getting ready to revoke licences of the ESB Management Board members.
85. On 3 May 2019, the ESB – in the same manner as in December 2018 and January 2019, i.e. without an order or knowledge of the company – transferred 3 million MKD to the account of Gradsko Taksi Sonce and from there transferred it immediately to the account of the company Zoi Per. Again, the company Gradsko Taksi Sonce was asked to sign some documents for a “loan”, again allegedly following the advice of the NBSM, more precisely of the NBSM representatives, who were daily present in the ESB. Director of the ESB (Petkovski) and director of Zoi Per (Perovski) promised the owner of the company that the money would be returned in one-and-a-half years. Petkovski also told him later that the money would be paid back in September, which did not happen. Then he promised it would be returned in November but again it did not happen. In May 2020, the new Director of the ESB, Goran Trajkovski, invited the owner of the company Gradsko Taksi Sonce to “restructure” the loan. The owner of the company told Trajkovski that its company had not taken the loan and used it and that he would press charges against the ESB. Trajkovski knew all details of the fraud and said that they would press charges, too. In addition, he mentioned that several other companies and individuals had also been used in the same manner.

Since the owner of the company Gradsko Taksi Sonce did not have enough money to sue the ESB, he decided to go public. He also wrote a letter to the NBSM, explaining what the ESB was doing. After two months he received the answer of the NBSM that they were not authorized to deal with such cases and that he would have to go to court. No further steps followed by the NBM.

When his lawyer tried to cancel the contract for a loan with the ESB<sup>37</sup>, they replied that the company Gradsko Taksi Sonce had received the money. When he asked for the documents on basis of which the money had been transferred to Zoi Per, he allegedly received the answer that he was not authorized to ask for that. Shortly afterwards the ESB went bankrupt.

---

<sup>37</sup> On 1st July, 2020, see below, in Para 57.

When the owner of the company Gradsko Taksi Sonce was still hoping to get the money back, he was asked by the owner of Zoi Per if Zoi Per could lend some money to the company Galafarm 2 through his company. He accepted and on 28 February 2019, an amount of 4,114,500 MKD was transferred from Zoi Per to Gradsko Taksi Sonce's account and immediately on the same day, 28 February 2019, onwards to Galafarm 2. When the owner of Gradsko Taksi Sonce understood what was going on, he pressed charges against Galafarm 2. The moment he won, his company's account was blocked by an execution order initiated by Zoi Per.

86. Also on 28 February 2019, and in the same manner as described above, Zoi Per transferred 4 million MKD to the account of the company Akademski Pečat, from where the same amount was transferred to the account of Galafarm 2 on the same day. When the owner of Akademski Pečat understood what was going on, he pressed charges against Galafarm 2. The moment he won, his company's account was blocked by an execution order initiated by Zoi Per.
87. On 15 May 2019, the NBSM Governor adopted Decision No. 15-16805/1, amending Decision No. 15-30458/1 on regular and additional measures for the ESB. With the new Decision, the NBSM required from the ESB Supervisory Board to deliver an improvement plan containing measures for enhancing the ESB own funds in order to improve the ESB capital adequacy ratio to 15% by 15 September 2019. In addition, the ESB was banned from performing several functions without prior approval of the NBSM: starting new financial activities, increasing the risk portfolio by more than 5% yearly, paying any dividends and the like to shareholders, other persons with special rights and employees of the ESB, increasing general exposure of the Bank.
88. On 6 June 2019, the Governor of the NBSM adopted Decision No.15-16805/8 in which she approved the Improvement Plan and introduced some additional prohibitions for the ESB. Without prior approval of the NBSM, the Bank was prohibited from: starting new financial activities, increasing the risk weighted assets above the planned levels listed in the Plan, making a dividend payment or any payment in the form of bonuses, grants and the like to shareholders, persons with special rights and responsibilities and to Bank employees and increasing the total exposure of the Bank above the planned levels listed in the Plan.

89. On 31 July 2019, Mr Goran Trajkovski received the approval of the NBSM to become a member of the Management Board of the ESB. Officially, he took the post on 14 August 2019. On 29 November 2019, he became the Chairman of the Management Board.
90. Despite the fact that it was agreed that the major shareholder would provide new capital for the ESB by the end of July 2019, this did not happen. Moreover, the shareholder kept postponing the already agreed meeting with the NBSM Governor claiming that he was not in the country, when he was spotted at lake Ohrid. Meanwhile, Mr Nikolče Petkovski, the Chair of the Management Board, travelled to Venezuela to negotiate a loan of 17 million EUR for GOFI, which would be used for the recapitalization of the ESB. He was not successful in acquiring the money.
91. On 12 August 2019, a meeting was held between the NBSM Governor, her Vice-Governors, Director of the NBSM Supervision, the shareholder, Mr Trifun Kostovski, and Mr Trajkovski. During the meeting, Mr Kostovski asked the Governor not to approve the purchase of the ESB shares by the company Continental Holding for Development SA Via Francini 10, 6850 Mendrisio, Switzerland, represented by Mr Nikolaj Hintolarski, due to a lack of confidence in Mr Hintolarski's financial capabilities. Accordingly, Mr Kostovski promised to find the needed money himself and invest it into the Bank in accordance with the Bank Improvement Plan of 27 May 2019. It was agreed that the first tranche of the money would be invested at the end of August or beginning of September 2019. During the same meeting, the NBSM handed over the decision No. 15-16805/14 and amendments to decision No. 15-30458/1, according to which the ESB was not allowed to render any credits any more to natural and legal persons except for credits with first-priority guarantees and to pay any amounts to shareholders and connected persons, on account of having failed to follow the Bank Improvement Plan and related Action Plan of 27 May 2019 and on account of wrong classification of risks for some clients<sup>38</sup>.
92. Mr Hintolarski was allegedly brought to North Macedonia by the owner of the company Zoi Per and was on good terms with Mr Zaev, the PM of North Macedonia at the time, whom he visited several times. He was also a good friend of the former ESB CEO, Mr Petkovski. During the last visit of Mr Hintolarski to the NBSM, he was accompanied by Mr Petkovski, who was not the CEO of the ESB

---

<sup>38</sup> Which meant that the ESB was obliged to increase the level of reservations.



anymore. When asked in which capacity they were participating at the NBSM meeting, Mr Hintolarski allegedly replied that he was “representing Mr Zaev” and Mr Petkovski allegedly said that he was present on the request of the “government”.

93. On 15 August 2019, a meeting was held in the ESB with the participation of the ESB representatives and the NBSM auditing team, including the Director of Supervision. Once again, the need for additional capital in the ESB was underlined and Mr Trifun Kostovski promised again to do that soon. During the same meeting, Mr Petkovski, the Chairman of the ESB Management Board, announced an appeal against the two NBSM decisions of 12 August, 2019.
94. In the period after 12 August 2019, the ESB continued to issue loans with first-priority guarantees in the form of cash deposits. On 1 October 2019, Mr Petkovski, the Chairman of the ESB Management Board, left for a vacation despite the fact that exactly on the same day the NBSM Auditing Report became final and the legal conditions for the NBSM to take over the administration of the ESB and initiate a bankruptcy procedure were met.
95. In August and especially in September 2019, some of the ESB staff, mainly in higher positions, started to withdraw their money from the bank. In addition to that, allegedly following the information of the Chairman of the ESB Management Board concerning the situation at the bank, the biggest depositor<sup>39</sup> of the ESB decided to withdraw 10 million EUR on 1 October 2019. As a result, other ESB clients also learnt about the situation at the bank and withdrew another 15 million EUR of deposits. In order to fight the rumours on the possible collapse of the bank, the ESB decided to pay 15 million EUR of pension money in advance. Those were the days when the liquidity of the ESB was – by far – the worst, much worse than at the time of bankruptcy in 2020. The ESB even paid a fine for not reaching the required liquidity level.
96. On 19 August 2019, the NBSM, in a letter No. 17-26125/2, submitted to the members of the ESB Management Board a report of the on-site supervision<sup>40</sup> No. 17-26125/2, issued on the same day, 19 August 2019. In the document it is clearly and explicitly stated on page 8 that the capital adequacy ratio of the Bank is negative.

---

<sup>39</sup> Makedonijaturist.

<sup>40</sup> Conducted between 8 April 2019 and 6 June 2019.

Despite the fact that the report of the on-site supervision No. 17-26125/2 is described in the NBSM Decision No. 15-20139/1 of 12 August 2020, which revoked the ESB banking license, the fact about the identified negative capital adequacy ratio of the Bank on 19 August 2019, is omitted (see below).

97. The NBSM continued to exert pressure on the ESB shareholders for additional investments in the bank. The company Continental Holding for Development SA Via Franscini 10, 6850 Mendrisio, Switzerland, appeared as a possible buyer of the ESB again, and asked for a new NBSM approval. Additionally, the NBSM started activities for the ESB to be taken over by Komercijalna Banka Skopje. During the first talks Komercijalna Banka rejected the possibility of buying the ESB<sup>41</sup> since it was more inclined to take it over for free plus for a certain compensation. In order to fix the problem with a decreasing image of the ESB, the information concerning talks between the ESB and Komercijalna Banka was leaked and published on the official website of the Stock Exchange in Skopje at the end of September 2019.
98. In September 2019, the current bankruptcy trustee of the ESB allegedly withdrew 500,000 EUR, which he had kept in an account with the ESB, in the form of a time deposit with privileged interests, allegedly after receiving insider information that the Bank had serious problems.
99. In the second half of September, the owner on the insurance company EUROLINK participated at the meeting with the NBSM, where she was asked to use 1.5 million EUR of the EUROLINK deposit in the ESB for the recapitalisation of the ESB. She found out that the NBSM had already made a due diligence of her company, however, she also realized that the valid insurance legislation in North Macedonia does not allow a transformation of a insurance company's deposit into the share capital of a bank.
100. On 30 September 2019, a non-disclosure agreement and an agreement on exchange of information were signed by the ESB and Komercijalna Banka. An encrypted communication link between the banks was established and relevant working groups were formed. The NBSM also gave the green light to the ESB to provide the last NBSM Auditing Report on the ESB to Komercijalna Banka.

---

<sup>41</sup> As a consequence of the failed deal from some years ago when Komercijalna Banka offered the ESB 3% of its shares while the ESB wanted to have 5%.

101. In this way, the ESB bought some time to deal with its biggest problems: increase the liquidity ratio, improve the situation of non-performing loans and implement requirements from the NBSM Auditing Report, especially to close its business relations with non-resident clients suspected of money laundering<sup>42</sup>.
102. On 30 September 2019, the NBSM sent a letter No. 17-26125/6 to the ESB, responding to the ESB's objections of 4 September 2019, to the results of the external on-site supervision at the Bank, conducted in the period from 8 April 2019 to 6 June 2019, which were sent to the ESB on 19 August 2019 (see above). The NBSM more or less rejected all objections.

In the letter, the NBSM also pointed at some severe irregularities in the work of the ESB:

- use of credits against declared and approved purposes, where it was identified that companies did not spend the credits received from the ESB for the announced and approved purposes but mainly for loans to other companies or for direct coverage of due liabilities of other companies. In this connection, companies Atlantik Group, A-Cona Aleksandar, Zoi Per Kompany, Beton Plus, Jugotrejding, Olma Teks, Zoka Trejd, GSO Trans, Relaks Sas, Multiofis, MTS, Goreks, Konoba Gold, Tromak, CD Fruit, Vinkon, etc., were mentioned. In this, clearly well-organised scheme, some companies, mainly Zoi Per Kompany, had the role of intermediaries when placing the credits to their end-users in the form of loans<sup>43</sup>,
- there were cases where credits given were used for loans to owners of companies receiving the credit,
- there were also cases where the credit documentation obviously contained false information,
- not respecting limitations on issuing credits to connected clients by avoiding identification of connected clients, where companies Janev Trejd, Tete EM, DM Oil, Krmzov, Netkom Plus, Minka DA, Krmzov, Pink Flaj, B&G Logistik, Geneks Kop, Om Tam, Multi Ofis were mentioned, some of

---

<sup>42</sup> In the first three quarters of 2019 only clients from Venezuela were engaged in transactions in the value of 110 million EUR, of which 10 million EUR were given in the form of loans to the most exposed clients of the ESB in North Macedonia (to bank accounts with other banks).

<sup>43</sup> But the NBSM did not mention that.

them again as part of an organised scheme for covering due liabilities of other companies with or without credits given to them<sup>44</sup>,

- improper risk classification of clients (Trgoprevoz Slave, Ferospektar, Geneks Kop, Automotiv Popravki (the credit received was given as a loan to company Zoi Per), Dan-Mak, Krmzov, Zoka Trejd, Olma Tek, CD Fruit, Vikon, Grupacija Galafarm (Galafarm 2 Eleonora, Galafarm, De-Jo Jovan, Inform LP, whose due liabilities were being covered by loans from companies Goreks, So-Ni, ATV Zeus, Barton and Dianita, for which the money came from credits taken at the ESB), Zoi Per Kompany, GSO Trans (the whole credit received was transferred to company Zoka Trejd as a loan), Recikl Eko Trejd, DM Oil, Zoki Petrol, Čame Snežana i dr., Gradsko Taksi Sonce (when the credit was received by Gradsko Taksi Sonce, the money was transferred to Zoi Per Kompany, from which the money went to the company Gradežnik and, finally, to Pan Europa LTD, which used it for financing its liabilities in other banks), Izolmont, ATV Zeus (97% of its receivables were composed of loans given to other companies: Galafarm Group 39%, Krmzov 19%, Barton 7%, Delev Trejd 7%, Minka Oil 7%, Goreks 4%, Kambrium 3%, Sanšped Trans 3%, Estera Nova 3%, which means that ATV Zeus is another major intermediary, similar to Zoi Per Kompany, taking credits at the ESB only to use them for loans to other companies, enabling them to cover their due liabilities to other banks), Arbor Group, MTS, Eno Mak, Povardarje Špedicija and Sekjurikom Multiservices International), mostly based on a well-organised scheme of mutual covering of liabilities of companies at different banks through a developed system of loans, in violation of the established rules of an organised banking system.

103. A group of companies, which was mentioned several times in the NBSM letter above, was the Galafarm Group, whose due liabilities were covered through loans from other companies. A closer look at some financial operations of the Group shows the following picture:

- in the period between 4 January 2016 to 2 January 2018 it received 5 loans from the company Netkom Plus in the total value of 18,247,982 MKD and returned 12,116,591 MKD,
- in the period between 26 July 2017 and 29 August 2018, the Group also received another 3 loans from Netkom Plus<sup>45</sup> in the total value of 14,246,778 MKD and paid back 11,647,952 MKD,

---

<sup>44</sup> Ibid.

<sup>45</sup> In addition to "Netkom Plus", also "BKD-M" is mentioned at the top of the balance sheet.

- in the period between 6 March 2019 and 30 July 2019, it received 3 loans from the company Multi Ofis in the total value of 17,656,000 MKD and returned 8,722,266 MKD,
- in the period between 7 March 2014 and 8 July 2019, it received 10 loans from the company Trgoprevoz in the total value of 16,282,076 MKD and paid back 8,722,395 MKD,
- in the period between 10 July 2015 and 30 July 2019, it received 4 loans from the company Estera-Nova in the total value of 15,514,237 MKD and returned 13,775,713 MKD,
- in the period between 4 January 2016 and 29 October 2020, it received 10 loans from the company Barton in the total value of 61,787,139 MKD and paid back 40,703,048 MKD,
- in the period between 1 December 2016 and 3 November 2020, it received 7 loans from the company Arbor Interior Solution in the total value of 21,847,202 MKD and returned 9,369,366 MKD,
- in the period between 3 April 2017 to 29 May 2019, it received 11 loans from the company So-Ni in the total value of 47,921,151 MKD and paid back 25,248,378 MKD,
- in the period between 15 October 2014 and 30 April 2019, it received 9 loans from the company Bag-Kop in the total value of 52,335,419 MKD and returned 41,729,377 MKD,
- in the period between 29 December 2014 and 10 June 2020, it received 18 loans from the company Goreks in the total value of 51,416,214 MKD and paid back 29,937,312 MKD,
- in the period between 6 May 2015 and 22 September 2020, it received 11 loans from the company ATV Zeus in the total value of 74,657,232 MKD and paid back 52,573,316 MKD,
- in the period between 3 May 2016 and 18 April 2019, it received 4 loans from the company Krmzov in the total value of 7,264,168 MKD and paid back 5,935,734 MKD.

Summarising the information above, it is obvious that Galafarm Group, in the period between 7 March 2014 and 3 November 2020, received 95 loans from 11 companies in the total value of 399,175,598 MKD and paid back 260,481,448<sup>46</sup> MKD.

The NBSM representatives were always very interested in the operations of the Galafarm Group but it is unclear whether they wanted to clarify its role in the illegal lending scheme or whether there were some other reasons for their interest. In the absence of any meaningful reaction of the NBSM to target the illegal lending scheme, the second option of “other reasons” seems more probable.

---

<sup>46</sup> Without paid interests.

