EUROPEAN COMMISSION

Brussels, 03.08.2014
C(2014) 5682 final

Subject: **State aid n° SA.39250 (2014/N) – Portugal, Resolution of Banco Espírito Santo, S.A.**

Sir,

1 PROCEDURE

(1) On 31 July 2014, Banco Espírito Santo S.A. and its subsidiaries ("BES") announced losses for the first half of 2014 amounting to EUR 3.577 billion. The capital situation of BES deteriorated significantly, mainly due to high impairment and contingency costs related to the Espírito Santo Group and its entities (EUR 2 billion) and the negative impact of potentially illegal transactions by the bank identified by the external auditor in the second fortnight of July 2014 (EUR 1.5 billion). On 30 June 2014, the Common Equity Tier 1 ("CET1") of BES stood at 5.0%, below the minimum requirement set by the Bank of Portugal at 7%.

(2) The Portuguese authorities carried out an assessment of various options to address BES's problems and to take a specific course of action during the weekend of 2 – 3 August 2014.

(3) On 3 August 2014, the Portuguese authorities submitted a report by the Bank of Portugal assessing various options for the resolution of BES from an operational and a financial viewpoint. Due to the absence of buyers, the creation of a bridge bank was considered as the only remaining solution for safeguarding the stability of the financial system in Portugal. Selected assets and liabilities would be transferred to a bridge bank, while the remaining assets and liabilities would be resolved.

(4) On 3 August 2014, the Portuguese authorities submitted a report by the Bank of Portugal describing the procedure for the resolution of BES.

(5) On 3 August 2014, the Portuguese authorities notified to the Commission the resolution of BES and the immediate creation and capitalisation of a temporary credit institution ("the Bridge Bank").

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(6) The notification contained a decision by the Bank of Portugal of the same date with the transfer of the activities to a Bridge Bank on the basis of BES unaudited figures.

(7) The notification also contained the preliminary individual balance sheet of the new entity that will be created and the consolidated balance sheet, taking into account value adjustments made by the Bank of Portugal.

(8) On 3 August 2014, the Commission received a final catalogue of commitments from Portugal.

(9) The Republic of Portugal exceptionally accepts that the decision be adopted in the English language for reasons of urgency.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(10) The beneficiary of the measure is the Bridge Bank, as formed by the transfer of selected assets and liabilities from BES.

2.2 Description of BES

(11) According to the notification, as of March 2014, BES was the third largest Portuguese banking group, with EUR 76 600 million of assets, EUR 37 300 million in customer deposits, EUR 13 700 million in debt issued and EUR 4 200 million in resources from other credit institutions. Being present in four continents and in 25 countries and employing almost 10 000 people, BES Group is currently the second largest Portuguese private banking group by total reported net assets. According to the results announced by BES on 30 June 2014, BES had EUR 80.2 billion of assets, EUR 36.7 billion in customer deposits and EUR 5.8 billion in resources from other credit institutions.

(12) Being present in four continents and in 25 countries and employing almost 10 000 people, Banco Espírito Santo S.A. is currently the second largest Portuguese banking private group by total reported net assets.

(13) BES is a universal bank incorporated and domiciled in the Republic of Portugal. BES serves all segments of clients: retail, corporate and institutional, offering a wide range of products and financial services through a diversified network. Since its privatization in 1992, BES has followed a consistent growth strategy on the domestic market, supported by the development of a multi-specialist approach to the market. The organic growth was supported by the franchise of the BES brand and by strong commercial dynamics in the retail and corporate segments.

(14) The sustained growth of the domestic activity of the BES Group has been complemented by the progressive reinforcement of its international activities, particularly on markets with cultural, economic and/or geographic ties with Portugal.

(15) Most of the international activity of the BES group is developed through BES: Angola, by BES Angola (BESA). Spain, where BES has a network of 30 branches, United Kingdom,

Brazil, USA, Macao, Poland, Cape Verde and Ireland. All banking subsidiaries owned directly by Espírito Santo Financial Group (ESFG) are located outside European Union: Dubai (ES Bankers Dubai), Panama (ES Bank Panama) and Switzerland (Banque Privée Espírito Santo).