104. At the end of October 2019, the ESB – following the request of the NBSM – started to draft a Plan for the management of the capital and liquidity.
105. In the autumn of 2019, the owner of the company EUROLINK, who is also a family member of one of the shareholders, attempted to save the ESB. She was first asked by the NBSM to transform the EUROLINK deposit of 1.5 million EUR into the share capital of the Bank. Since due to the national legislation on the operation of insurance companies that would be illegal, she finally decided to sell her insurance company EUROLINK to the Austrian company GRAWE to obtain the money to invest into the share capital of the Bank. When GRAWE's representatives arrived in Skopje with a binding offer, a meeting was organized at the NBSM on 20 November 2019, where they found out that some time would be needed for the Insurance Supervision Agency to issue all the necessary permits. The NBSM was pressing hard, aiming at recapitalization of the ESB very soon and therefore suggested that the company GOFI, as one of the ESB's shareholders, take a loan with Komercijalna banka and secure it with a mortgage on EUROLINK shares offered for sale.
106. Komercijalna banka assessed the value of the shares at 7.5 million EUR. However, when the representatives of EUROLINK's buyer offered to pay 10 million EUR in advance in just 5-6 days, the Governor rejected the offer and insisted that the money had to be in the account of the ESB "today".
107. As stated above, the NBSM insisted that GOFI should immediately take a loan of 10 million EUR with Komercijalna Banka and pledge it with shares of EUROLINK, offered for sale. However, the Management Board of Komercijalna Banka was not satisfied with the pledge of shares only. They also required that the private house<sup>47</sup> of the major ESB shareholder should be pledged and that all ESB's shareholders, its Management and Supervisory Boards sign a statement validating a decision of the former CEO of the Bank, who without proper authorization transferred 3 million EUR to Komercijalna banka to be used as collateral for the loans of some legal persons heavily exposed at the ESB<sup>48</sup>, now managed by Komercijalna banka<sup>49</sup>.

---

<sup>47</sup> In the value of approx. 4 million EUR.

<sup>48</sup> Jugotrading, Krmzov, Prototip, Galafarm.

<sup>49</sup> Details of those operations are contained in the Internal Audit Report from November 2019, which was also sent to the NBSM. No reaction followed.

108. Moreover, during the same meeting with ESB representatives<sup>50</sup>, Komercijalna banka required the signature of another document, which would allow it to continue to use the mentioned 3 million EUR. The request was made in front of the NBSM representatives, including the Governor herself, three vice-governors and the Head of Supervision, who did not react to such a strange, most probably also illegal request. When representatives of the ESB declined to sign those two documents, the representative of Komercijalna banka announced that if that was the case there would be no loan, which, finally, forced the ESB representatives to sign the documents validating an old and most probably illegal decision of the former CEO of the ESB and giving the green light to Komercijalna banka to continue to use 3 million EUR.
109. Thus, GOFI was forced to take out a loan – pledged by the shares of EUROLINK – of 615 million MKD from Komercijalna banka, which happened on 26 November 2019<sup>51</sup>, when GOFI also had to immediately pay around 300,000 EUR to Komercijalna banka<sup>52</sup>.
110. Finally, Eurolink was sold for 17.5 million EUR, of which its owner immediately returned 10 million EUR to Komercijalna Banka. Meanwhile, 10 million EUR acquired by GOFI as a credit entered the ESB not as recapitalization but as a subordinated loan. Namely, Trifun and Kosta Kostovski wrongly expected that the subordinated loan would close the issue of liquidity ratio with the NBSM but still enable GOFI to earn 4% interest.
111. The operation of transferring heavily indebted clients from one bank to another happened in the case of the company Galafarm: when Galafarm, due to its exposure at Komercijalna banka could not get loans there anymore, the company was “transferred” on the basis of the agreement between the ESB and Komercijalna banka to the ESB, which continued to finance it. Those loans were secured with a second priority mortgage, while Komercijalna banka was in possession of a first priority mortgage on the same real estate for the same company. In practical terms, the company was receiving money from the loans of the ESB and used them to pay the loan at Komercijalna banka, which had much better collaterals than the ESB. The company’s debt to

---

<sup>50</sup> One of the shareholders and the new CEO.

<sup>51</sup> On exactly the same day when the buyer of Eurolink would execute the advance payment.

<sup>52</sup> In the form of the credit approval fee + advance payment of interest.

Komercijalna banka was decreasing, while its debt to the ESB was increasing. When it reached the limit of exposure at the ESB, they simply established a new company, Galafarm 2, which continued to borrow money from the ESB.

112. Meanwhile, due to significant improvement of the NPL portfolio, in December 2019 the NBSM expressed willingness to adjust the Bank Improvement Plan. The new Plan would cover the period of 2 years if the following conditions were met: additional investments of 3.5 million EUR into ESB by 30 April 2020, and 2 million EUR by 31 December 2020 – with the possibility of postponement until 31 March 2021, in the case of continuous improvement in the NPL portfolio. The new Plan was to be formally adopted on 15 December 2019, but the major shareholders did not allow the subordinated loan of 10 million EUR to be used for covering the ESB losses because they did not want GOFI to lose 4% of interest, which was used by the company to settle its monthly obligations<sup>53</sup> towards Komercijalna Banka.
113. In this way, the liquidity ratio was not improved, which was particularly damaging considering that in December the ESB had to undergo an external audit, which – in the case of settling the ESB losses – would show an improvement of that ratio<sup>54</sup>, which might have been one of the elements influencing the NBSM to lift the ban on giving loans and start normal operations on 1 January 2020. Finally, in February 2020, 10 million EUR from the mentioned subordinated loan and 1 million EUR from another subordinated loan were used to cover losses of the ESB but that had no influence on the external audit in December 2019.
114. In the period from October to December 2019, the ESB recovered 15.2 million EUR from the NPLs, increasing the liquidity ratio by 1.5 % to 2%. In the period from January to March 2020, another 6 million EUR were recovered but those efforts had to stop due to the Covid-19 emergency situation, during which forced repayments were prohibited completely and the regular ones had to be reprogrammed. In total, the ESB managed to recover 21.2 million EUR from the NPLs in six months only but its further efforts in this area were stopped by the Covid-19 emergency situation.

---

<sup>53</sup> Approximately 110,000 EUR/month.

<sup>54</sup> According to an unofficial calculation, it would have increased to over 8%.



115. On 4 February 2020, the NBSM Governor adopted a Decision No. 15-3539/1 on amending the Decision No. 15-16805/8 on regular and additional correction measures for the ESB. The new Decision approved amendments to the Improvement Plan, which was based on the following assumptions: change in the structure of clients, introduction of new services with related marketing activities, introduction of a long-term lending schemes, especially for SMEs. The Decision also introduced some prohibitions for the ESB. It was prohibited to: start performing new financial activities, increase the risk weighted assets above the planned levels listed in the revised Plan, pay a dividend or any other payment in the form of bonuses, grants and similar to shareholders, persons with special rights and responsibilities and employees and increase the total exposure of the Bank above the planned levels listed in the revised Plan.
116. On the same day, 4 February 2020, the NBSM adopted a Decision No. 15-3540/1, based on which the Bank was allowed to give loans to natural persons classified in A risk category but not to legal persons with the exception of credit exposures secured by a first-priority security instrument.
117. On 24 March 2020, the Government of North Macedonia issued a Decree with the force of law No. 44-2437/1 (Služben Vesnik, No. 80/2020), according to which initiating any bankruptcy procedure during the Covid-19 state of emergency and three months afterwards was not allowed. Similarly, all already initiated bankruptcy procedures were delayed for the duration of the state of emergency, as well as for three months after the termination of the duration of the state of emergency. The state of emergency in North Macedonia was declared by the President of the country on 18 March 2020 and ended on 13 June 2020.
118. On 27 April 2020, the NBSM Governor adopted a Decision No. 15-12059/1 amending the Decision No. 15-30548/1 and Decision No. 15-16805/8 on regular and additional correction measures for the ESB.
119. On 22 May 2020, the Governor of the NBSM issued a Decision No.15-13672/1, amending the Decision No. 15-30458/1. Now, restrictions on financial lending activity were reintroduced in the case of natural persons, the Bank was required to place every newly collected deposit in its entirety in high quality liquid assets and it was prohibited from conducting transactions that meant direct or indirect payment of deposits to shareholders and persons related to that category.

120. On 26 May 2020, the NBSM Governor adopted a Decision on partial control of the work of the ESB.
121. On 27 May 2020, the NBSM sent its administrators into the ESB, therefore, they had every opportunity to closely monitor activities of the ESB.
122. On 29 May 2020, during the 178<sup>th</sup> meeting of the ESB Supervisory Board, the establishment of an Internal Auditing Centre was discussed but the final decision was postponed until the recruitment of staff for the new Centre was finalized.
123. On 29 May 2020, the Government of North Macedonia issued a Decree No. 44-4744/1 cancelling the Decree with the force of law of 24 March 2020, according to which initiating any bankruptcy procedure during the Covid-19 state of emergency and three months afterwards was not allowed. According to the new Decree, the bankruptcy procedures against the bankruptcy debtors were to be introduced after the termination of the state of emergency (on 30 June 2020).
124. The efforts of the ESB to find a strategic partner continued. In June 2020, a new potential strategic partner from Dubai was represented to the Supervisory Board. The new potential partner engaged the auditing company PwC as its representative in North Macedonia. Meanwhile, the major shareholder also sent some other potential partners to the NBSM. When one of them was arrested, that caused significant damage to the ESB image and serious doubts in its real intentions.
- During the presentation on the ESB's financial situation, the potential strategic partner was informed that the expected income from the ESB NPLs by the end of 2020 was 4.5 million EUR<sup>55</sup> although an income of 8 million EUR was an objective possibility, which was a fact known to the Head of the NBSM Supervision Ms Viktorija Gligorova, who was present when the thorough analysis of each of the NPL debtors was made.

---

<sup>55</sup> That was the most conservative assessment of the possibilities.

125. On 1 June 2020, due to a drop of the ESB own assets below 560 million MKD, the NBSM Governor adopted a decision No. 15-1-14082/1, revoking the ESB license for international securities trading<sup>56</sup>.
126. On 26 June 2020, the ESB started a dispute at the Administrative Court against the decision of the NBSM Governor No. 15-13672/1 of 22 May 2020.
127. On 30 June 2020, the Supervisory Board of the ESB, at its 179<sup>th</sup> meeting, approved the Report of the ESB Risk Management Committee of May 2020, according to which the capital adequacy ratio in the ESB in May 2020 was 5.91%.
128. On 30 June 2020, the ESB submitted a “Statement of the capital adequacy ratio with the condition” to the NBSM, according to which the capital adequacy ratio on 30 June 2020, calculated by the Bank itself, was 5.55%, with the level of own funds of 326 million MKD.
129. On 1 July 2020, the ESB received letters from companies Automotiv Popravki and Gradsko Taksi Sonce rescinding the contract with the ESB due to misuse of their bank accounts.
130. On 6 July 2020, the ESB sent to the NBSM Information and Proposal for an amended Improvement Plan due to the Covid-19 situation, in which the Bank explained reasons for the failure of the amended Improvement Plan of 4 February 2020, and submitted a new proposal to revise the already amended Improvement Plan.
131. On 13 July 2020, the NBSM, under No. 15-3539/7, issued a Response to the amended Improvement Plan of 6 July 2020.
132. On 16 July 2020, a representative of the potential investor for the purchase of the ESB informed the NBSM in writing<sup>57</sup> that they had concluded a binding MoU with the ESB and some of related shareholders (EHS, GOFI), which entitled the investor to acquire 80% shareholding in the ESB. He also informed the NBSM that the investor had ordered the auditing company PwC to prepare a

---

<sup>56</sup> Not influencing security trading in the country.

<sup>57</sup> Following an oral discussion with them the day before, 15 July 2020.

due-diligence report on the ESB and on its basis a Business Plan/Plan for improvement of the ESB to be delivered in the week from July 31 to August 5. The representative of the investor also suggested an in-person meeting between the investor and the NBSM in the first/second week of August.

133. On 17 July 2020, the ESB responded to the letter from the NBSM of 13 July 2020 and the Management Board again asked for understanding. In the letter, the ESB pointed at improvements in its work and listed several reasons for its deteriorating situation, ranging from the global economic impact of Covid-19 to NBSM measures – the general ones<sup>58</sup> and the ones designed especially for the ESB<sup>59</sup>, asking for understanding and support, which would enable the Bank to continue with operations.
134. On 18 July 2020, the representative of the investor sent another message to the NBSM, thanking them for their confidence in the investor and informing them about the shortening of the period for receiving the PwC Business Plan/Plan for improvement of the ESB to 31 July at the latest. In addition, the suggestion for an in-person meeting was repeated, this time for the first week of August only.
135. On 27 July 2020, the ESB sent a new letter to the NBSM, in which it emphasized and clarified certain points of the request of 6 July 2020, and the circumstances in which the Bank found itself and, therefore, asked the NBSM for understanding regarding the slow implementation of the Improvement Plan. Additionally, the letter also mentioned that accelerated processes for the sale of the Bank's shares were taking place in which the NBSM was included on a daily basis.

In accordance with Article 133, Paragraph 1/7 and Paragraph 2/2/10 of the Law on Banking, the ESB's letter also invited the NBSM to order the shareholder(s) to recapitalize the bank, a measure

---

<sup>58</sup> Adoption of a Decree to stop all enforcement proceedings, introduction of changes in the Law on Bonds, according to which interest rates were reduced while liabilities remained unchanged, amending Methodology for credit risk management, where relief was provided only for credits and mortgages classified in A, B and C (regular) categories, while no relief was provided with regard to the method of calculation of losses for the remaining risk categories.

<sup>59</sup> Not lifting the NBSM ban on issuing loans after what the Board of the ESB Directors called "the recapitalization of the Bank in December 2019", which allegedly contributed to a drastic reduction in functional capital.

which had not been taken since June 2015 despite the fact that since then the ESB never maintained the required adequacy capital ratio.

136. On 28 July 2020, the ESB Supervisory Board sent a letter No. 02-5405/22 to the Governor of the NBSM as a response to her letter No. 02-16550/2 of 9 July 2020. In the letter, the Supervisory Board expressed its satisfaction over genuine attempts of a serious foreign investor to recapitalize the ESB and over his cooperation with the NBSM, requesting the Governor to do everything needed in the framework of her powers to successfully conclude negotiations with the investor and recapitalize the Bank.
137. Following the initiative of one of the Vice-Governors of 4 August 2020, a video call between the ESB Supervisory Board and vice-governors of the NBSM took place on 5 August 2020, during which – following an explanation from the ESB itself that the bank's losses were a consequence of mismanagement of the risks in the loan portfolio in the past period and the weaknesses in loan approval procedures, constantly deteriorating the capital position of the bank and pushing its capital adequacy ratio far below the regulatory minimum and causing the already present insolvency – it was agreed that 3.5 million EUR<sup>60</sup> would be invested by one of the shareholders into the ESB by 14 August 2020. During that meeting, the NBSM also expressed their appreciation of the potential buyer of the bank.
138. On 4 August 2020, a former owner of the company EUROLINK sent a letter to the Governor of the NBSM as a reply to the Governor's letter of 17 June 2020. In her letter, she informed the Governor that she was not a direct shareholder of the ESB and that after the sale of EUROLINK she had no intention of any further investment into the ESB. She also explicitly mentioned that putting a mortgage on EUROLINK shares to pledge for GOFI's credit from Komercijalna Banka had been the Governor's idea in which she unwillingly participated, only trying to save the ESB. She also underlined that all information she had about the ESB was information received from the Governor. She was also very explicit in stating that she had no intention of taking over any management position in the ESB and that she would only communicate with the Governor through her legal representative in the future.

---

<sup>60</sup> Also consisting of a loan for which a house of one of the shareholders would serve as collateral.

139. On 6 August 2020, the Portfolio Manager from the Off-Site Supervision and Licensing Department of the NBSM, sent an email to the ESB, in which she informed the Bank that following the quarterly report of the ESB Risk Management Board, approved by the 180<sup>th</sup> Session of the ESB Supervisory Board, the NBSM found that there was a mistake of the ESB in the calculation of the needed correction of the loan portfolio value on 30 June 2020 and, therefore, the calculated capital adequacy ratio on 30 June 2020 was not +5.5% as stated by the ESB but -1.23%. In addition, the Portfolio Manager required from the ESB to ensure full reservation for loans given to companies Jugotrejding, Strumica, Cvetanovski Agrar, Kumanovo<sup>61</sup> and Fero Centar, Skopje. Finally, the Manager requested that the Supervisory Board be informed about the mistake concerning the capital adequacy ratio and about the need to correct the Report of the Risk Management Board.
140. On 6 August 2020, the potential investor sent the final Business Plan for the ESB prepared by the PwC to the NBSM and expressed the willingness to immediately deposit 2 million EUR directly in the ESB in order to allow the NBSM to continue the licensing process for the investor. If the NBSM did not approve the licence for the investor, the ESB would refund 2 million EUR to the investor.
141. On 6 August 2020, the NBSM sent an email to the representative of the investor, informing him that – following the last email from the investor – the NBSM understood that the potential investor “does not stand ready to provide the initial capital support, neither in terms of the amount, the type of instrument needed, nor in terms of the specific timeline, which is necessary given the state of the bank”. The NBSM also expressed the opinion that the initial deposit of 2 million EUR offered by the investor did not qualify as a capital instrument and it was well below the urgently needed amount.
142. The representative of the investor replied to the above mentioned NBSM email on the same day, 6 August 2020, stating that their plans for recapitalization of the ESB were based on the due-diligence report of the ESB, carried out by the PwC, and on the Business Plan, also developed by the PwC. According to that plan, the investor would immediately invest 2 million EUR, followed by another 5 million EUR by the end of 2020 and any additional sum in the following years, if needed.

---

<sup>61</sup>Although Jugotrejding and Cvetanovski Agrar did not have credit agreements signed with the ESB, they were receiving the money from those “credits”.

An explanation was also added that it would be economically not viable for the investor to invest the full amount of money without prior acquisition of the necessary approvals of the NBSM. However, understanding the problem of the NBSM's identification of the first tranche (2 million EUR) as a capital investment, the investor offered to make an unconditional upfront investment of 2 million EUR immediately if the NBSM issued a principled approval letter stating that the NBSM did not foresee any major issues in the investor getting the licence to own 80% of the ESB.

143. On 7 August 2020, at the 182<sup>nd</sup> Session of the Supervisory Board, the NBSM's request of 6 August 2020 was discussed and the Board requested the Management Board to conduct a detailed analysis concerning the mistake in the calculation of the capital adequacy ratio.

In addition, Mr Kosta Kostovski informed the members of the Supervisory Board about the efforts of the investor to buy the bank. According to that information, the investor received a negative answer to his offer by the NBSM, on the basis of which he sent another letter to the NBSM announcing that despite the NBSM reaction, he was not withdrawing from the investment in the ESB. Mr Kostovski further described the plans of the investor and the Supervisory Board made a decision to send a letter to the NBSM sharing this information.

144. On 8 August 2020, the investor sent another email to the NBSM, stating that it was ready to invest 7 million EUR (EUR 2 million + EUR 5 million), which were required to stabilize the capital adequacy ratio of Eurostandard) even if the due-diligence by the PwC had not been completed yet.

145. Only a few days before the bankruptcy of the ESB, the Minister of Finance<sup>62</sup> collected 200,000 EUR from her account in the ESB.

146. Following its decision of 7 August, on 10 August 2020 the ESB Supervisory Board sent a letter No. 02-5648/2 to the NBSM, repeating the information received from Mr Kostovski and recalling theirs and the NBSM's intention from the online meeting on 5 August 2020, to do everything possible to keep the Bank in operation. They expressed their disappointment at learning that despite the fact that an obviously serious investor was willing to immediately invest 2 million EUR in the ESB even without receiving the approval of the NBSM to buy the Bank's shares, he had been declined by the

---

<sup>62</sup> Nina Angelovska.

- NBSM. Therefore, they asked the NBSM to do everything in their power to ensure the recapitalization and to keep the bank in operation.
147. On 10 August 2020, the NBSM responded to the ESB and members of the Supervisory Board concerning the letters it received on 30 July 2020, and 6 August 2020, No. 02-1655/4 and 02-19586/2 respectively. In its response, the NBSM referred to the online meeting held on 5 August, repeating the reasons for the critical situation of the Bank. In the letter, the NBSM was very clear in saying that further operation of the Bank exclusively depended on a very rapid recapitalization, providing conditions for its stabilization and development, and that the NBSM for the moment had absolutely no credible assurances that such recapitalization would happen soon.
148. On 10 August 2020, a meeting took place at the NBSM between one of the shareholders, the vice-governor and other staff of the NBSM, where the shareholder offered to invest 2.2 million EUR into the Bank immediately in order to convince the Governor to have a meeting with the potential investor.
149. On 11 August 2020, the NBSM replied to the investor, stating that the NBSM was not satisfied with an immediate investment of 2 million EUR, followed by an investment of 5 million EUR by the end of September, requesting an “urgent and prompt recapitalization of EUR 7 million”.
150. On the same day, 11 August 2020, the investor sent another email to the NBSM, offering to pay 2 million EUR in the current week and 5 million EUR according to the business plan submitted on 4 August 2020. This time the investor also added that in the absence of a positive answer from the NBSM, this binding offer would expire automatically on 14 August at 3 pm Skopje time.
151. On the same day, 11 August 2020, GOFI, S.A., one of the ESB’s shareholders, sent a letter to the NBSM, asking for approval of two operations, which would – as temporary measures until the entry of an external investor – increase the share capital of the ESB: selling of the house in Vodno (61 million MKD) and taking over of a subordinated loan of one of the indebted companies by GOFI and introducing it back, which would increase the share capital of the ESB by a further 74 million MKD. Together, that would represent a financial injection of approximately 2 million EUR into the ESB. The NBSM received the letter on 12 August and did not respond to it.



152. On 12 August 2020, in the morning, the North Macedonian Post sent a letter No. 0508-740/1 to its local branches, urging them to empty two accounts (No. 604 and 833) held with ESB in favour of their account with Komercijalna banka and asked them to redirect all collected fees and payments that normally went into those two accounts to the account with Komercijalna banka.
153. On 12 August 2020, one of the shareholders of the ESB visited the technocratic Prime Minister (today the Minister of Interior), who assured him that everything would be OK with the ESB.
154. On 12 August 2020, the ESB participated in the monthly payments of all North Macedonian Banks with 20% and paid pensions to 60,000 retirees in the country.
155. On 12 August 2020, in the afternoon, the NBSM issued a Decision No. 15-20139/1, according to which:
- on the basis of “the last available information of 30 June 2020, and on the basis of the off-site supervision”, the NBSM had calculated that the total unallocated impairment correction for the loan portfolio in the ESB was 564 million MKD, which meant that the ESB own funds were negative and amounted to -220 million MKD. Accordingly, the ESB capital adequacy ratio, as calculated by the NBSM, was also negative: - 4.14%;
  - the conditions for introducing a bankruptcy proceeding were confirmed for the ESB, AD Skopje, due to the fact that the Bank was insolvent, i.e. the capital adequacy ratio was -4.14%, which was lower than a quarter of the registered capital (Articles 157/5/1 and 65 of the Banking Act);
  - the licence for the establishment and operation of ESB, AD Skopje was revoked due to the fact that the conditions for introducing a bankruptcy proceeding against the Bank were confirmed;
  - from the day of the adoption of the Decision to the day of the entry into force of the decision of the court to introduce a bankruptcy proceeding for the ESB, the Bank was excluded from payment operations and was ordered to cease performing all activities;
  - a new person executing the duties of the bank manager would have to be appointed according to the conditions provided for in the Bankruptcy Law.

On the same day, branches<sup>63</sup> of the Bank owned by the ESB were approached physically by representatives of the NBSM and closed.

156. On 12 August 2020, the NBSM Governor also issued a Decision No. 15-20149/1, according to which the administration of the ESB was taken over by 44 employees of the NBSM.
157. On 13 August 2020, the Governor of the NBSM sent a proposal to the Basic Civil Court in Skopje to start a bankruptcy proceeding against the ESB.
158. On 14 August, 2020, the Court adopted a decision No 1 CT 123/20, according to which a bankruptcy proceeding against the ESB was introduced and a bankruptcy trustee was appointed. The ESB appealed against that decision on 26 August 2020, claiming that the Governor, while starting the bankruptcy proceeding did not produce any evidence for the insolvency of the bank, which was the reason for the bankruptcy. On 3 September 2020, the Appellate Court in Skopje rejected the appeal and confirmed the decision of the first instance Court of 14 August 2020.
159. On 3 September 2020, the Governor of the NBSM gave an interview to Fokus magazine, in which she stated the following:
  - revoking of the ESB banking licence was needed to protect depositors and the stability of the banking system,
  - the decision of the NBSM to revoke the licence was based on the analysis and assessment of the supervisory team, intensive communication with stakeholders and continuity of the supervisory measures,
  - the capital adequacy ratio of the ESB was found to be insufficient in 2019 already, which was the reason for the introduction of the Improvement Plan, a measure, which – according to the Law on Banking – is applied for banks with the capital adequacy ratio below the lawful minimum but still solvent with capital adequacy ratio above 2%,
  - in the Improvement Plan, shareholders accepted the obligation to recapitalize the Bank, which partly happened in the previous year but not in the first half of 2020,

---

<sup>63</sup> 8 or 9 of them.

- when the Bank became insolvent, there were no other legal options than to revoke the licence, especially since the urgent recapitalization of the Bank did not occur despite constant warnings of the NBSM,
  - the NBSM was in a constant communication with shareholders and with the potential investor,
  - on the day when the licence was revoked, the ESB had 2100 corporate clients, of which more than 80% had more than 60,000 MKD in their accounts, and 140,000 natural persons as clients, of whom 99.4% had less than 30,000 EUR in their accounts,
  - on the day, the capital of other banks was at the historic maximum and their capital adequacy ratio was twice as high as required by law (8%), in the range from 14% to 22%,
  - the main reason for the ESB problems was bad handling of credit portfolio and related risks, not followed by the needed recapitalization,
  - the potential investor produced a detailed analysis of the ESB situation and a plan for its recovery but the plan did not prove the readiness of the investor to recapitalize the bank in the needed amount and in the needed timeframe. In addition, the NBSM had not received the documentation required to assess if the potential investor fulfilled the conditions to become the ESB shareholder,
  - activities of the NBSM were exclusively guided by the legislation in place and interests of citizens.
160. On 11 September 2020, the ESB filed a lawsuit at the Administrative Court against the Decision of the NBSM Governor No. 15-20139/1.
161. On 11 September 2020, the ESB also filed a lawsuit at the Administrative Court against the Decision of the NBSM Governor No. 15-20140/1.
162. On 23 September 2020, the Administrative Court, with Decision No. U-6 br.1555/20, rejected the lawsuit of the ESB against the Decision of the NBSM Governor No. 15-20140/1.
163. On 26 September 2020, the Administrative Court, with Decisions No. U-6 br.1553/20 and 1554/20, rejected the lawsuits of the ESB against the Decision of the NBSM Governor No. 15-20139/1.

164. On 9 October 2020, the ESB and its main shareholders filed lawsuits against decisions of the Administrative Court No. U-6 br.1553/20, No. 1554/20 and U-6 br.1555/20.
165. On 5 November 2020, the Higher Administrative Court, with decision No. Uz-2 br.576/2020, rejected the lawsuit of 9 October 2020, and upheld the decision of the Administrative Court No. U-6 br.1555/20.
166. On 12 November 2020, Mr. Trifun Kostovski sent a letter to the Parliamentary Finance and Budgetary Committee, claiming that the capital adequacy ratio of the ESB on 31 December 2019 was 8.6%, and that on 31 March 2020 the capital adequacy ratio of the ESB was 6.55%.
167. On 13 November 2020, the Parliamentary Finance and Budgetary Committee held a hearing about the bankruptcy of the ESB, in which several invited guests were interviewed.

The first to be interviewed was the Governor of the NBSM. In her statement she pointed out the following facts:

- the NBSM had exhausted all other options,
- in the last 8 years, the NBSM had applied 70 correction measures against the ESB, 40 of them in the last 2 years,
- in 2019 supervisors of the NBSM found out that there was a large amount of unsecured reservations in the ESB, causing the undercapitalization of the Bank but not to the extent that would require revoking the licence,
- the ESB shareholders injected 10 million EUR into the ESB in November 2019 and pledged that they would continue to recapitalize the Bank in 2020, which did not happen,
- in June 2020, the ESB informed the NBSM that there was an investor willing to recapitalize the bank but the investor did not submit the documentation to the ESB, which would enable it to assess the investor's ability to buy the ESB shares. Additionally, at the beginning of August 2020, the investor "informed the NBSM that they were not ready to ensure the needed capital in the given timeframe";
- after the revocation of the ESB licence, the capital adequacy ratio in the North Macedonian banking system was 16.9%.

Member of the Parliament Antonio Milošoski asked the Governor why the NBSM had not intervened when they realised<sup>64</sup> that 29 companies from the town of Strumica, connected to the Prime Minister of North Macedonia, did not pay any tranche of their loans totalling 12.8 million EUR.

Member of the Parliament Dimitar Apasiev asked the Governor several questions, including why the NBSM had not applied other measures against the ESB, including a direct take-over of the management of the ESB instead of immediately revoking its licence, and whether it was true that in 2017 the NBSM had made the decision that North Macedonian banks were no longer obliged to report “net debtors”<sup>65</sup>.

At first, the Governor only replied to the question of the NBSM not applying other measures instead of directly revoking the license, stating that the NBSM had not taken over the management of the Bank because the management was not reason for the critical situation in the ESB. The real problem was undercapitalization of the Bank and not its management. In any case, when the bank became insolvent, the NBSM had to revoke its licence.

In the later discussion, the Governor repeated once again that at the beginning of August the potential investor had informed the NBSM that “on the basis of increased due diligence conducted they were not ready to invest the needed capital”.

When the Governor’s hearing ended, she was invited by the Chair of the Committee to respond to all the remaining questions in written form.

168. After the hearing of Mr Trifun Kostovski before the Parliamentary Finance and Budgetary Committee on 12 November 2020, he sent another letter to the Committee, responding to some of the questions of the members of parliament. In his response to the MP Dimitar Apasiev he wrote that it had been in the business interest of other legal persons, including banks, in North Macedonia to liquidate the ESB, mainly due to its lucrative 20-year contract with the Post of North Macedonia, which has 330 branches across the country.

---

<sup>64</sup> At least from 22 May, 2020, when the NBSM introduced daily monitoring of the ESB.

<sup>65</sup> Implying that this has been done to enable financing of related parties (clients) over 25%.

169. On 18 November 2020, the Basic Public Prosecutor's Office for the Prosecution of Organised Crime and Corruption from Skopje proposed temporary measures of prohibition of alienation, encumbrance and flooring lease of real estate and prohibition of use, alienation or disposing of securities from value-ordinary shares against several natural and legal persons. Accordingly, on 18 November 2020, the Basic Criminal Court in Skopje, as a temporary measure, froze the assets of natural persons Mr Trifun Kostovski and Mr Kosta Kostovski and legal persons GOFI DOOEL, ZUPL Negorski Banji, ZUPL Kultura, Nova Holding, GOFI Group Finance and Investment (Switzerland). On 23 March 2021, an appeal was lodged by Mr Trifun Kostovski and Mr Kosta Kostovski against the decision of 11 November 2020, but it was rejected on the same day, 23 March 2021.
170. On 16 December 2020, the Higher Administrative Court, with decision No. Uz-2 br.631/2020; rejected the ESB lawsuit of 9 October 2020, and upheld the decisions of the Administrative Court No. U-6 br.1553/20 and No. 1554/20.
171. On 11 February 2021, the main shareholders of the ESB launched an appeal against decisions of the North Macedonian courts at the European Court for Human Rights in Strasbourg, France.
172. On 30 March 2021, GOFI (CH) and E.H.H. Hemispher Holding filed a criminal complaint at the Financial Police against the NBSM Governor and three officials of the NBSM for the criminal offences of Abuse of official position and authorization according to Article 353 of the Criminal Code of North Macedonia and Causing bankruptcy of a bank according to Article 181 of the Banking Law of North Macedonia, claiming that the NBSM officials had not applied the mandatory Article 139 of the Banking Law (administration of the bank).
173. On 8 November 2021, the bankruptcy trustee of the ESB gave a statement at the Basic Public Prosecution Office for Organised Crime and Corruption in Skopje. According to his statement, since the introduction of the bankruptcy procedure, claims in the value of 8,064,995,108.00 MKD against the ESB had been registered, of which he had acknowledged 6,607,883,861.00 MKD. According to his statement, there were 3,001,782,825.00 MKD in the bankruptcy account on 31 October 2021. Since 14 August 2020, which is the date when the bankruptcy procedure was initiated, the income of the ESB under liquidation had been 3,080,885,086.00 MKD and the expenses 79,102,261.00 MKD. On 14 August 2020, the receivables of the ESB were

4,654,496,049.00 MKD, of which 27.42% were performing loans and 72.58% non-performing loans (NPLs).

From 14 August 2020 to 31 October 2021, the bankruptcy trustee managed to recover 1,416,065,280.00 MKD<sup>66</sup> from the outstanding loans (72.89% from performing and 27.11 % from non-performing loans), all on the basis of procedures that had already been started by the ESB during the time of its regular operation. According to his statement, he did not introduce any new recovery procedures.

Of the recovered sums from legal persons, 59.68% were recovered on the basis of performing loans and 40.33 % from NPLs. Of the recovered sums from natural persons, 96.12% were recovered on the basis of performing loans and 3.88 % on the basis of the NPLs.

---

<sup>66</sup> According to the bankruptcy trustee's written submission (report). In the Minutes of his hearing, the sum of 1,441,002,686.00 MKD is mentioned.