(16) BES' main shareholders on 30 July 2014:

Espírito Santo Financial Group	20.1%
Crédit Agricole	14.6%
Silchester	4.7%
BlackRock	4.65%
Capital Research	4.2%
Bradport	3.9%
Portugal Telecom	2.1%

(17) BES' main figures on 30 June 2014 based on the notification by the Portuguese authorities:

Total assets (EUR million)	76 600
Loans and advances to customers (EUR million)	45 886
Total deposits from customers (EUR million)	37 300
Total wholesale funds (EUR million)	14 416
Employees domestic (Full-time equivalents ("FTE"))	7 371

2.3 The events triggering the measure

(18) BES has come under pressure since May 2014, when BES announced that an audit by the Bank of Portugal of Espírito Santo International ("ESI" the controlling shareholder in Espírito Santo Financial Group) found ESI to be in a serious financial condition. BES described ESI's financial situation to be extremely negative. The likelihood of a negative impact on BES' solvency, given the magnitude of BES' direct exposure to other companies within the Espírito Santo group[1] ("ES group") raised concerns about the potential risks to BES' financial profile and its liquidity position.

(19) On 30 July 2014, BES announced its losses for the first half of 2014 which amounted to EUR 3 577 million. The impairment and contingency costs of BES reached EUR 4 253 million, influenced by the following extraordinary events: (i) creation of provisions related to the exposure of the ES group entities (EUR 2 062.3 million, this amount includes provisions for BES's direct exposures on ES group entities and provisions for contingent debt obligations linked to debt issuances by ES group entities and subscribed by BES clients.); (ii) write-off of irrevocable interest on loans granted by BES Angola ("BESA") and creation of provisions for tax contingencies in this subsidiary (EUR 3.7 million); (iii) deterioration of loan book risk (EUR 489.7 million); (iv) recognition of impairment on the participation on Portugal Telecom (EUR 106.1 million); (v) consolidation of Special Purpose Entities and contingencies on issued debt and the identification of several potentially illegal practices by the external auditor related to those entities in the second fortnight of July 2014 (EUR 757.8 million).

[1] All companies within and including the Espirito Santo Financial Group and Espirito Santo International

(20) Total exposure to entities of the ES group (including insurance companies) significantly increased during Q2 2014 and reached EUR 1 798 million on 30 July 2014. The Board of Directors decided to create a provision for impairments in the amount of EUR 1 206 million.

(21) As of 30 July 2014, debt securities issued by ES group entities and subscribed by BES clients totalled approximately EUR 3.1 billion, of which EUR 1.1 billion was subscribed by retail customers and EUR 2 billion by institutional investors. Considering the ES group's restructuring plan is not yet available, it is not possible to determine the non-recoverable amounts of the subscribed debt. However, the Board of Directors has decided to create a provision of EUR 856 million to deal with the contingent debt obligations of the debt securities issued by ES group entities and subscribed by clients of BES.

(22) BESA reported a EUR 355.7 million loss in the first half of 2014, of which EUR 198.2 million is attributable to BES by reason of its 55.7% stake in BESA. The loss resulted from (i) irrevocable interests in the loan book of BESA and (ii) the recognition of contingencies arising from possible difference in interpretation of the application of certain provisions of the Angolan Industrial Tax Code.

(23) The National Bank of Angola informed BESA of the need to undertake a substantial reinforcement of its equity, no information is provided about the amounts. BES's total exposure to BESA is (i) EUR 273 million in acquisition value; (ii) EUR 3 330 million money market (funding line); (iii) EUR 276.1 million of documentary credit; and (iv) EUR 0.7 million of guarantees, resulting in a total exposure of EUR 3 880 million.

(24) The amount of credit impairment for BES Q2 2014 was influenced by the direct and indirect impact on BES borrowing clients within the ES group, the internal review of the impairment on the loan book and deviations in the execution of business plans of corporate clients. The impact of the Asset Quality Review ("AQR") by the ECB is not yet available.