## 4 RELEVANT LEGAL PROVISIONS ON BANKING IN NORTH MACEDONIA

174. The following provisions of the Banking Law of North Macedonia are important for the assessment of the bankruptcy proceedings against the ESB:

### *Article 65*

*(1) The bank shall maintain capital adequacy ratio of at least 8%.*

*(2) In fulfilment of the obligation under paragraph (1) of this Article, the bank shall at least maintain: 1) rate of Common Equity Tier I capital of 4.5% of risk weighted assets and 2) rate of Tier I capital of 6% of risk-weighted assets.*

*(3) The Governor may prescribe ratios above those stipulated in paragraphs (1) and (2) of this Article for one or several banks in the country, if necessary due to the nature, the type, and the scope of activities the bank performs and the risks it is exposed to as a result of such activities, including risks arising from the macroeconomic environment.*

## **MEASURES**

### *Article 131*

*(1) The Governor shall undertake measures and shall determine deadlines for their implementation in case the bank, banking group, shareholders or bank's bodies fail to adhere to the regulations governing the bank's operations or its internal procedures, or if necessary for preserving safety and soundness of the bank or the overall banking system.*

*(2) Measures undertaken by the Governor: 1) regular measures, 2) additional measures 3) introduction of administration, 4) withdrawal of an approval, and 5) revocation of a license.*

*(3) When choosing the measures to be undertaken, the Governor shall be guided by the following:*

*1) type and severity of illegality and/or irregularity;*

*2) the effect or possible effect of the measure on the bank or its depositors in order to prevent from further deterioration of the bank's position,*

*3) the need to maintain the safety and soundness of the bank or the banking system as a whole;*

*4) whether the illegality, i.e. irregularity was made on purpose and/or is recurrent, and*

*5) willingness of the bank's bodies to eliminate the identified illegitimacies and irregularities.*

## **ADDITIONAL MEASURES**

### *Article 133*



*(1) The Governor shall undertake additional measures against any bank or bank shareholder particularly when:*

- 1) identified that there is a risk to the maintenance of the safety and soundness of the bank or the banking system as a whole;*
- 2) they fail to undertake, on time, the measures under Article 132 paragraph (2) of this law,*
- 3) they repeat the irregularities referred to in Article 132 paragraph (1) of this law, which have already been subject to a measure or sanction for an infraction.*
- 4) the bank performs activity without obtaining a license or approval,*
- 5) the bank performs activities through branch abroad without obtaining a license by the Governor,*
- 6) the bank no longer meets the requirements underlying the issuance of the founding and operating license, i.e. the approval for performing financial activities,*
- 7) the capital adequacy ratio and/or own funds and/or capital conservation buffers are below the level defined by this law,*
- 8) they failed to allocate the required level of special reserves, i.e. failed to make adequate correction of value of the bank assets,*
- 9) they permanently or considerably violate the supervisory standards,*
- 10) they frequently fail to meet the obligation for timely submission of data, information and reports to the National Bank and other institutions specified by law,*
- 11) they impede the National Bank in the conduct of supervision, consolidated supervision and taking action;*
- 12) they hinder the audit company to perform audit;*
- 13) the shareholder was not granted an approval for acquiring shares.*
- 14) the existence of close connections of the bank, the entities/persons where the bank has equity holding or of the other members of the group where the bank belongs with other persons/entities hinders the supervision and consolidated supervision or the enforcement of measures taken pursuant to this law.*

*(2) In the cases under paragraph (1) of this Article, the Governor shall adopt a decision on undertaking one or more of the following measures:*

- 1) authorize persons for on-site supervision of the bank's operations,*
- 2) order the bank and/or shareholder to:*
  - review the internal procedures and policy,*
  - reduce the operating costs,*
  - reach adequate level of reserves,*
  - replace a person with special rights and responsibilities,*

- conduct additional audit by the audit company, different from the audit company engaged by the bank, in a scope and under terms defined by the Governor and at the expense of the bank,
- achieve and maintain own funds and/or capital adequacy ratio higher than the one stipulated by this law, including increase in own funds by allocation of profit at the year end,
- establish and maintain stricter supervisory standards than those specified in Articles 68,71, 72, 73, 74, 78, 79 and 81 of this law,
- sell equity holdings in other legal entities,
- develop and implement a plan for improving the condition of the bank, provided that the bank is undercapitalized, and
- recapitalize the bank, and

3) prohibit, limit and impose special terms for:

- payment of dividend or other consideration paid by the bank for instruments that are part of its Tier I capital, 58
- exercising the rights arising from shares,
- payments to the members of the management bodies,
- exposure to connected persons, unless they are backed by a pledge on securities issued or guaranteed by the Republic of Macedonia or the European Union, kept by an independent third party - depository institutions, the market value of which exceeds 125% of the credit amount at all times, or other type of exposure,
- transactions with other entities in the banking group or persons/entities connected with the bank or with other persons/entities,
- exposure to an entity for which, as specified by the methodology of the National Bank, correction of value is made or special reserve is allocated of at least 20%,
- prolonging of approved credits,
- performing all or certain financial activities,
- opening units of a bank,
- participation in a foreign exchange market,
- acquiring equity holdings in other legal entities, and
- launching new financial activities.

#### **Article 134**

(1) The Governor may authorize a person - supervisor from the National Bank who will monitor the implementation of the measures listed under Article 133 paragraph (2) of this law.

(2) The person referred to in paragraph (1) of this Article shall be entitled to verify the payment order, attend the sessions of the Supervisory Board and the Management Board without voting right and obtain

*any information and data necessary for the implementation of the measures under Article 133 paragraph (2) of this law.*

#### *Bank improvement plan*

#### *Article 135*

*(1) The bank shall be considered undercapitalized provided that its own funds or capital adequacy ratio are below those required by this law.*

*(2) If the bank is undercapitalized or owing to the operating losses it faces undercapitalization, the Governor shall adopt a decision requiring from the bank's Supervisory Board to submit a plan for improving the condition, within 10 days.*

*(3) The plan referred to in paragraph (2) of this Article shall contain precisely elaborated measures and activities and period for reaching and maintaining own funds and achieving the capital adequacy ratio set in accordance with this law.*

*(4) The Governor shall adopt a decision on approving or rejecting the plan under paragraph (2) of this Article within 10 days after the date of receiving the plan.*

*(5) Should the plan under paragraph (2) of this Article also allow for increase in the initial capital, the bank shall, within 30 days after receiving the decision of the Governor on approving the plan, convene meeting of shareholders. If the General Meeting of Shareholders passes a decision on increasing the initial capital, the payment shall be made within 90 days after the date of adopting the decision.*

*(6) In the case the Governor rejects the plan under paragraph (2) of this Article or the General Meeting of Shareholders of the bank does not pass the decision on increasing the initial capital, the Governor shall adopt a decision on introducing an administration or revoke the founding and operating license.*

#### *Article 136*

*(1) The bank required to submit a plan for improving the condition shall not perform the following activities without prior approval of the Governor:*

*1) launch a new financial activity,*

*2) increase the risk weighted assets by more than 5% annually,*

*3) pay dividend or make any other payment in the form of bonuses, grants, etc. to the shareholders, the persons with special rights and responsibilities and to the bank's employees, and*

*4) increase the total exposure of the bank.*

*(2) In addition to the restrictions listed under paragraph (1) of this Article, the Governor may also require from the bank that implements a plan for improving the condition, to undertake any of the measures under Article 132 paragraph (2) and Article 133 paragraph (2) of this law.*

#### *Restriction of rights arising from shares*

#### Article 137

*(1) For shares acquired contrary to Article 59 of this law and shares for which the approval issued in accordance with Article 153 of this law has been withdrawn, the Governor shall adopt a decision declaring that the shareholder who has acquired those shares shall not bear any voting rights and requires from them to dispose of the shares within a specified period, which may not be longer than 180 days, except in the cases of Article 59 (2) of this law when the Governor may determine a longer period.*

*(2) The shareholder shall dispose of such shares within the period set in the decision of paragraph (1) of this Article.*

*(3) A shareholder who fails to dispose of the shares within the period set in the decision of paragraph (1) of this Article, the Governor shall adopt a decision and order to authorize, within 10 days of receipt of the decision, the National Bank to dispose of the shares on its behalf.*

*(4) The shareholder shall submit the authorization within the period specified in paragraph (3) of this Article.*

*(5) A shareholder who will not give authorization within the specified period, the Governor shall adopt a decision declaring that the shares, despite voting right, shall also not bear the right to dividend payment and that it can not be or become a shareholder with qualifying holding in the bank.*

*(6) The Governor shall, within eight days of the adoption of the decision referred to in paragraph (5) of this Article, adopt a decision to sale the shares on behalf of the shareholder under paragraph (5) of this Article.*

*(7) Provided that in the period after adoption of the decision under paragraph (5) of this Article until the sale of shares, the bank pays a dividend to the other shareholders, the dividend of the shareholder referred to in paragraph (5) of this Article shall be distributed to the bank's general reserve.*

#### Article 138

*(1) The sale of shares under Article 137 paragraph (6) of this law shall be conducted by a person authorized by the Governor, at a public stock exchange auction, according to the rules of a licensed stock exchange, approved by the Securities and Exchange Commission.*

*(2) The person under paragraph (1) of this Article shall, within 8 days after the decision-making referred to in of Article 137 paragraph (6) of this law, publish the date of holding the public stock exchange auction in the Official Gazette of the Republic of Macedonia, in at least two daily newspapers and on the National bank website.*

*(3) In the announcement referred to in paragraphs (2) and (8) of this Article, the person under paragraph (1) of this Article shall indicate:*

- 1) the initial price of the shares to be sold on the date of the first public stock exchange auction,*
- 2) date/dates of holding one or more public stock exchange auctions,*
- 3) the requirements for acquiring a shareholder status having a qualified holding in a bank as stipulated by this law and the deadline for submitting the request along with the documentation for obtaining an approval for acquiring shares, in case of selling shares that represent a qualified holding in a bank,*

*4) the requirement for submitting to the National Bank, a written statement of the interested persons to pay-in funds for purchasing shares and a deadline for submitting such statement.*

*(4) In cases of sale of shares that represent qualified holding in a bank, only persons who have received prior approval by the Government stating that they have fulfilled the conditions required for obtaining the status of a shareholder with a qualifying holding in a bank in accordance with the provisions of this law and who submitted a written statement to the National Bank that they will pay-in the funds to purchase the shares, may participate in the public stock exchange. In cases of sale of shares that do not represent a qualified holding in a bank, only persons who submitted a written statement to the National Bank that they will pay-in the funds to purchase the shares may participate in the public stock exchange.*

*(5) The Governor shall make a decision within 30 days after the submission of the request for issuing an approval for acquiring shares with qualified holding.*

*(6) The initial price of shares shall be: 1) an average of the official daily average price of shares in the last three months prior to the date of making the decision referred to in Article 137 paragraph (6) of this law, or 2) book value of shares, provided that in the last three months prior to the date of making the decision referred to in Article 137 paragraph (6) of this law no transactions in shares have been conducted. In this light, transactions in shares shall not include a block transaction and non-commercial transfer of shares.*

*(7) If an announcement includes holding of several public stock exchange auctions, at each following public stock exchange auction the shares shall be offered at a price by 10% lower than the price offered for sale at the previous public stock exchange auction.*

*(8) If the public auctions are not held, or if after holding one or more published public stock exchange auctions some shares remain unsold, the person referred to in paragraph (1) of this Article shall re-announce one or more public stock exchange auctions within a period of 30 days from:*

*1) last held public stock exchange auction or*

*2) the date on which the person referred to in paragraph (1) of this Article notified the authorized stock exchange that the auction / auctions have not been held.*

*(9) At each subsequent announcement of one or more public stock exchange auctions, the initial stock price shall be by 10% lower than:*

*1) the price of the last held public stock exchange auction or*

*2) the initial price of the first auction of the previous announcement, if public stock exchange auctions from the previous announcement have not been held.*

*(10) The initial price of paragraph (9) of this Article may not be lower than 50% of the average of the official daily average share price determined in the last three months before the date of announcing the public stock exchange auction. If in the last three months before the date of announcing the public stock exchange, there were no transactions in the shares of the bank, where transactions in shares does not imply block transaction and non-commercial transfer of shares, the initial price of paragraph (8) of this Article may not be lower than 50% of the book value of the shares.*

*(11) While making the decision referred to in Article 137 paragraph (6) of this law, the Governor shall also issue a decision to the Central Securities Depository to register a ban on holding the shares subject to sale by their owners referred to in Article 137 paragraph (6) of this law.*

*(12) The funds risen from the sale of shares less the costs for organizing and holding the public stock exchange auction shall belong to the shareholder referred to in Article 137 paragraph (6) of this law.*

*(13) The person referred to in paragraph (1) of this Article shall sign the order for selling the shares at the public stock exchange auction.*

*(14) The Central Securities Depository shall abolish the ban under paragraph (11) of this Article after receiving a notification by the Governor.*

## *Administration*

### *Article 139*

*(1) The Governor shall pass a decision on introducing an administration and appoint members to the administration - administrators in a bank if:*

- 1) the circumstances have appeared that may seriously compromise the bank's solvency,*
- 2) the bank and/or shareholders refuse to fulfil or fail to undertake proper activities for fulfilling the additional measures imposed by the Governor, thus compromising the liquidity and solvency of the bank,*
- 3) the bank's Supervisory Board fails to submit a plan for improving the condition in the bank,*
- 4) the National Bank rejects the plan for improving the condition in the bank,*
- 5) the bank fails to implement the plan for improving the condition in the bank within the set periods,*
- 6) the bank fails to reach the required level of own funds within the period set by the plan for improving the condition in the bank, and*
- 7) the capital adequacy ratio of the bank drops below 50% of the level specified by this law.*

*(2) The decision on introducing an administration in a bank shall determine the number of administrators, the authorizations of any administrator and the duration of the administration which may not be longer than one year after the date of submitting the decision to the bank subject to administration, with a possibility to be prolonged for another 6 months. The decision authorizes one of the administrators to sign the decisions.*

### *Article 140*

*(1) The administration shall consist of maximum of three administrators.*

*(2) Any person, including a person employed with the National Bank, who fulfils the requirements of this law that refer to a member of a bank's Management Board and an independent member may be appointed as an administrator.*

*(3) The administrators shall receive remuneration for their work defined by the Governor, and shall be paid by the bank subject to administration.*

*(4) The administrator shall not be held liable for damages to third parties that might arise from the implementation of the administration in a bank if they have acted in accordance with their duties and authorization and committed no felony.*

*(5) The Governor may restrict the bank's payment operations or exclude it from the payment operations for a certain period by adopting a decision on introducing an administration in a bank.*

*(6) The decision on introducing an administration in a bank shall be published in the Official Gazette of the Republic of Macedonia and in at least one daily newspaper and shall be submitted to the Trade Registry for registration.*

#### **Article 141**

*(1) All responsibilities of the Supervisory Board and the Management Board of the bank and the responsibilities of the General Meeting of Shareholders, other than the responsibility for adopting a decision on increasing the capital shall cease on the date of submitting the decision on introducing an administration to the bank, and shall be conferred to the administrators.*

*(2) On the date of submitting the decision on introducing an administration to the bank, only payments on order signed by the administrators may be made from the account of a bank subject to administration and excluded from the payment operations.*

*(3) On the date of submitting the decision on introducing an administration to the bank, the decisions on forced payment and other payment instruments on the burden of the account of the bank excluded from the payment operations, submitted to the National Bank shall be recorded and returned to the submitter within 3 days, with the bank being notified thereon.*

*(4) On the date of submitting the decision on introducing an administration to the bank, the forced payment decisions and other payment instruments on the burden of accounts maintained by the bank subject to administration and excluded from the payment operations, submitted to the bank shall be recorded and returned to the submitter within 3 days.*

#### **Article 142**

*(1) The administrators, when performing the duties specified by this law, shall have an access and control over the business premises, property, business records and other documentation of the bank and shall protect the property and the documentation of the bank.*

*(2) The members of the Supervisory Board and Management Board and the other persons with special rights and responsibilities that performed this function by that time, shall provide the administrators an access to the entire documentation of the bank, as well as supply them with all necessary information and additional reports on the bank's operations.*

*(3) If the administrators are hindered, in any way, from entering the premises of the bank, such access shall be enabled with the assistance of the Ministry of Internal Affairs.*

*(4) The administrators shall be entitled to remove any person who impedes their work, and when needed, they may also request assistance from the Ministry of Internal Affairs.*

*(5) The administrators shall, in their work, adhere to the laws and other regulations and observe the written instructions and guidelines provided by the Governor.*

#### *Article 143*

*(1) The administrators shall, within 21 days after the appointment determine the conditions in the bank.*

*(2) After the expiration of the period under paragraph (1) of this Article, the administrators shall submit a report on the condition of the bank to the Governor, including:*

*1) Bank Rehabilitation Plan, or*

*2) a proposal for revoking the founding and operating license, which may include a plan for transfer of the bank's assets and liabilities to other bank.*

*(3) The period for submitting the report under paragraph (2) item 1 of this Article may be even shorter, if determined by the decision under Article 139 paragraph (1) of this law.*

*(4) The National Bank Council shall more precisely set the requirements and the procedure for conducting the rehabilitation plan and the plan for transfer of the bank's assets and liabilities to other bank.*

#### *Article 144*

*(1) The rehabilitation plan shall include:*

*1) assessment of the amount of own funds, the bank's solvency and liquidity position,*

*2) assessment of the willingness of the bank's shareholders to invest additional capital for covering the bank's losses,*

*3) method of conducting the bank rehabilitation, and*

*4) calculation of the expenses incurred from the implementation of the administration-related activities.*

*(2) The bank rehabilitation plan may be implemented through one or more of the following methods: 1) by selling the bank's assets,*

*2) by increasing the bank's own funds by issuing shares for the creditors or for new investors as specified by this law,*

*3) by selling the shares, and*

*4) by status changes of the bank.*

#### *Article 145*

*The plan for transfer of the bank's assets and liabilities to other bank shall include at least:*

*1) assessment of the amount of own funds, the bank's solvency and liquidity position,*

*2) assessment of the value of the total assets and determination of the bank's liabilities,*



3) assessment of the bank's assets and liabilities that would be transferred to other bank, and 4) effects of the transfer.