(25) On 30 June 2014, BES's CET1 stood at 5.0%, while the Bank of Portugal's minimum requirement is 7.0%.

(26) In the course of July 2014, BES's liquidity profile has deteriorated. BES has been facing significant deposit withdrawals of retail customers and non-financial companies. On 28 July 2014, customer deposits amounted to EUR 40 000 million (excluding the intragroup operations), registering a decrease of EUR 1 600 million when compared with the situation on 30 June 2014. This variation includes the increase in ECB/Bank of Portugal financing over the period (EUR + 4 100 million, out of which EUR 3 500 million Emergency Liquidity Assistance). Without taking the ECB/Bank of Portugal deposits into account, the bank lost 14% of its deposits in July. The outflow of retail clients (resident and non-resident) over the period was EUR 1 900 million, out of which EUR 1 200 million from retail clients of BES Spain and EUR 480 million from Portuguese residents.

2.4 The creation of the Bridge Bank and the Bad Bank

(27) On 3 August 2014, the Portuguese authorities notified to the Commission the resolution of BES and the immediate creation and capitalisation of a temporary credit institution

following a decree adopted by the Ministry of Finance on a proposal by the Bank of Portugal.

(28) BES's sound business activities are transferred to the Bridge Bank in accordance with the recommendation by the Bank of Portugal. Therefore selected relationships of BES with third parties are transferred to the Bridge Bank. The Bridge Bank receives assets and liabilities such as cash, retail deposits and performing loans, central bank funding, Government Guaranteed Bonds and T-Bills. Overall, EUR 64 007.6 million assets were transferred to the Bridge Bank (see Annex 3 for the balance sheet of the Bridge Bank)

(29) After the transfer of assets and liabilities to the Bridge Bank and the losses on those assets and liabilities to be taken by BES, referred to as "the Bad Bank", a total amount of EUR 1 000 million net assets are left in the Bad Bank. In particular, the shares representing the capital of BESA, shares in Espírito Santo Bank and claims on this entity, shares in Aman Bank and claims on this entity and claims on entities which are part of the Espírito Santo Group with the exception of those entities integrate in BES Group and insurance companies supervised by Instituto de Seguros de Portugal were included in the "non-transferred" items. Those residual assets remaining in the Bad Bank will be resolved through resolution.

2.4.1 Aid measure for the Bridge Bank

(30) The Resolution Fund provides the Bridge Bank with an initial share capital of EUR 4 899 million in exchange for which the Resolution Fund receives common shares.

(31) With the objective of stabilising the liability side of the Bridge Bank's balance sheet, and in line with the 2013 Banking Communication[2], Portugal will transfer the State Guaranteed Bonds of BES in the amount of EUR 3 750 million to the Bridge Bank. The maximum amount of liquidity to be provided represents 5.8% of the total assets of the Bridge Bank.

(32) The State Guaranteed Bonds were issued by BES under the Portuguese Guarantee Scheme approved by the Commission on 29 October 2008 in case NN60/2008[3] which was subsequently prolonged several times, last on 30 July 2014. Therefore, liquidity provided to the Bridge Bank under this aid scheme constitutes existing aid, and is therefore not subject to this Decision.

2.4.2 The orderly winding down of the Bridge Bank and the Bad Bank

(33) As described in recitals (27) to (31), selected assets and liabilities will be transferred from BES to the Bridge Bank, the remaining BES becoming the Bad Bank. The resolution fund will provide capital to the Bridge Bank for a maximum amount of EUR 4 900 million.

(34) The sale of the assets of the Bridge Bank will be completed in a period of 24 months from the date of the Decision (the "Existence Period"). Unsold assets at that date will be wound down in the month following the end of the Existence Period.

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[2] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C216, 30.7.2013, p. 1.

[3] OJ C 9, 14.01.2009, p.1, a corrigendum to which appears in OJ C 25, 31.01.2009, p. 25

(35) The banking license of the Bridge Bank will be revoked when the Bridge Bank is sold entirely or after 24 months from the date of the Decision, whichever comes the earlier.