#### *Article 146*

*(1) The Governor shall decide on the report referred to in Article 143 paragraph (2) of this law within 15 days from the date of receiving.*

*(2) In the decision-making under paragraph (1) of this Article, the Governor shall be guided by the need to protect the interests of the bank's creditors, and the feasibility of the rehabilitation plan during the administration.*

*(3) Provided that the Governor approves the bank rehabilitation plan or the proposal for revoking the founding and operating license that includes a plan for transfer of the bank's assets and liabilities to other bank, they shall adopt a decision authorizing the administrators to undertake further activities for delivery of the plans.*

*(4) After being approved, the administrators shall implement the bank rehabilitation plan or the plan for transfer of the bank's assets and liabilities to other bank.*

*(5) Once the plan for transfer of the bank's assets and liabilities to other bank is being implemented, the Governor shall pass a decision on revoking the founding and operating license and for fulfilling the requirements for opening a bankruptcy proceeding in the bank.*

*(6) Provided that the Governor rejects the bank rehabilitation plan or approves the proposal for revoking the license for founding and operating a bank, they shall adopt a decision on revoking the founding and operating license and on fulfilling the requirements for opening a bankruptcy or implementing a liquidation procedure in the bank.*

#### *Article 147*

*(1) If the Governor determines, on the basis of the rehabilitation plan, that reaching of the set capital adequacy ratio requires an increase in the bank's own funds, they shall adopt a decision requiring from the administrators to convene a General Meeting of Shareholders and to propose to its shareholders to adopt a decision on covering the loss at the burden of the own funds and decision on increasing the bank's own funds*

*(2) The administrators shall publish the convening of the General Meeting of Shareholders in at least three daily newspapers within 8 days after receiving the decision referred to in paragraph (1) of this Article.*

#### *Article 148*

*(1) If the General Meeting of Shareholders rejects the proposal referred to in Article 147 paragraph (1) of this law, or if the announced issue of shares in accordance with the decision adopted by the bank's General Meeting of Shareholders on the basis of the proposal referred to in Article 147 paragraph (1) of this law fails, the Governor may adopt a decision authorizing the administrators to organize a sale of shares of the existing shareholders to investors willing to rehabilitate the bank.*

*(2) The sale of shares of the existing shareholders of the bank referred to in paragraph (1) of this Article to new investors shall be conducted by a public stock exchange auction, as required by this law.*

*(3) The administrators shall, within 90 days from the day of adopting the decision under paragraph (1) of this Article, announce the date of the public stock exchange auction in the Official Gazette of the Republic of Macedonia and in at least two daily newspapers.*

*(4) Within the period referred to in paragraph (3) of this Article, the administrators shall elect an auditing company to audit the financial statements of the bank and to determine the book value of the shares. The audit expenses shall be borne by the bank.*

*(5) In the announcement for the public stock exchange auction, the administrators shall indicate the initial price of the shares which may not be lower than 70% of the book value determined in the audited financial statements of the bank, the amount of funds needed for recapitalization and the payment deadline, the requirements for acquiring a shareholder status in a bank as set by this law and the deadline for submitting the documentation to the National Bank proving that the aforementioned requirements are met.*

*(6) The order for selling the shares at public stock exchange auction shall be signed by the administrators.*

*(7) Simultaneously with the announcement for selling the existing shares, the Governor shall issue an order to the Central Securities Depository to register a ban on holding the shares of the bank by their owners.*

*(8) Investors who 1) have submitted an application and obtained a prior approval by the Governor for fulfilling the requirements necessary for acquiring a shareholder status in a bank as set by the provisions of this law, and 2) have submitted a written statement to the National Bank to pay funds for bank recapitalization within the period set by the announcement under paragraph (5) of this Article may participate in a public stock exchange auction.*

*(9) If no one accepts the initial price at the public stock exchange auction, at the following public stock exchange auction the shares shall be offered at a price by 10% lower than the initial one, with the sale price being reduced by another 10% until one or more investors express willingness to purchase the offered shares. The decrease may not be below 50% of the initial price.*

*(10) The Governor shall decide on the application for issuing an approval referred to in paragraph (8) item 1 of this Article, within 30 days from the day the request is submitted.*

*(11) The funds risen from the sale of shares less the costs for organizing and holding the public stock exchange auction shall belong to the shareholders of the bank.*

*(12) The Central Securities Depository shall abolish the ban referred to in paragraph (7) of this Article, once the Governor informs it that the public stock exchange auction is over, that the new investors settled the assumed liabilities to the former shareholders and recapitalized the bank, if there is such a requirement.*

#### **Article 149**

*(1) The administrators shall, by the 15th in the current month, submit an operations report and report on the course of implementation of the bank rehabilitation plan for the preceding month.*

*(2) The report under paragraph (1) of this Article shall contain an assessment of the amount of own funds and the solvent and liquidity position of the bank during the administration and calculation of the expenses incurred by the implementation of the administration.*

*(3) In addition to the report under paragraph (1) of this Article, the administrators shall also submit other reports in line with the needs and requests of the National Bank.*

#### *Article 150*

*(1) If the Governor finds that the bank rehabilitation plan has been fulfilled and that the financial position of the bank has improved and the bank reached the required amount of own funds and capital adequacy ratio set under this law, as well as that the bank is capable of settling its due liabilities, they shall order the administrators to summon the bank's General Meeting of Shareholders.*

*(2) At the bank's General Meeting of Shareholders, the shareholders shall nominate members of the bank's Supervisory Board and shall submit an application for obtaining a prior approval for their appointment to the National Bank. Upon obtaining prior approval by the Governor, the Supervisory Board shall submit an application to the Governor for obtaining a prior approval to appoint members of the bank's Management Board. On the date the members of the Management Board are registered in the Trade Registry, the administration and the authorizations of the administrators shall cease.*

#### *Article 151*

*If the Governor finds that during the administration, the financial position of the bank in terms of Article 150 paragraph (1) of this law have not improved, they shall make a decision on revoking the founding and operating license and on opening a bankruptcy proceeding or initiating liquidation procedure in the bank.*

#### *Article 152*

*(1) The function of the administrator shall cease:*

- 1) after the expiration of the term of their appointment,*
- 2) in case of their resignation,*
- 3) in case of death,*
- 4) in case of their dismissal, and*
- 5) in case of termination of the administration.*

*(2) The Governor shall make a decision on dismissing a member of the administration:*

- 1) if the member fails to implement the bank rehabilitation plan,*
- 2) in case of lengthy severe disease that prevents them from carrying out the duties,*
- 3) in case of loss of the working ability,*
- 4) if the court has ruled a ban on carrying out a profession, activity or duty and*
- 4-a) who has been convicted, by an effective court judgment, for unconditional imprisonment of more than six months, in the period of duration of the legal consequences of the conviction, for crimes against*

*property, crimes against public finances, payment operations and economy, criminal offenses against official duty, as well as crimes of forging document, specific cases of forging documents, computer forgery, using a document with untrue content and pettifoggery of the Criminal Code,*

*5) in case they are convicted of a crime.*

*(3) The discontented party may seek a protection by the competent court against the decision referred to in paragraph (2) of this Article.*

#### *Revocation of approvals*

##### *Article 153*

*The Governor shall revoke the approval for acquiring shares in a bank, the approval for appointing a member of the Supervisory Board and the Management Board and for performing financial activities that require special approval if:*

- 1) such approval was obtained on the basis of false data,*
- 2) in the period after the issuance of the approval receives a documented evidence that any of the requirements specified under Articles 13, 18, 58, 59, 83, 88 and 92 of this law are no longer fulfilled,*
- 3) a member of the supervisory board and/or board of directors does not implement the bank's business policy;*
- 4) a member of the supervisory board and/or the board of directors fails to comply with the provisions of this law, thus jeopardizing the safety and soundness of the bank and its creditors and;*
- 5) member of the Supervisory Board and/or Management Board cuts across the responsibilities defined by this law.*

#### *Revocation of a founding and operating license and license for status changes*

##### *Article 154*

*(1) The Governor shall adopt a decision on revoking the license for founding and operating a bank or the license for status changes in the case:*

- 1) such license was obtained on the basis of false data,*
- 2) the bank failed to adopt a statute within 30 days upon receipt of the decision stipulated under Article 20 paragraph (5) of this law, i.e. it failed to make a decision on status changes within 45 days from obtaining the decision referred to in Article 22 paragraph (3) of this law,*
- 3) the bank failed to submit an application for registration in the Trade Registry within the specified period,*
- 4) the bank failed to commence operating within 90 days following the issuance of the founding and operating license,*
- 5) the bank performs financial activities for which it did not obtain a license, i.e. consent by the Governor,*

6) the bank fails to meet the technical, organizational, personnel or other requirements for conducting banking activities, as specified by the provisions of this law and regulations adopted on the basis of this law,

7) the bank performs no financial activities for more than six months,

8) the effective decision of a competent authority determines that the bank has been involved in money laundering and other felonies,

9) the terms for introducing a bankruptcy or liquidation procedure in the bank have been fulfilled, as specified by this law,

10) for the purposes of covering the losses, the bank's initial capital dropped below the level set in Article 14 paragraph (1) of this law, and the bank, along with the decision on reducing failed to adopt a decision on increasing the initial capital or failed to register or pay in the initial capital within 90 days after the adoption of the decision,

11) the conduct of efficient supervision of the National Bank is impaired,

12) the bank fails to implement or acts contrary to the measures imposed by the National Bank,

13) the number of members of the Supervisory Board and/or Management Board dropped below the minimum set by the law, and the bank failed to submit an application for obtaining a prior approval for appointing a member of the Supervisory Board i.e. Management Board for a period longer than 60 days after the termination of the term,

14) the number of members of the supervisory board and/or board of directors fell below the legal requirement, and the bank failed to receive an approval for a member of the board of directors or the supervisory board more than six months because it failed to nominate a person who meets the requirements of this law.

(2) The Governor shall also adopt a decision on revoking the license for founding and operating license in the cases under Article 146 paragraphs (5) and (6) and Article 151 of this law.

(3) From the date of adoption of the decision on revoking the founding and operating license referred to in paragraph (1) of this Article to the date of effectiveness of the court decision on introducing a bankruptcy proceeding in a bank, i.e. to the date of registering the liquidation trustees in the Trade Registry, the bank shall be excluded from the payment operations, and shall cease performing all activities, other than claim collection.

*Notification on issuing and revoking a license*

#### *Article 155*

(1) The National Bank shall notify the Ministry of Finance in writing on any issuance and revocation of a license for founding and operating a bank and status changes within five days after the date of adoption of the decision on issuing, i.e. revoking the license.

(2) The notification under paragraph (1) of this Article shall contain:

1) name and head office of the bank,

2) name of the members of the Management Board,

- 3) name of natural persons, i.e. name and head office of the legal entities - shareholders of the bank holding voting shares of more than 5% of the total number of voting shares,
- 4) financial activities performed by the bank,
- 5) date of issuance, i.e. revocation of the license, and
- 6) reasons for revoking the license.

(3) The National Bank shall also notify the Ministry of Finance on each change in the data referred to in paragraph (2), items 1, 2, 3, 4 and 5 of this Article. Article 156 69 The National Bank shall immediately announce the decision on issuing i.e. revoking a license for founding and operating a bank in the mass media and its web site.

#### *Bankruptcy proceeding*

##### *Article 157*

(1) The Governor shall pass a decision on fulfilment of the requirements for opening bankruptcy proceeding in a bank.

(2) The Governor shall pass the decision under paragraph (1) of this Article in the cases listed in paragraph (4) of this Article, ex officio, upon proposal of the creditors and of the bank.

(3) The Governor shall decide on the proposal of the creditors and of the bank, stipulated in paragraph (2) of this Article, within 15 days from the submission of the proposal.

(4) Bankruptcy procedure shall be initiated in the following cases:

- 1) when a bank is insolvent,
- 2) the administrator report, or the implementation of the rehabilitation plan show that the bank is insolvent, or
- 3) the liquidation procedure shows that the bank's assets are insufficient to pay all the claims of its creditors.

(5) The bank is insolvent when:

- 1) the capital adequacy ratio is below one fourth of that specified under Article 65 of this law, or
- 2) it is unable to settle its due liabilities uninterruptedly for more than ten days.

(6) The provisions under paragraph (4), item 1 of this Article shall not be applied when during the administration the bank is excluded from the payment operations.

(7) Only the Governor may file a proposal for opening bankruptcy proceeding in a bank to a competent court, in accordance with this law. The proposal for opening bankruptcy proceeding in a bank to a competent court shall be submitted on the first working day after the adoption of the decision on fulfilment of the requirements for opening bankruptcy proceeding in a bank. The proposal for opening bankruptcy proceeding in a bank shall also enclose decision of the Governor on fulfilment of the requirements for opening a bankruptcy proceeding in a bank.

*(8) The court shall adopt a decision on the proposal for opening a bankruptcy proceeding in a bank within 3 working days from the receipt of the proposal under paragraph (7) of this Article, without conducting prior procedure.*

*(9) The provisions of the Bankruptcy Law shall respectively apply to the bank bankruptcy proceeding, unless otherwise set under this law.*

175. The analysis of the provisions above shows that the Banking Law introduced a gradual approach. Based on 14 reasons from Paragraph 1 of Article 133<sup>67</sup>, the Governor of the National bank is obliged to introduce extraordinary measures, defined in paragraphs 2 and 3 of the same Article. The Governor may also authorize a person – supervisor from the National Bank - to monitor the implementation of the measures referred to in Paragraph 2 of Article 133. If the bank is undercapitalized<sup>68</sup> or faces undercapitalization, the Governor is obliged, on the basis of Article 135, to require from the bank's Supervisory Board to submit a bank improvement plan. Such a request automatically leads to suspension of some activities of the bank, listed in Article 136, which can only be performed with the Governor's approval.

176. If the situation of the bank deteriorates further and the capital adequacy ratio of the bank drops below 50% of the level specified by the law<sup>69</sup>, the Governor, according to Article 139, is obliged<sup>70</sup> to pass a decision on introducing an administration and appointing administrators in a bank.

177. According to Article 141, with the appointment of the administration all responsibilities of the Supervisory Board and the Management Board of the bank and the responsibilities of the General Meeting of Shareholders, other than the responsibility for adopting a decision on increasing the capital cease on the date of the decision on introducing an administration to the bank, and are conferred to the administrators. According to Article 143, the administrators have 21 days to determine the conditions in the bank, submit a corresponding report to the Governor and propose two possible steps: Bank Rehabilitation Plan, or a proposal for revoking the founding and operating licence, which may include a plan for a transfer of the bank's assets and liabilities to other banks. According to Article 146, the Governor has 15 days to make a decision on which proposal to accept

---

<sup>67</sup> Also including situations where “the capital adequacy ratio and/or own funds and/or capital conservation buffers are below the level defined by this law”.

<sup>68</sup> The bank is considered undercapitalized when its own funds or capital adequacy ratio are below those required by this law, which – according to Paragraph 1 of Article 65 – means below 8%.

<sup>69</sup> According to Paragraph 1 of Article 65 that means less than 4%.

<sup>70</sup> In the English translation of the Law, the word “shall” is used.

and according to Article 147 he or she can also require from the administrators to convene a General Meeting of Shareholders and to propose to shareholders to cover the loss at the burden of their own funds and increase the bank's own funds.

178. If – in accordance with Article 151 - the Governor finds that during the administration the financial position of the bank has not improved, he or she is obliged to make the decision on revoking the founding and operating licence and on opening a bankruptcy proceeding or initiating liquidation procedure in the bank.
179. According to Article 154, the Governor must revoke the licence for founding and operating a bank if the conditions for introducing a bankruptcy or liquidation procedure in the bank have been fulfilled.
180. According to Article 157, the Governor is obliged to pass a decision on fulfilment of the requirements for opening a bankruptcy proceeding in a bank in the case of its insolvency, which applies if the capital adequacy ratio is below one fourth of that specified under Article 65<sup>71</sup>. According to Paragraph 6, this provision will not be applied when during the administration the bank is excluded from payment operations.
181. The approach of the Law to the issue of capital adequacy ratio/undercapitalization of the bank is to use a gradual approach:
- according to Article 133, when the bank capital adequacy ratio of the Bank drops below 8%, the Governor must apply extraordinary measures, including a request to the bank's Supervisory Board to submit a plan for improvement,
  - according to Article 139, when the capital adequacy ratio of the bank drops below 4%, the Governor must pass a decision on introducing an administration and appointing administrators in a bank,
  - according to Article 157, when the capital adequacy ratio of the bank drops below 2%, the Governor must pass a decision on fulfilment of the requirements for opening a bankruptcy proceeding.

---

<sup>71</sup> According to Paragraph 1 of Article 65 this means less than 2%.



182. In Article 157, Paragraph 4, the first two points refer to insolvency of the bank:
- according to the first one (“when a bank is insolvent”), it is not important how the Governor learns about the insolvency<sup>72</sup>,
  - in the second one (“the administrator report, or the implementation of the rehabilitation plan show that the bank is insolvent”), the administrator and the rehabilitation plan are mentioned as sources of information for the Governor.
183. The provision of Article 157 has to be read in the way that bankruptcy can be initiated even without previous engagement of administrators in the critical bank. Beyond any doubt, this provision applies to cases where the NBSM learns about the insolvency of the bank as a “surprise”, for the first time, and the insolvency is such that it triggers an immediate introduction of a bankruptcy procedure<sup>73</sup>.
184. However, reading all the paragraphs dealing with banks in troubles shows that the idea of the legislator was to oblige the Governor to try to save banks in difficulties by first applying less intrusive methods and replacing them with stronger methods, if necessary. It is also obvious that bankruptcy is understood by the legislator as *ultima ratio*, when there is absolutely no other possibility to protect depositors and the stability of the national financial system. Such solution is not specific to North Macedonia since all countries want to protect banks as pillars of their financial systems from collapsing. And this is why bankruptcies of banks do not materialize very often.

---

<sup>72</sup> Only the fact of insolvency is important.

<sup>73</sup> When the capital adequacy ratio of the bank is below 2%.