(36) The winding-down period of the Bad Bank starts with the setup of the Bridge Bank and ends when the Bad Bank is wound up entirely, its banking license revoked and its stops any banking activity (the "Winding-down Period"). The banking license of the Bad Bank will be revoked no later than at the time of the conclusion of the sale process of the Bridge Bank, at which time the Bad Bank will be orderly wound down under normal insolvency judicial proceedings.

(37) During the Existence Period and the Winding-down Period, the operations and assets will be restructured with the objective of selling them to the extent possible, in order to minimise losses. Portugal estimates that respectively by the end of the Existence and the Winding-down Period, the Bridge Bank and the Bad Bank will manage to realise a significantly higher yield from the realisation of their assets (loans, securities, fixed assets, etc.) than they would under immediate resolution or bankruptcy. The orderly winding-down should therefore result in lower loss, capital needs and related cost for the State.

(38) Portugal submitted the following commitments as an integral part of the orderly winding-down plan:

Common commitments of the Bridge Bank and the Bad bank

(39) Management of existing assets: the Bridge Bank and the Bad Bank undertake to manage the assets which are to be divested, liquidated or wind down, in an orderly manner but minimizing the cost for taxpayers. The Bridge Bank will manage existing assets in a way that maximises the net present value ("NPV") of the assets.

(40) Salary cap: the Bridge Bank and the Bad Bank will apply strict executive remuneration policies with the embedded incentive for executives to sell the assets as rapidly as possible.

(41) Acquisition ban: the Bridge Bank and the Bad Bank shall not acquire any stake in any undertaking. The acquisition ban shall not apply to acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms.

(42) Ban on coupons or dividends: the Bridge Bank and the Bad Bank will not pay any coupons on hybrid capital instruments or dividends on own funds instruments and subordinated debt instruments.

(43) Advertising ban: the Bridge Bank and the Bad Bank will refrain from advertising referring to state support and from employing any aggressive commercial strategies which would not take place without the support of Portugal.

Commitments of the Bridge Bank

(44) Cap on loans: the Bridge bank will not lend amounts higher than the average of the last two years of the business being transferred to the Bridge Bank.

(45) The Bridge Bank will have sold all assets transferred to it no later than 24 months after the date of adoption of this Decision. In case the assets have not been sold by the end of the 24th month, they will be put in wind down in the month that follows.

(46) Loan and deposit pricing: the Bridge Bank will not price deposits above market average and will not grant credit or other than business below market average.

(47) Discontinuation of the brand BES : the Bridge Bank will discontinue the name Banco Espírito Santo (or any combination of it) no later than 2 months as of the Decision date.

Commitments of the Bad Bank

(48) New business ban: the Bad Bank will not and cannot generate any new business.

(49) Reduction of the balance sheet. The Bad Bank will gradually reduce its balance sheet and off-balance sheet exposure total by at least 20% by 31 December 2014 and by 30% by 31 December 2015.

3 POSITION OF THE PORTUGUESE AUTHORITIES

(50) The Portuguese authorities accept that the Measure constitutes State aid and request the Commission to verify if it is compatible with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ("the TFEU"), as it is necessary in order to remedy a serious disturbance in the Portuguese economy.

(51) By its letter of 3 August 2014, the Bank of Portugal stated that the situation of BES threatened financial stability and that an urgent intervention was therefore necessary to avoid a serious disturbance in the economy of Portugal.

(52) In addition, the Portuguese authorities submit that the Measure is (i) appropriate and well-targeted; (ii) necessary and limited to the minimum; and (iii) proportionate as designed to minimize negative spill-over effects on competitors.

(53) The Portuguese authorities submitted commitments.

4 ASSESSMENT

4.1 Existence of State Aid

4.1.1 Aid to the Bridge Bank in the form of capitalization

(54) The Commission first has to assess whether the Measure constitutes State aid within the meaning of Article 107(1) TFEU. According to that provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States. Only advantages granted directly or indirectly through State resources can constitute State aid within the meaning of Article 107(1) TFEU. The origin of the resources is not relevant provided that, before being directly or indirectly transferred to the beneficiaries, they enter under public control and are therefore available to the national authorities.

(55) The Commission in that context observes that the Portuguese authorities do not dispute that the Measure constitutes State aid.

(56) The aid measure in favour of the Bridge Bank is granted via the Resolution Fund. The Resolution Fund was created in 2012 through the Portuguese Decree-Law nr. 31-A/2012

of 10 February. The Purpose of the Resolution Fund is to provide financial assistance to the application of resolution measures adopted by the Bank of Portugal.

(57) As of 30 June 2014, the Resolution Fund holds EUR 90.4 million in own funds, which will be used to fund the share capital of the Bridge Bank. However, these funds are not sufficient to ensure compliance of the Bridge Bank with regulatory requirements.

(58) The Resolution Fund will levy EUR 286 million of funds from the Portuguese banking sector. Furthermore, Portugal grants a loan to the Resolution Fund in the amount required to complement the financing needs of 4 500 million. This loan is financed from the State budget as foreseen in Portuguese Law nr. 83-C/2013 of 31 December

(59) Even though the Resolution Fund is financed by participating credit institutions and investment companies, its financing has a public nature as the Resolution Fund is completely under public control. The Commission observes that all funds from the Resolution Fund are attributable to the State. It is clearly publicly controlled and therefore its resources must be considered as State resources. According to paragraph 64 of the 2013 Banking Communication, the compatibility of State aid in the form of interventions by a resolution fund shall be assessed on the basis of the that communication.

(60) Under the current circumstances, no private operator acting on the basis of market logic would participate in the Bridge Bank's capital. Moreover, due to the fact that the Bridge Bank is per definition a temporary institution with the goal to sell all its assets, no private operator would be willing to capitalise it. However, in order to maximise the value of the assets, the Bridge Bank is allowed to continue its business and compete with other private operators on the market. Since the capitalisation measure is available only to the Bridge Bank, the Measure confers a selective advantage to it.

(61) The Commission finds that the Measure distorts competition as it allows the Bridge Bank to obtain the necessary capital to avoid insolvency.

(62) The Commission finds that the Measure is also likely to affect trade between Member States as the financial services market is by its nature global, BES competes on an international level, and some of the its competitors in Portugal are subsidiaries or branches of foreign banks.

(63) On the basis of the forgoing, the Commission finds that the Measure fulfils all the conditions laid down in Article 107(1) TFEU and that the Measure qualifies as State aid to the Bridge Bank.

4.1.2 Aid to the Purchasers of the Bridge Bank or part of its assets

(64) The sale of a credit institution during an orderly resolution procedure may entail State aid to the buyer, unless the sale is organised via an open, non-discriminatory and unconditional competitive tender and the assets are sold to the highest bidder.

(65) In order to prevent potential aid to the buyers of the Bridge Bank or part of its assets, Portugal commits to notify any substantial sale[4] of assets of the Bridge Bank to the Commission. Upon such notification the Commission will, according to point 80 of the 2013 Banking Communication, assess among others whether (i) the sales process is open,

[4] For the purposes of this Decision, substantial sale means at least 10% market share in the given market

unconditional and non-discriminatory, (ii) the sale takes place on market terms, and (iii) the Bridge Bank maximises the sales price for the assets and liabilities involved. Where the Commission finds that there is aid to the buyer, the Commission will assess the compatibility of that aid separately.

4.2 Compatibility of the aid

(66) As regards compatibility with the internal market of the capitalization measure provided to the Bridge Bank, the Commission must first determine whether the aid can be assessed under Article 107(3)(b) TFEU, i.e. whether the aid remedies a serious disturbance in the economy of Portugal. Subsequently, the Commission has to assess whether the notified aid measure is compatible with the internal market.

4.2.1 Legal basis for the compatibility assessment

(67) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State." The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications[5], as well as in the 2013 Banking Communication.