## 5 ANALYSIS AND CONCLUSIONS

185. In the following five chapters some important features related to the bankruptcy of the ESB are analysed: an informal lending scheme in the North Macedonian banking sector, the NBSM measures in the ESB concerning its capital adequacy ratio, relations between the NBSM and Komercijalna banka, potential insider trading and two important NBSM Governor's public statements after initiating the bankruptcy of the ESB.

### 5.1. Informal lending scheme and wilful blindness of the NBSM

186. In operations of the ESB, the existence of an informal lending system, which is an important characteristic of the functioning of many banks in North Macedonia, can easily be identified. Companies – clients of the bank, which due to their existing exposure or due to the lack of proper collaterals are not in a position to acquire a credit from a certain bank, in this case the ESB, can acquire money through other companies, which are not heavily indebted yet or are still in possession of quality collaterals and are able to get credits from the banks. Those “good” clients serve as intermediaries and take credits from the bank, only to disperse them immediately, in the majority of cases on the same day, through loan contracts to other clients – or even without them. The final recipients of the money are obliged to return the money, though not necessarily to their lenders but to other companies participating in the scheme, which then finally have to repay the money to the bank that provided the credit. In many cases, the ESB clients – like the clients of other banks – participated in this scheme without having been informed in concrete cases that the Bank would run significant amounts of money through their accounts and without giving their approval for any of the operations.
187. Based on their engagement and role in the described informal system, some of the companies were more exposed than others – for instance Zoi Per Kompany, Galafarm Group<sup>74</sup> and ATV Zeus.
188. When the final recipients of the money or intermediaries become too exposed in one bank, they are transferred to other banks, which are engaged – with their full knowledge – to keep the scheme running – by issuing new credits, which are then used to cover the debts of their “new” clients at their previous banks directly by those clients or through yet another set of companies, paying for

---

<sup>74</sup> In the period between 7 March 2014 and 3 November 2020, Galafarm Group received 95 loans from other companies in the total value of 399,175,598 MKD.

the credits of other clients at their banks. In this way, unhealthy relations between banks, which are normally competitors when operating in the same market, develop, which does not allow for an objective assessment of the quality and credibility of the banking system and financial flows in the country.

189. As proven in the case of another bank in North Macedonia<sup>75</sup>, the schemes involving dozens of companies and several banks slowly became uncontrollable, causing major financial damage to the companies but also to the banks involved. Therefore, any normal bank would try to avoid participating in such a scheme or to stop such participation in cases where it is already engaged. As usual, a move from an informal back to a fully legal lending activity always causes the breakdown of a pyramid scheme, built by participants of informal chains, and this is what started happening with the appointment of the new President of the ESB Management Board, who started his job on 29 November 2019, and who tried to collect debts from intermediaries and other participants of the informal scheme, by simply following the contracts concluded and not informal agreements of the participants in the informal scheme.
190. It is difficult, if not impossible, to understand how the NBSM did not identify the existence and extent of the mentioned informal lending schemes and did not react to them given the threat they represent to the integrity of the banking system<sup>76</sup>. Having in mind the fact that the NBSM was informed of the existence of the scheme by the owner of the company Gradsko Taksi Sonce in the first half of 2019<sup>77</sup>, the findings of the external on-site supervision at the ESB, conducted in the period from 8 April 2019 to 6 June 2019, where massive and significant deficiencies – the use of credits against the declared purpose, falsification of documents, issuing credits to connected clients, improper risk classification of clients<sup>78</sup>, all being caused by the existence of such an informal lending system – were identified and the volume of informal financing in the North Macedonian financial system, there is only one conclusion possible: the NBSM deliberately did not want to deal with the problem, in which, for example, Komercijalna Bank was engaged in 2004 already and which had grown to uncontrollable proportions by 2020. The wilful blindness of the NBSM caused enormous material damage to many companies and banks and to the whole banking sector of

---

<sup>75</sup> Komercijalna Banka.

<sup>76</sup> In the worst case scenario, it might lead to a collapse of the banking sector in North Macedonia.

<sup>77</sup> See Para 12 above.

<sup>78</sup> See Para 30 above.

North Macedonia. There are also some credible allegations that individual employees of the NBSM in certain situations gave advice on how to deal with certain problems to keep the scheme running.

191. The importance of some of the participants of the informal lending scheme was further underlined by the July 2021 purchase of company Galafarm, one of important intermediaries in the scheme, by Nicholas Hintolarski<sup>79</sup>, a buyer<sup>80</sup>, who only some months ago was seriously interested in buying the ESB and who had very close connections to the Government of North Macedonia<sup>81</sup>. Obviously, there was an element of urgency in buying Galafarm, which was sent into the bankruptcy procedure by company Krmzov MR only one month earlier. It seems that Galafarm was acquired by Hintolarski through an expensive purchase of receivables of creditors<sup>82</sup> only a short period before the company would have been available at a far lower price after the completion of the bankruptcy procedure.

## **5.2. The NBSM measures in the ESB concerning the capital adequacy ratio**

192. Following direct supervision of the NBSM, conducted in the period between 18 April 2018 and 7 June 2018, the NBSM Governor, on 26 September 2018, adopted a Decision on regular and additional correction measures for the ESB. One of the measures was the requirement for the ESB to increase its own funds to achieve the capital adequacy ratio of at least 15% by 31 March 2019. On 15 May 2019, the Governor made a Decision amending the Decision from September 2018, now requiring from the ESB to plan the measures for increasing the ESB capital adequacy ratio to 15% by 15 September 2019. The plan, devised by the ESB, was approved by the NBSM Governor on 6 June 2019. During the meeting between the NBSM and the ESB on 12 August 2019, it was agreed that the first tranche of the money increasing the capital adequacy ratio would be invested by the shareholders at the end of August or beginning of September 2019. On 15 August 2019, a new meeting between the NBSM and the ESB was held and the need for the investment of additional capital in the ESB was underlined again, followed by a promise of the main shareholder to do it soon.

---

<sup>79</sup> Through company Niko Farm, DOOEL, Skopje.

<sup>80</sup> Mr. Hintolarski, Bulgarian citizen.

<sup>81</sup> See Para 18 and 19 above.

<sup>82</sup> Especially Krmzov MR.

193. On 19 August 2019, the NBSM Minutes of the Direct On-Site supervision on the same day clearly and explicitly stated that the capital adequacy ratio of the Bank was negative. That statement meant that according to Article 139 of the Banking Law, the Governor was obliged to pass a decision on introducing an administration of the ESB and appoint the administrators. In addition, that statement also meant that according to Article 157 of the same Law, the Governor was obliged to pass a decision on fulfilment of the requirements for opening the bankruptcy proceeding of the ESB. Neither happened and although that was the moment when the ESB was in the all times<sup>83</sup> worst position concerning its solvency<sup>84</sup>, the NBSM allowed it to continue operations without using the strongest tools provided by the Banking Law.
194. On 26 November 2019, the company GOFI, which was one of the ESB shareholders, acquired a credit of 615 million MKD from Komercijalna Banka (secured by the pledge of shares of the company EUROLINK) for the purposes of recapitalisation but it did not use it to increase the basic capital of the ESB. On the contrary, it introduced it to the Bank as a subordinated loan. In this way, the liquidity ratio of the ESB was not improved, which was particularly damaging, bearing in mind that through this action the external audit of the ESB in December 2019 could not record an improvement of that ratio<sup>85</sup>, which might have been one of the elements influencing the NBSM to lift several bans on the ESB operations in 2020. Namely, due to a significant improvement of the NPL portfolio (see below, the next Paragraph), in December 2019 the NBSM expressed a willingness to adjust the Bank Improvement Plan. The adjusted Plan would cover a period of two years if the following conditions were met: additional investments of 3.5 million EUR into ESB by 30 April 2020, and 2 million EUR by 31 December 2020 – with the possibility of postponement until 31 March 2021. However, since the shareholders did not use 10 million EUR for recapitalisation but for a subordinated loan, the adjustment of the Improvement Plan did not happen.
- Finally, in February 2020, 11 million EUR from two subordinated loans were used to cover losses of the ESB but that had no influence on the results of external audit from December 2019 or on the willingness of the NBSM to adjust the ESB Improvement Plan.
195. In the period from October to December 2019, the ESB recovered 15.2 million EUR from the NPLs, increasing the liquidity ratio by 1.5 % to 2%. From January to March 2020, another 6 million EUR

---

<sup>83</sup> Allegedly even worse than at the time of bankruptcy on 12 August 2020.

<sup>84</sup> Many important deposits were withdrawn by the depositors.

<sup>85</sup> According to unofficial calculation it would increase to over 8%.

were recovered. Those efforts had to stop on 24 March 2020, due to the Covid-19 emergency situation, in which forced repayments were prohibited completely. A thorough analysis of the ESB possibilities for further forced repayments after the emergency situation (which ended on 29 May 2020), in which the NBSM also participated in June 2020, proved that for the period from June to December 2020 there were realistic chances for the ESB to recover between 4.5 to 8 million EUR.

196. On 4 February 2020, the NBSM Governor adopted a new Decision, amending previous decisions, approving amendments to the Improvement Plan and introducing new prohibitions for the ESB but not mentioning the capital adequacy ratio. On the same day, another Decision was passed by the NBSM, allowing the ESB to issue loans to limited categories of natural and legal persons.
197. On 24 March 2020, based on the Decree of the Government of North Macedonia, forced repayments of outstanding loans and bankruptcies of commercial entities in North Macedonia were prohibited. On 29 May 2020, that Decree was cancelled, again by the Government.
198. On 27 April 2020, the NBSM adopted a Decision amending previous decisions and on 22 May 2020, another one, reintroducing the ban on crediting certain categories of natural and legal persons, which had been lifted just three months ago, on 4 February 2020. On 26 May 2020, the NBSM adopted a Decision on partial control of the work of the ESB and on the following day, 27 May 2020, the NBSM administrators entered the NBSM with full access to all information. In none of the decisions, the problem of capital adequacy ratio was exposed. On 1 June 2020, due to a drop of the ESB own assets, a decision was made by the NBSM to revoke the ESB license for international securities trading.
199. In May 2020, the capital adequacy ratio of the ESB, as calculated by the Bank itself, was 5.91% and on 30 June 2020, the capital adequacy ratio, again calculated by the ESB itself, was 5.55%. Encouraged by that data, on 6 July 2020, the ESB explained the reasons for the failure of the amended Improvement Plan of 4 February 2020, which had to do with the Covid-19 situation, and submitted a new proposal to the NBSM to revise the already amended Improvement Plan. The proposal was declined by the NBSM on 13 July 2020. On 17 July 2020 and 27 July 2020, the ESB repeated its request, further explaining reasons for the slow implementation of the Improvement Plan. In the letter of 27 July 2020, the Bank itself asked the NBSM to order the shareholder(s) to recapitalize the bank on the basis of Article 133, Paragraph 1/7 and Paragraph 2/2/10 of the

Banking Law, a measure that had never been taken since June 2015 despite the fact that since then the ESB had never maintained the required adequacy capital ratio. On 28 July 2020, the ESB sent a new letter to the NBSM, expressing its satisfaction with genuine attempts of a serious foreign investor to recapitalize the Bank.

200. Namely, in June 2020, a foreign investor appeared showing a genuine interest to buy the bank. On 16 July 2020, the potential investor informed the NBSM that they had concluded a binding MoU with the ESB and some of related shareholders for the purchase of 80% of ESB and that the auditing company PwC was tasked to prepare a due-diligence report and the Business Plan/Plan for improvement of the ESB. Furthermore, the investor also suggested an in-person meeting between the investor and the NBSM in August. This and none of the following requests inexplicably never resulted in a meeting between the NBSM and the investor. On 18 July, the investor informed the NBSM of the shortening of the period for receiving the PwC Business Plan/Plan for improvement of the ESB to 31 July at the latest.

On 6 August 2020, the investor delivered the final Business Plan for the ESB to the NBSM and expressed willingness to immediately deposit 2 million EUR directly in the ESB even before acquiring the necessary license but under certain conditions<sup>86</sup>. Following that information, the NBSM responded on the same day that it was its understanding that the investor did not want to invest the necessary amount into the ESB. Again, on the same day, the investor responded that the plan for recapitalization of the ESB was based on the draft due-diligence report of the ESB and corresponding Business Plan. According to that Plan, the investor would immediately invest 2 million EUR, followed by another 5 million EUR by the end of year 2020 and any additional sum in the following years, if needed. An explanation was also added that it would be economically not viable for the investor to invest the full amount of money without prior acquisition of the necessary approvals of the NBSM. Still, this time the investor offered to make an unconditional upfront investment of 2 million EUR immediately if the NBSM were to issue a principled approval letter stating that the NBSM did not foresee any major issues in the investor getting the license to own 80% of the ESB.

---

<sup>86</sup> But also adding that in the case that the NBSM did not approve the license for the investor, the ESB would refund 2 million EUR to the investor.

On 8 August 2020, the investor informed the NBSM that it was ready to invest 7 million EUR (EUR 2 million + EUR 5 million) to stabilise the capital adequacy ratio of the ESB even if the due-diligence by the PwC had not been completed yet.

On 11 August 2020, the NBSM replied to the investor, stating that they were not satisfied with the immediate investment of 2 million EUR, followed by the investment of 5 million EUR by the end of September, requesting an “urgent and prompt recapitalization of EUR 7 million”. On the same day, the investor sent another email to the NBSM, offering to pay 2 million EUR in the current week and 5 million EUR according to the business plan submitted on 4 August 2020. This time the investor also added that in the absence of a positive NBSM answer this binding offer would expire automatically on 14 August at 3 pm Skopje time. The NBSM did not respond to this letter.

201. On 4 August 2020, the former owner of the company EUROLINK sent a letter to the NBSM as a reply to NBSM Governor’s letter of 17 June 2020. In her letter, she informed the Governor that she had no intention to invest further into the ESB or to take up any managerial position there.
202. Following the initiative of the NBSM, on 5 August 2020, a video call between the ESB and the NBSM took place where it was agreed that 3.5 million EUR would be invested by one of the shareholders into the ESB by 14 August 2020. During that meeting, the NBSM also expressed their appreciation of the potential buyer of the bank.
203. On 10 August 2020, a meeting took place in the NBSM between a representative of one of the shareholders and the NBSM, where the shareholder offered to invest 2.2 million EUR to the Bank immediately in order to convince the Governor to have a meeting with the potential investor. On the next day, 11 August 2020, the shareholder sent a letter to the NBSM, asking for the approval of two operations, which would increase the basic capital of the ESB by approximately 2 million EUR immediately. The NBSM received the letter on 12 August and did not respond to it.
204. On 6 August 2020, the Portfolio Manager from the Off-Site Supervision and Licensing Department of the NBSM informed the Bank that according to the NBSM calculations the ESB capital adequacy ratio on 30 June 2020 was not +5.5% as stated by the ESB but -1.23%.
205. On 12 August 2020, the NBSM issued a Decision, according to which conditions for opening a bankruptcy proceeding were confirmed for the ESB and its founding and operating license was revoked due to the ESB insolvency caused by the fact that according to the NBSM calculations the



ESB capital adequacy ratio on 30 June 2020, was – 4.14 %. In the Decision, the method based on which the capital adequacy ratio was calculated was not presented clearly.

206. The language of paragraphs 1 and 4 of Article 157 of the Banking Law is very clear and direct in obliging the Governor of the NBSM to initiate a bankruptcy procedure of the bank in case of insolvency.

In the English version, Paragraph 1 reads as follows: “The Governor shall pass a decision on fulfilment of the requirements for opening bankruptcy proceeding in a bank”. Also in the English version, Paragraph 4 reads as follows: “Bankruptcy procedure shall be initiated in the following cases:”

In the original, Macedonian version, Paragraph 1 of Article 157 reads as follows: “Решение за исполнување на условите за отворање на стечајна постапка во банка донесува гувернерот.” Also in the Macedonian version, Paragraph 4 of Article 157 reads as follows:” Услови за воведување на стечајна постапка во банка постојат кога:..”

207. Following the text of Article 157 of the Banking Law, the Governor would have been obliged to initiate the bankruptcy proceeding of the ESB on 19 August 2019. The fact that the Governor was aware of her (omitted) duty can be considered confirmed by the fact that in her interview on 3 September 2020, she mentioned that the capital adequacy ratio of the ESB had been “found to be insufficient” in 2019 already. Such a careful formulation of her statement confirms two facts: the Governor was aware of the real situation of the ESB capital adequacy ratio in 2019 and in the interview she did not want to be too specific on it, most probably because she knew that she had breached her duty to initiate the bankruptcy in 2019 already.
208. Having in mind the obvious gradual approach of the Banking Law, in the case of a negative capital adequacy ratio and even before passing a decision on bankruptcy, the Governor would have had to apply Article 139 of the Banking Law, according to which the Governor is obliged to pass a decision on introducing an administration of the ESB and appoint the administrators if the capital adequacy ratio of the bank drops below 4%. This failure is very important for the analysis of the Governor’s measures against the ESB: despite the fact that she knew that the managerial structures of the ESB were the root of the problem, which she tried to solve by unsuccessfully convincing a family member<sup>87</sup> of the one of shareholders to take over the Bank, not even once in

---

<sup>87</sup> The former owner of the company EUROLINK.

her many decisions was the target of regular and extraordinary measures the management of the ESB, it was always the Bank itself, mainly in the sense of restricting its activities. Paradoxically, it had to be the Bank itself<sup>88</sup> that asked the NBSM to order the shareholder(s) to recapitalize the bank on the basis of Article 133, Paragraph 1/7 and Paragraph 2/2/10 of the Banking Law. This initiative was not followed by the Governor, which is surprising given her public statement of 3 September 2020, that one of the main problems of the ESB was “bad handling of credit portfolio and related risks”, which is a problem exclusively caused by poor management. Instead of replacing the people responsible for the problems, which the NBSM did not even want to see in their entirety (see above, sub-chapter 4.1.), with administrators chosen by the NBSM, the NBSM decided to deal with the problem by always adding additional restrictions to the operation of the Bank.

209. It is obvious that the Governor did not read articles 139 and 157 of the Banking Law as being mandatory, obliging her to take action in certain circumstances of insolvency. On the contrary, it is clear that she is of the opinion that the Governor has a discretionary right to decide which measure – if any – to apply against the banks having problems. This is undoubtedly the case for many measures listed in the Banking Law but not for the ones referred to in Articles 139 and 157.
210. The conclusion on the Governor’s wrong interpretation of her duties under the Banking Law leads to the following simple question: if not legal, what were the main reasons influencing her decision to initiate the bankruptcy of the ESB on 12 August 2020, when she did not find it mandatory to do it already on 19 August 2019? Since it is obvious that she applied the mandatory text of the Law in a discretionary manner, there could only be economic reasons influencing her decision in 2020. Taking into consideration any other potential reason such as disrespectful attitude of the shareholders or managers<sup>89</sup> of the Bank towards the NBSM and the Governor herself, ignoring her ideas<sup>90</sup> (not decisions!) on how to proceed with the Bank and similar should never happen in any country with the rule of law and in any national bank conducting its duties in the best interests of its citizens and the financial system of the country.
211. The Governor was facing difficult challenges when dealing with the ESB, especially due to constant delays in its recapitalization, caused by the shareholders. She was forced to move the deadlines

---

<sup>88</sup> On 27 July 2020.

<sup>89</sup> The penultimate Chairman of the Management Board.

<sup>90</sup> For example, forcing family members of the shareholders to invest in the Bank.

for the recapitalization already set – from 31 March 2019, first to 15 September 2019 and then to February 2020, when the recapitalization with 11 million EUR took place. Due to those challenges, mutual trust between the NBSM and the ESB declined sharply and it was only partly re-established with the new Chairman of the Management Board. The trust could not be restored fully due to the continuing unreliability of the main shareholders in their approach to the recapitalization and due to their occasional disrespectful behaviour towards the NBSM and the Governor. Meanwhile, the NBSM did not do anything meaningful to stop the ESB management from continuing the “bad handling of credit portfolio and related risks” as the biggest problem identified by the NBSM.

212. Economic conditions in which the ESB was operating in the first half of 2020 were not conducive to the improvement of its situation: in addition to corrective measures introduced by the NBSM, many of which directly limited its abilities to sell its products and earn the necessary income, the Bank was also abruptly stopped in its successful forced repayments due to the Covid-19 emergency situation in place from 24 March 2020 to 29 May 2020. Still, in the period from October 2020 to March 2021, the ESB managed to collect 21.2 million EUR from the non-performing loans (NPLs).
213. On the other hand, economic perspectives for the ESB were also improving due to other developments: as it was also known to the NBSM, there was a credible assessment that the ESB might collect further 4.5 million EUR to 8 million EUR from the NPLs in the period between June and December 2020. After many unsuccessful attempts to sell the Bank, its shareholders seemed to have found a credible investor, willing to invest – although treated in an incomprehensively negative manner by the NBSM – 2 million EUR immediately and unconditionally, followed by another investment of 5 million EUR by the end of 2020. Finally, one of the shareholders was ready to immediately invest an additional 2 million EUR into the Bank himself. Despite the fact that these two offers – from the potential investor and from the shareholder – came on 11 August 2020, when – most probably – everybody in the NBSM was already getting ready to initiate the bankruptcy, they should have been taken into account while assessing the future solvency and destiny of the Bank.
214. That should have been particularly important bearing in mind that it was absolutely unclear what the real capital adequacy ratio of the Bank was. Namely, in just one month there were four different assessments of that ratio: according to the ESB itself, at the end of May 2020, the capital adequacy ratio was 5.91% and on 30 June 2020, the capital adequacy ratio – again, according to the ESB itself – was 5.55%. According to the NBSM, the capital adequacy ratio for 30 June 2020

was first calculated – with a well substantiated calculation – to be -1.23%<sup>91</sup>, only to be calculated again for the same day (30 June) on 12 August 2020<sup>92</sup> and set at -4.14% in a way which does not offer any particular clarity concerning the method on the basis of which the capital adequacy ratio was calculated. Namely, the NBSM calculation of the total unallocated impairment correction, which was decisive in the NBSM calculation of the capital adequacy ratio, only referred to “the last available information of 30 June 2020”, in general terms without any further details. Yet, as a result of that “calculation”, the Bank was sent into bankruptcy.

215. Bearing in mind that it was unclear what the capital adequacy ratio of the Bank really was, the importance of the missed application of Article 139 of the Banking Law and the failure to introduce the administration to the Bank by the Governor cannot be underlined enough. Namely, administrators appointed by the Governor and replacing the Supervisory and the Management Board of the Bank have one main task<sup>93</sup>: to determine the condition of the bank, which includes determination of the capital adequacy ratio. With the appointment of administrators, the Governor would have solved two critical issues in the ESB: replacing the supervisors and managers, who for the most part<sup>94</sup> brought the Bank into a critical situation and receiving a reliable picture concerning the financial situation on the Bank, which would have enabled her to make really qualified decisions. It is not known why Article 139 was not applied.
216. In conclusion, strictly legally and in accordance with the NBSM data, the Governor had a duty to initiate the bankruptcy procedure for the ESB on 12 August 2020 – if for no other reason, then because of the calculation of the capital adequacy ratio at -1.23% by the Portfolio Manager of the Off-Site Supervision and Licensing Department of the NBSM.
217. However, bearing in mind that this duty already existed on 19 August 2019 and was not followed then, the question appears as to why the Decision on initiating the bankruptcy on 12 August 2020 really had to be made. Firstly, the situation of the Bank was not absolutely clear. Secondly, everybody in the country knew that the operation of all banks in North Macedonia was hit hard by the introduction of a moratorium on forced repayments during the Covid-19 emergency situation<sup>95</sup>. For the ESB, the situation was even more difficult, since it was also exposed to serious

---

<sup>91</sup> By the Portfolio Manager of the Off-Site Supervision and Licensing Department of the NBSM.

<sup>92</sup> By the Governor.

<sup>93</sup> According to Paragraph 1 of Article 143 of the Banking Law.

<sup>94</sup> With the exception of the new Chair of the Management Board.

<sup>95</sup> From 24 March 2020 to 29 May 2020.

NBSM limitations in performing its lucrative activities due to its bad standing. Finally, even a very conservative assessment led to the conclusion that by the end of 2020, the ESB would add another 9 million EUR to its basic capital and additionally collect at least 4.5 million EUR from forced repayments. If the bankruptcy was not introduced in 2019, when the ESB was in a worse position, the NBSM could have waited for a few more months or maybe weeks to see if and how the promised investments<sup>96</sup> in the ESB would go and in the case of their absence launch the bankruptcy procedure immediately.

218. According to Para 3 of Article 131 of the Banking Law, when deciding on measures for the banks facing problems, the Governor, in addition to many other criteria, also has to take into consideration “the soundness of the banking system as a whole”. In other words, if the situation of the ESB had been seriously endangering the North Macedonia banking system as a whole, the Governor’s Decision of 12 August 2020 would have been economically acceptable. But the banking system of North Macedonia had never been in better shape than in August 2020: according to the Governor’s own public statement on 3 September 2020, “the capital of other banks is at the historic maximum and their capital adequacy ratio is twice as high as that required by law ...”.
219. According to the same Para 3 of Article 131 of the Banking Law, when deciding on measures for the banks facing problems, the Governor, in addition to many other criteria, also has to take into consideration “the effect or possible effect of the measure on the bank or its depositors in order to prevent from further deterioration of the bank's position”. In the case of the ESB, this provision translates into a very simple question: were the depositors protected better during regular operation of the Bank or during its bankruptcy? As the bankruptcy proceedings are still ongoing, the final answer cannot be given yet but some comparisons are already possible: when the Bank still operated, it managed to recover 21.2 million EUR from the NPLs in the period of 6 months<sup>97</sup>. After the introduction of the bankruptcy, the bankruptcy trustee<sup>98</sup>, during a period of 14.5 months<sup>99</sup>, managed to recover 383,895,297.41 MKD from the NPLs, which makes roughly 6.4 million EUR. In other words, in a period more than twice as long, the bankruptcy trustee managed to recover more than three times less money than the Bank before it was declared bankrupt. And what is also extremely important, the bankruptcy trustee did not initiate any new recovery

---

<sup>96</sup> 2+5 million EUR by the potential investor and 2 million EUR by one of the shareholders.

<sup>97</sup> From October 2019 to March 2020.

<sup>98</sup> According to his statement of 8 November 2021.

<sup>99</sup> From 14 August 2020 to 31 October 2021.

procedure but only brought the ones started by the ESB already to an end. Therefore, it currently appears that the interests of the depositors would be much better protected if the Bank was left in function.

220. In accordance with Para 3 of Article 131 of the Banking Law, there are also some other criteria – in addition to those mentioned in paragraphs 139 and 140 above – which have to be taken into account by the Governor when making decisions on the measures against the banks having problems: type and severity of illegality and/or irregularity; whether the illegality, i.e. irregularity was made on purpose and/or is recurrent, and willingness of the bank's bodies to eliminate the identified illegitimacies and irregularities. When assessing the “type and severity of illegality and/or irregularity”, it can be concluded that the situation in the ESB on 12 August 2020 was undoubtedly very severe, since the insolvency according to Article 157 of the same Law is a reason for initiating bankruptcy. This “irregularity” was a recurrent one since it was already registered on 19 August 2019. In addition, according to her previous experience with the bank's bodies, mainly the shareholders, the Governor had every right to doubt their willingness to eliminate the irregularity in the sense of improving the capital adequacy ratio of the Bank and its solvency. However, all the three criteria mentioned here are less important than the question whether there were real economic chances to save the Bank, eliminate the irregularities and protect the interests of the banking system and of the Bank's depositors, and as mentioned above (in paragraphs 138, 139 and 140), there were real and tangible perspectives that the Bank's solvency would improve significantly by the end of 2020.
221. It is possible to conclude that after incomprehensibly failing to introduce a mandatory administration of the Bank, which would have been by far the best measure in potentially saving the Bank from bankruptcy, in legal terms, the Governor had to initiate the bankruptcy proceeding of the ESB on 12 August 2020. But since she had not done so on 19 August 2019, when the Bank was in a much worse position, in light of very promising economic developments in the Bank (existence of a serious investor, effective forced repayments) there was every reason to wait with the initiation of the bankruptcy for some more time, especially as the depositors and their deposits were better protected when the Bank was still in operation.

### 5.3. Relations between the NBSM and Komercijalna banka

222. Bearing in mind the wilful blindness of the NBSM over the existence and functioning of the illegal lending scheme in the banking sector of North Macedonia, described in chapters 2 and 4.1. above, in which Komercijalna banka played an extremely important role, it is worth analysing any potential particular or special relations between the NBSM and Komercijalna banka, especially as this bank is a systemic bank of the country. This is needed to understand whether the failure of the NBSM to identify and sanction the existence of the illegal lending scheme, which also heavily influenced the operation of the ESB, can also be attributed to these special relations within the banking sector of North Macedonia.
223. In September 2019, the name of Komercijalna banka was used to reassure depositors and the general public in North Macedonia that the ESB was not in such a difficult position as it seemed to be. The leakage of information concerning the talks between the ESB and Komercijalna Banka on a possible ESB takeover by Komercijalna Banka and its publication on the official website of the Skopje Stock Exchange at the end of September 2019 played a major role in calming the situation. That was obviously done in agreement between the NBSM and Komercijalna Banka.
224. It is difficult to understand why the NBSM Governor in November 2019 rejected the offer of the Austrian buyer of the company EUROLINK, who expressed the willingness to execute an advanced payment of 10 million EUR in maximum 6 days, on 16 November 2019. The Governor, however, required the payment and increase of the ESB own capital “today”<sup>100</sup>. Instead of a solid payment, the NBSM insisted that one of the main shareholders of the ESB should take a loan of 10 million EUR from Komercijalna Banka and pledge it with shares of EUROLINK, which was finally also done – but the loan became operational in 6 days, on 16 November, which is exactly the day when the Austrian buyer would also have transferred the money. In other words, instead of agreeing to a simple upfront payment of a credible foreign investor, the NBSM insisted on a complicated scheme of a loan from Komercijalna Banka, which, among other things, also cost the borrower approximately 300,000 EUR.
225. The NBSM Governor was also personally present when representatives of Komercijalna Banka required from the ESB Management and Supervisory Board to sign a statement validating a decision of the former CEO of the Bank, who without proper authorization transferred 3 million

---

<sup>100</sup> An impossible request on the part of the Governor.

EUR to Komercijalna banka to be used as collaterals for the loans of some legal persons heavily exposed at the ESB<sup>101</sup>, now managed by Komercijalna banka<sup>102</sup>. Moreover, during the same meeting Komercijalna banka required the signature of another document, which would allow it to continue to use the aforementioned 3 million EUR. Those two requests were extremely questionable and most probably illegal, not only from the point of view of extremely unusual financial operations within the banking system controlled by the NBSM but also from the point of view of the possible criminal offence of “Abuse of authorization in the economy” under Article 287 of the Criminal Code of North Macedonia committed by the former CEO of the ESB. Therefore, according to Article 364 of the same Criminal Code, the Governor as an official person was obliged to report a crime that she found out about while performing her duty and since she consciously did not do it, there are reasonable grounds to suspect that she committed a criminal offence of “Not reporting a crime or an offender” under aforementioned Article 364.

226. It also seems that the NBSM did not recognize any of the operations of transferring heavily indebted clients from Komercijalna Banka bank to the ESB with the aim of continuing their financing but not exposing Komercijalna banka to any additional risks<sup>103</sup>.
227. Without any doubt, there was a special relationship between the NBSM and Komercijalna banka, which cannot be explained only by the fact that Komercijalna Banka is the most important bank of the North Macedonian banking system. This might also serve as an explanation why for at least 17 years the NBSM has not been able to identify and sanction the existence of a parallel lending scheme in its banking sector in which Komercijalna banka had<sup>104</sup> the most important role.

#### 5.4. Potential insider trading

228. As for any other bank, banking secrecy also applied for the ESB and despite its very difficult position no information on its problems would be expected to leak, neither to the general public nor to specific individuals – at least in principle. However, the events following the critical situation in the

---

<sup>101</sup> Jugotrading, Krmzov, Prototip, Galafarm,...

<sup>102</sup> Details of those operations are contained in the Internal Audit Report from November 2019, which was also sent to the NBSM. No reaction followed.

<sup>103</sup> As was the case for companies from the Galafarm Group.

<sup>104</sup> And maybe still does.



ESB in August 2019 and just before the bankruptcy point to the conclusion that information on the situation in the Bank was leaked.

- 229. In August and especially in September 2019, some of the ESB staff, mainly in higher positions, started to withdraw their money from the bank. Immediately after that, the ESB's biggest depositor withdrew 10 million EUR on 1 October 2019. Through these facts other ESB clients also learnt about the situation in the bank and withdrew additional 15 million EUR of deposits. Only with extreme engagement did the ESB prevent a total collapse.
- 230. In September 2019, the current bankruptcy trustee of the ESB withdrew 500,000 EUR from his account with the ESB. This immediately opens a question of a potential conflict of interests between his former position of an ESB saver and current position of the ESB bankruptcy trustee. In no other country would a saver with a bank be allowed to serve as the bankruptcy trustee of the same bank, even if he were the only bankruptcy trustee in the country specialized for bankruptcies of banks.
- 231. Only a few days before the bankruptcy of the ESB, the Minister of Finance withdrew 200,000 EUR from her account with the ESB, which could also indicate that she knew that the bankruptcy would be initiated soon.
- 232. There is almost no doubt that inside information on the difficult position of the Bank was leaked but in the circumstances surrounding the struggle of the ESB to survive even more leaks could have been expected. Basically, the only surprise is the withdrawal of 200,000 EUR by the Minister of Finance, on the basis of which it can be concluded with great probability that the North Macedonian government – or at least a part of it – knew that the bankruptcy was coming.

## **5.5. The NBSM Governor's public statements**

- 233. After the bankruptcy of the ESB, the Governor of the NBSM gave a number of public statements, of which two are really important: the first one to Fokus magazine on 3 September 2020, and the second one to the Parliamentary Finance and Budgetary Committee on 13 November 2020.
- 234. Parts of the Governor's statements on those two occasions were either not true or not precise enough.