(68) In the 2013 Banking Communication, the Commission acknowledged that Member States should encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability. The Commission recognises that, due to the specificities of credit institutions and in the absence of mechanisms allowing for the resolution of credit institutions without threatening financial stability, it might not be feasible to liquidate a credit institution under ordinary insolvency proceedings. For that reason, State measures to support the resolution of failing credit institutions may be considered as compatible aid, subject to compliance with the requirements specified in point 44 of the 2013 Banking Communication[6] (Burden Sharing).

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

[6] Point 44 of the 2013 Banking Communication states: "*In cases where the bank no longer meets the minimum regulatory capital requirements, subordinated debt must be converted or written down, in principle before State*

(69) Member States may choose a number of tools for the organisation of the resolution of ailing credit institutions. Any State aid measures to support such a resolution must comply with the principles specified in points 69 to 82 of the 2013 Banking Communication.

(70) By letter of 3 August 2014, the Bank of Portugal states that without the proposed Measure, BES would have undergone a disorderly liquidation, with potential severe adverse impacts on other banks and the wider financial system in Portugal. The assessment of the Portuguese authorities is that the disorderly liquidation of BES would destabilise the Portuguese financial markets and trigger a general crisis of confidence.

(71) The Commission acknowledges that the unorderly resolution of BES could create a serious disturbance in the economy of a Member State and that the creation of a bridge bank is apt to remedy that disturbance.

(72) In view of the above the Commission considers that the Measure for the resolution of BES has to be examined under Article 107(3)(b) TFEU.

4.2.2 Compatibility *assessment*

(73) The Commission will assess whether the Measure complies with the general criteria of appropriateness, necessity and proportionality for compatibility under Article 107(3)(b) TFEU.

(74) The 2013 Banking Communication, and in particular its Section 6, sets out the State aid rules applicable to the liquidation of financial institutions in the current circumstances. According to those rules, in order to be compatible with Article 107(3)(b) TFEU, the liquidation of a financial institution has to, among others:

(i) be designed in such a way so that to limit liquidation cost to the minimum necessary;

(ii) contain sufficient measures limiting the distortion of competition;

(iii) include sufficient own contribution by the beneficiary (burden-sharing).

Limitation of liquidation costs

(75) The counterfactual scenario (i.e. the immediate liquidation or bankruptcy) is estimated by the Portuguese authorities to increase the resolution costs. Considering the institution's size, its market share, external and internal interconnectedness and substitutability, the Bank of Portugal estimates that the disorderly resolution of BES could generate around EUR 20 000 million to EUR 25 000 million in losses. It would also imply a disbursement of around EUR 14 000 million by the Deposit Guarantee Fund to reimburse covered deposits. The Commission has no reason to question that assessment. Furthermore, the Commission notes that immediate resolution or bankruptcy as opposed to an orderly winding down would involve a fire sale of assets. However, no party was interested in an outright sale of the assets and liabilities of BES, and given the current uncertainties, this becomes even less of an option. Therefore, the orderly resolution of BES through the

aid is granted. State aid must not be granted before equity, hybrid capital and subordinated debt have fully contributed to offset any losses."

creation of a Bridge Bank and the resolution of the Bad Bank is the least costly option for Portugal.

(76) The volume of the capital needed by the Bridge Bank has been estimated by the Bank of Portugal based on its own assessment of the assets and liabilities of BES and the regulatory capital requirements for the Bridge Bank. This amount comes directly from the evaluation of the assets transferred to the Bridge Bank that has been carried out by the Bank of Portugal. At the moment of its creation, the Bridge Bank will have a CET1% of 10,2%. Furthermore, no additional capital injection can be provided to the Bridge Bank in the future.

(77) Therefore the Commission considers the orderly resolution aid to be limited to the minimum necessary.

Limitation of competition distortion

(78) The Commission notes that to minimize the distortion of competition caused by the State aid, the banking license of the Bad Bank will be revoked by no later than the conclusion of the sale process of the Bridge Bank, at which time the Bad Bank will be orderly wound up under normal insolvency judicial proceedings[7].