235. In the interview for the Fokus magazine on 3 September, she made the following statements:

- *“revoking of the ESB banking license was needed to protect depositors and the stability of the banking system”*: as seen above, in paragraphs 138 – 141, depositors were in a much better position before rather than after the bankruptcy and the banking system in North Macedonia was in extremely good shape in August 2020;
- *“the capital adequacy ratio of the ESB was found to be insufficient in 2019 already, which was also a reason for the introduction of the Improvement Plan, a measure which – according to the Banking Law – is applied for banks with the capital adequacy ratio below the lawful minimum but still solvent with the capital adequacy ratio above 2%”*: the Governor was not precise enough since she knew that the capital adequacy ratio on 19 August 2019 was not only “insufficient” but negative, which should have triggered much more serious NBSM measures<sup>105</sup>;
- *“in the Improvement Plan the shareholders accepted the obligation to recapitalize the Bank, which partly happened in the previous year but not also in the first half of 2020”*: more precisely, 11 million EUR were used for recapitalization in February 2020;
- *“the potential investor produced a detailed analysis of the ESB situation and a plan for its recovery but the plan did not prove the readiness of the investor to recapitalize the bank in the needed amount and in the needed time-frame. In addition, the NBSM did not receive the documentation required to assess if the potential investor fulfils the conditions to become the ESB shareholder”*: the plan produced by the potential investor was based on a thorough PwC due diligence report for the ESB, while it is not entirely clear on which basis the “needed amount” and the “needed time-frame” were decided by the NBSM. It is also not clear why the NBSM, despite several requests by the investor, did not offer the chance for a personal meeting to the representatives of the investor, where all outstanding issues could have been dealt with.

236. During the hearing at the Parliamentary Finance and Budgetary Committee on 13 November 2020, she made the following statements:

---

<sup>105</sup> Such as forced administration or initiation of the bankruptcy.

- *“the NBSM has exhausted all other options”*: not really. As it can be seen above, in para 129, the NBSM never introduced an administration in the Bank<sup>106</sup>;
- *“in 2019, supervisors of the NBSM found that there was a large amount of unsecured reservations in the ESB, causing the undercapitalization of the Bank but not to extent which would require revoking of the license”*: the Governor was not telling the truth here since she knew that the capital adequacy ratio of the ESB on 19 August 2019 was negative already, which should have triggered much more serious NBSM measures, including a possible revocation of the license;
- *“the ESB shareholders injected 10 million into the ESB in November 2019 and pledged that they would continue to recapitalize the Bank in 2020, which did not happen”*: the ESB shareholders injected 11 million EUR into the share capital of the ESB in February 2020. In addition, what the Governor did not say was that there were realistic chances that the ESB would be recapitalized in the remaining five months (August – December) of the year 2020;
- *“in June 2020, the ESB informed the NBSM that there was an investor willing to recapitalize the bank but the investor did not submit the documentation to the NBSM, which would enable it to assess the investor’s suitability for buying the ESB shares. Additionally, at the beginning of August 2020, the investor “informed the NBSM that they were not ready to ensure the needed capital in the given timeframe”*: the potential investor was trying hard to explain to the NBSM that they were willing to invest the needed amount of money following the PwC due diligence report and never said that they were “not ready to invest”. It is also not clear why, despite several requests by the investor, the NBSM did not offer a chance for a personal meeting with the representatives of the investor, where all outstanding issues could have been dealt with.

237. Additionally, in reply to a direct question by a Member of Parliament<sup>107</sup> as to why the NBSM had not applied other measures against the ESB, including a direct takeover of the management of the ESB, instead of immediately revoking its license, the Governor replied that the NBSM had not taken over the management of the Bank because the real problem was undercapitalization of the Bank and not its management. This is not exactly what she told Fokus magazine, where she stated that the main reason for the ESB’s problems was “bad handling of credit portfolio and related risks, not followed by the needed recapitalization”. “Bad handling of credit portfolio and related risks” is an

---

<sup>106</sup> Only a partial one to a very limited extent on 26 May 2020.

<sup>107</sup> Mr Apasiev.

exclusive problem of the bank management and of no one else. From her statement for Fokus but also from other facts it is also clear that “the needed recapitalization” was a consequence of poor credit handling. That means that throughout the whole process, the NBSM was dealing only with the consequences of the main ESB’s problem and not with the problem itself.

238. Although it is difficult to understand how the Governor did not know when the ESB was recapitalized with 11 million EUR, especially after her strong engagement in securing Komercijalna banka an unnecessary but lucrative deal<sup>108</sup>, it is obvious that she did not tell the full truth – neither to Fokus, nor to the Parliamentary Finance and Budgetary Committee – on the situation in the ESB in August 2019. In addition, a very clear underestimation of the potential investor from August 2020 can be observed in her statements.
239. By far the most important “inaccuracy” of the Governor is her denial of the fact that the most important problem of the ESB was poor management, mainly caused by the participation in the illegal lending scheme. However, the Governor’s denial does not mean that she did not really know about the problem. If that had been the case, she would not have aggressively urged the shareholder’s relative to take over the management of the ESB<sup>109</sup>.
240. Generally, the Governor’s public statements are quite defensive, covering up some incomprehensible decisions of the NBSM. While it may be understandable that the Governor was concealing the real situation of the ESB in August 2019, which already required decisive action, which did not materialise, it is really difficult to understand why the NBSM never really dealt with the original problem, which was the Bank management’s improper handling of credit portfolio and related risks, caused by the ESB’s participation in the illegal lending scheme. The NBSM was obviously aware of the scheme since it introduced many measures to eliminate the consequences of that scheme but – as explained in Chapter 4.1. above – it never dealt comprehensively with the scheme itself<sup>110</sup>. In circumstances where the NBSM wilfully did not want to officially recognize the existence of that scheme – although it almost certainly knew about it – but knew that the ESB’s management of the credit portfolio was the main problem, it is even more confusing why the NBSM did not want to deal with that real and obvious problem, which could be solved in a very

---

<sup>108</sup> Giving a loan to GOFI, secured by shares of EUROLINK.

<sup>109</sup> As it could be seen from the letter of that relative of 4 August 2020.

<sup>110</sup> Which would have related to several banks and not only to the ESB.

simple manner by introducing the NBSM's administration in the Bank. Speculating about the reasons for such an omission might also lead to a conclusion that an "official discovery" of the illegal lending scheme, which would certainly have happened with the NBSM administration of the ESB, was potentially not in the best interest of the NBSM. Maybe this is also the reason why a family member of the ESB's shareholder was such a desired solution<sup>111</sup> for the NBSM for taking over the most important position in the Bank.

---

<sup>111</sup> As a relative and in theory, she would be much more willing to deal with the consequences of the illegal lending scheme and not the scheme itself.

## 6 GENERAL CONCLUSIONS

241. In accordance with Paragraph 4/1 and Paragraph 5/1 of Article 157 of the Banking Law of North Macedonia, the bankruptcy of the ESB should have been initiated already in August 2019, following the findings of the Report of Direct On-Site supervision<sup>112</sup> No. 17-26125/2 of 19 August 2019. Since that did not happen, the NBSM was in a position<sup>113</sup> where it could apply its discretion about the next measures to be applied for the ESB in the attempt to improve its situation, management and the capital adequacy ratio. Despite the fact that the NBSM was extremely engaged in the next period and not really genuinely supported by the ESB shareholders and part of the management<sup>114</sup>, it always dealt only with the capital adequacy ratio as a consequence of the main problem, which was poor management of the Bank, and not with that problem itself. That problem was the cause and the reason for most of the other problems, especially for the low capital adequacy ratio. Poor management of the Bank, which was particularly obvious in the improper handling of credit portfolio and related risks, was in large part caused by the participation of the Bank in the illegal lending scheme, which had penetrated the majority – if not all – of North Macedonia’s banking system.
242. The illegal lending scheme was present in the banking system of North Macedonia as early as in 2004 and has managed to remain in operation to date due to a heavy engagement of many banks and companies from North Macedonia, all participating in the scheme of illegal crediting and lending. Since there is evidence that the NBSM was aware of all elements of that scheme and that it only dealt with individual elements but not also with the scheme itself, the NBSM indirectly contributed to the functioning of that scheme<sup>115</sup>.
243. There is no doubt that the NBSM knew about the ESB’s participation in the scheme and a very logical step – also following other collected information – should have been to dismiss the managers engaging in that scheme and causing, firstly, improper handling of credit portfolio and related risks, and, secondly, as a consequence of the that, a poor capital adequacy ratio. Despite a clear legal obligation from Article 139 of the Banking Law, the NBSM never intervened in that direction and never introduced an administration in the Bank. On the contrary, the Governor tried hard,

---

<sup>112</sup> Conducted in the period between 8 April 2019 and 6 June 2019.

<sup>113</sup> Though illegal - since the Banking Law did not foresee the possibility that the NBSM would not initiate bankruptcy despite all the conditions being fulfilled.

<sup>114</sup> The penultimate Chair of the Management Board.

<sup>115</sup> There were also some allegations that individual employees of the NBSM actively engaged in individual cases of illegal crediting and lending but there is not enough evidence to confirm that.

unsuccessfully, to introduce her own solution for the management of the ESB in the form of a major shareholder's relative.

244. In the NBSM's process of measures for the ESB, another bank, Komercijalna banka, had a special role and position but exploring the reasons for a very favourable treatment of that Bank by the NBSM would exceed the task of this analysis.
245. There is no doubt that on 12 August 2020, the NBSM had a legal right<sup>116</sup> to initiate the bankruptcy of the ESB but there is serious doubt if the moment for that was chosen well. Despite extremely serious problems with its capital adequacy ratio, the forced collection of debts by the ESB functioned much better than it is functioning after the bankruptcy and the prognosis for the continuing efficiency in that area for the second half of 2020 was also very good. In addition, it was very likely that the ESB would finally be taken over by a credible investor. However, having in mind some very bad experiences of the NBSM with the previous ESB owners, it is not difficult to understand the high level of distrust of the NBSM Governor when dealing with that important information. Still, letting the ESB to operate for another few months, when it would become crystal clear if the situation of the Bank had improved, would have neither harmed the depositors nor endangered the integrity of the North Macedonian banking sector.
246. Trying to understand why the bankruptcy had<sup>117</sup> to be initiated in August 2020, when it had not been initiated in a much worse situation of the ESB in August 2019, is extremely difficult and would lead to speculations. Therefore, it is better to only mention the consequences of the Governor's decision to initiate the bankruptcy on 12 August 2020:
- depositors have less chances to recover their deposits after the bankruptcy was initiated,
  - the part of the illegal lending scheme operating in the North Macedonian banking system through the ESB most probably won't be investigated at all,
  - the illegal lending scheme running through the ESB has stopped but there are no obstacles for it to continue running through other North Macedonian banks,

---

<sup>116</sup> Even obligation.

<sup>117</sup> According to Article 157 of the Banking Law, that was an obligation and not discretion of the Governor. But since she failed to fulfil that obligation in 2019 already, there would have been no legal harm if she had failed to follow a mandatory provision of the Law for the second time.

- debtors of the ESB have better chances of avoiding forced repayments of their debts,
- the identity of the biggest debtors in the illegal lending scheme but also in the legal crediting schemes will remain unknown, also due to the purchases of companies<sup>118</sup> serving as important intermediaries in the illegal scheme,
- there is a serious risk that the bankruptcy procedure will not be finished for many years,
- both the omissions of the NBSM in dealing with the ESB and its favourable treatment of one of the other banks will be forgotten.

---

<sup>118</sup> E.g. Galafarm Group.



## 7 DOCUMENTARY SOURCES

1. An Interview of the NBS Governor in Fokus, dated 3 September 2020
2. A Report of company Gradsko Taksi Sonce to the Financial Police, unknown date
3. Balance Sheets (12) on financial relations (loans) between Galafarm and Galafarm2 and other companies
4. Criminal charges of the ESB shareholders against the NBSM Governor and the NBSM officials Gligorova, Joleska, Arnaudova, dated 30 March 2021
5. Debt Assumption Agreement of 31.12.2019 between Goreks, Galafarm 2 and Multi Ofis, related to Loan Agreement of 29.8.2018 (one page)
6. Debt Assumption Agreement of 31.12.2019 between Goreks, Galafarm 2 and OM TAM, related to Loan Agreement of 16.4.2018 (one page)
7. Debt Assumption Agreement of 31.12.2019 between ZOI PER, Multi Ofis and Gradežnik, related to Loan Agreement of 4.1.2019 (one page)
8. Decision of the Basic Civil Court in Skopje, No. I CT 123/20, dated 14 August 2020
9. Decision of the Appellate Court in Skopje, No. TSŽ 817/2020, dated 3 September 2020
10. Decision of the Administrative Court No. U-6 br.1555/20, dated 23 September 2020
11. Decisions of the Administrative Court No. U-6 br.1553/20 and 1554/20, dated 25 September 2020
12. Decision of the Higher Administrative Court No. Uz-2 br.576/2020, dated 5 November 2020
13. Decision of the Basic Criminal Court No. III KOK PP 256/20, dated 18 November 2020
14. Decision of the Higher Administrative Court No. Uz-2 br.631/2020, dated 16 December 2020
15. Decision of the Basic Criminal Court No. KIOK-KS 45/21, dated 26 March 2021
16. Decision of the National Bank of the Republic of North Macedonia on the Method of Determining Connected Persons/Entities and Exposure Limits
17. Decision of the National Bank of the Republic of North Macedonia on the Methodology for Determining Capital Adequacy
18. Decree with the force of a law under No. 44-2437/1, issued by the Government of North Macedonia on 24 March 2020
19. Decree with the force of a law under No. 44-4744/1, issued by the Government of North Macedonia on 29 May 2020
20. Email of the Portfolio Manager from the Off-Site Supervision and Licensing Department of the NBSM to the ESB, dated 6 August 2020
21. Excerpt from the Business Register on the "History of Changes" for company Galafarm, dated 13 February, 2022.
22. Excerpt No. 2 from the ESB Bank Account No. 370001100164328 of 4 January 2019
23. GOFI letter to the National Bank of North Macedonia (NBSM), dated 11 August 2020
24. Hearing of the ESB bankruptcy trustee at the State Prosecution Service for organized crime and corruption on 8 November 2021
25. Financial Report of the ESB bankruptcy trustee to the State Prosecution Service for organized crime and corruption on 8 November 2021
26. Lawsuit of the ESB against the Decision of the NBSM Governor No. 15-20140/1
27. Lawsuit of the ESB against the Decision of the NBSM Governor No. br.15-20139/1
28. Lawsuit (appeal) of the ESB against the Decision of the Basic Civil Court No. I CT 123/20, dated 26 August 2020
29. Lawsuits of the ESB shareholders against decisions of the Administrative Court No. U-6 br.1553/20, No. 1554/20 and U-6 br.1555/20
30. Letter of company Automotiv Popravki to the ESB, received on 1 July 2020 (first page), rescinding the contract with the ESB due to misuse of its bank account

31. Letter of company Gradsko Taksi Sonce to the ESB, received on 1 July 2020 (first page), rescinding the contract with the ESB due to misuse of its bank account
32. Lawsuit of the ESB shareholders to the ECHR, with attachments
33. Letter of the NBSM No. 17-26125/2, to the ESB, dated 19 August 2019
34. Letter of the NBSM, No. 17-26125/6, to the ESB, dated 30 September 2019
35. Letter of the ESB to the NBSM, dated 6 July 2020
36. Letter of the ESB to the NBSM, dated 17 July 2020
37. Letter of the ESB to the NBSM, dated 27 July 2020
38. Letter of Ms Kostovska to the NBSM Governor, dated 4 August 2020
39. Letter of the ESB, No. 02-5648/1, dated 10 August 2020, to the NBSM
40. Letter of the NBSM to the ESB, dated 10 August 2020
41. Letter of the Post of North Macedonia to its local branches, No. 0508-740/1, dated 12 August 2020
42. Letter of Mr. Trifun Kostovski to Mr. Freek Janmaat, Head of Operations I at the EU Delegation Skopje
43. Letter of Mr. Trifun Kostovski to the Parliamentary Finance and Budgetary Committee, dated 12 November 2020
44. Letter of Mr. Trifun Kostovski to the Parliamentary Finance and Budgetary Committee, dated 13 November 2020
45. Minutes of the ESB Supervisory Board's 179 meeting on 30 June 2020
46. Minutes of the ESB Supervisory Board's 182 meeting on 7 August 2020
47. Minutes of hearings at the session of the Parliamentary Finance and Budgetary Committee on 13 November 2020, of the following invitees: Angelovska Bežoska, Trifun Kostovski, Ljubomir Jovevski, Olivera Klinčarova, Arafat Muaremi, Blažo Trendafilov, Fatmir Besimi, Gligor Bišev Abulmenat Bedžepi and Pančo Minov
48. The Appeal of Mr. Kosta Kostovski and Mr. Trifun Kostovski against the Decision of the Basic Criminal Court in Skopje No. III KOK PP 256/20, dated 23.3.2021
49. The Banking Law of the Republic of Macedonia
50. The Law on the Prevention of Money Laundering and Financing of Terrorism
51. The list of the ESB credits in 2018 (one page)
52. The NBSM Decision No. 15-30548/1, dated 26 September 2018
53. The NBSM Decision No. 15-16805/1, dated 15 May 2019
54. The NBSM Decision No. 15-16805/8, dated 6 June 2019
55. The NBSM Decision No. 15-16805/14, dated 12 August 2019
56. The NBSM Decision No. 15-20139/1, dated 12 August 2020
57. The NBSM Decision, No. 15-20149/1, dated 12 August 2020
58. The NBSM Decision No. 15-16805/14, dated 12 August 2019
59. The NBSM Decision No. 15-16805/15, dated 26 August 2019
60. The NBSM Decision No. 15-3539/1, dated 4 February 2020
61. The NBSM Decision No. 15-3540/1, dated 4 February 2020
62. The NBSM Submission to the Basic Civil Court in Skopje to open the bankruptcy procedure against the ESB, No. 15-20253/1, dated 13 August 2020