(79) The Bad Bank will gradually reduce its balance sheet and off-balance sheet exposure total by at least 20% by 31 December 2014 and by additional 30% by 31 December 2015.

(80) The Bad Bank will not compete on the market or pursue any new activities[8]. Its operations will be limited to continuing and completing activities pending for existing customers.

(81) Moreover, the Commission positively notes that in line with point 75 of the 2013 Banking Communication, the pricing policy of the Bad Bank will be designed to encourage customers to find more attractive alternative.

(82) The Commission considers that the distortions of competition stemming from the market presence of the Bad Bank during its orderly winding-down are limited.

(83) The Commission notes that to minimize the distortion of competition caused by the State aid, the Bridge Bank has been established for a limited for a period of two years[9]. However, the objective is to sell the assets as soon as possible, and therefore the Bridge Bank may exist for a shorter period than two years.

(84) New activities will be allowed for the Bridge Bank but only to maximise its NPV and thus reduce the resolution costs according to the exception laid down in point 67 of the 2013 Banking Communication.

(85) However, the growth of loans will be restricted to limit distortions of competition as described in recital (42): the Bridge Bank will not lend amounts higher than the average of the last two years of the business being transferred to the Bridge Bank.

[7] See recital (35)
[8] See recital (44)
[9] See recital (35)

(86) Moreover, a strict deposit and loan pricing policy will be implemented to ensure that the Bridge Bank does not enter into any aggressive commercial practice[10].

(87) The Commission notes positively that the brand BES will cease to exist within 2 months from the date of the Decision.

(88) The Commission considers that the distortions of competition stemming from the market presence of the Bridge Bank during its orderly winding-down are limited.

Own contribution and burden-sharing measure

(89) All shareholders and subordinated creditors will be left in the Bad Bank. Claims by related parties (that is to say shareholders or board members) of a non-contractual nature will also remain in the Bad Bank. As a result the contribution of shareholders and of subordinated debt holders will be achieved to the maximum extent possible. The State aid provided will not benefit shareholders and subordinated debt holders, thereby minimising moral hazard. The Commission notes positively that as per the Portuguese banking resolution law, the burden sharing is extended also to cover claims by related parties (e.g. shareholders and Board members) of a non-contractual nature (e.g., deposits of qualified shareholders with more than 2% shareholdings).

(90) The State of Portugal, through the Resolution Fund, will recapitalise the Bridge Bank and will become the only shareholder of the Bridge Bank. For the avoidance of doubt, there will be no capital injection in the Bad Bank.

(91) In addition, payment of coupon and dividends will be suspended unless those payments are legally due.

(92) Portugal also commits to an advertising ban and an acquisition ban.

(93) Finally, the Commission notes positively that the Bridge Bank and the Bad Bank will apply strict executive remuneration policies, with the embedded incentive for executives to sell the assets as rapidly as possible.

(94) The Commission considers that an adequate burden-sharing is ensured.

Monitoring

(95) In accordance with section 6.5 of the 2013 banking Communication, regular reports are required to allow the Commission to verify that the commitments are being implemented properly. As stated in the commitments given by Portugal, Portugal will ensure that until the end of the Existence Period or the Winding-down Period, whichever occurs last, the Monitoring Trustee, who will be appointed by the Resolution Fund with the approval of the Commission, will monitor the commitments given by Portugal.

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[10] See recital (44)

(96) The Commission therefore finds that proper monitoring of the implementation of the commitments is ensured.

Conclusion on the compatibility of the orderly resolution aid

(97) The Commission considers that the Measure is compatible with the internal market within the meaning of Article 107(3)(b) TFEU.

CONCLUSION

The Measure notified by the Republic of Portugal for the benefit of the Bridge Bank in form of capital injection constitutes State aid pursuant to Article 107(1) TFEU.

The Measure is compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU in light of the commitments given by Portugal.

The Measure is accordingly approved.

The Commission notes that Portugal exceptionally accepts that the adoption of the Decision be in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President