

EUROPEAN COMMISSION
Director General

Competition DG

Brussels, **07 JAN. 2015**
COMP – D (2015) 000567

Attn. Mr Fernando Negrão

Chairman of the Parliamentary Committee of Inquiry on the management of Banco Espírito Santo and the Espírito Santo Group and on the process leading to the implementation of the resolution measure and its consequences, notably as regards the developments and options concerning the Espírito Santo group and Novo Banco

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Sent by e-mail and registered mail

Subject: Your letters no. 29 and no. 30 of 30 October 2014, no. 65 of 11 November 2014 and no. 79 of 20 November 2014 relating to case COMP/SA.39250 (2014/N) – Banco Espírito Santo

Dear Sir,

I am writing you in reply to your recent invitations to give testimony in the inquiry you are conducting and request for access to documents in case SA.39250.

I would like to confirm that I am willing to respond in writing to your questions with respect to matters that fall in the competence of the Directorate-General for Competition.

You have also addressed a similar invitation to Mr Antoine Colombani, the former spokesperson for Competition. Please be informed that through my written reply in relation to the inquiry I will also cover the competences of the former spokesperson for Competition.

I take the opportunity to recall that the obligations of Article 339 TFEU apply, according to which the officials of the Union "shall be required, even after their duties have ceased, not to

disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components".

With regard to letters no.29 of 30 October 2014, addressed to the former Vice President of the Commission responsible for Competition, Joaquin Almunia, and no. 30 of 30 October 2014, addressed to myself, we note that you are asking for access to two categories of documents.

Firstly, you are requesting possible reports of the Directorate-General for Competition on the support programmes for Portuguese banks within the scope of the Financial Assistance Programmes (FAP). In this respect, please be informed that DG Competition did not prepare reports on this subject.

I would nevertheless like to inform you that during the FAP, DG Competition monitored the evolution of the Portuguese banks which had received State aid on the basis of reports prepared and presented by the Portuguese authorities, including the Banco de Portugal, for the regular review missions along with other Directorates of the Commission, as well as the European Central Bank and the International Monetary Fund. The Portuguese authorities concerned should be able to provide you with all the necessary documentation concerning these review missions.

Secondly, you are asking for all correspondence exchanged with the Portuguese Government on the Espírito Santo dossier and, in particular, on the resolution decision concerning Banco Espírito Santo (BES), between the 28th of July and the 3rd of August 2014, as well as for the Commission decision authorising the support to the resolution in favour of BES and all the supporting documents justifying it.

I can assure you that the Commission, in line with Articles 10(2) and 12 of the Treaty on European Union, attaches the greatest importance to requests for documents from any national parliament. As requested, please find attached the non-confidential version of the decision concerning BES¹. However, since this request also concerns correspondence between the Commission and the Portuguese Government, and supporting documents justifying the decision submitted by the Portuguese authorities, the Commission can only transmit these documents after permitting that Government to express its views in that respect. Accordingly, the Commission will request the views of your Government and will reply to you at a later stage.

This request will also concern the question whether specific measures concerning the confidentiality of these documents should be taken. Indeed, while the decision on the resolution of Banco Espírito Santo (BES) has been adopted, the case cannot be considered

¹ Published at <http://ec.europa.eu/competition/elojade/isef/index.cfm> , under case number SA.39250

closed as the Commission has been informed that several applications for annulment have been lodged with the General Court against this decision. Normally, such documents are kept confidential as long the legal proceedings are ongoing.

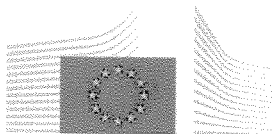
I look forward to receiving your questions.

Yours faithfully,

A handwritten signature in black ink, consisting of a horizontal line with a loop and a vertical stroke extending downwards from the center.

Alexander ITALIANER

Cc: Antoine Colombani



EUROPEAN COMMISSION

Brussels, 03.08.2014
C(2014) 5682 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**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

S. Ex.^a o Ministro dos Negócios Estrangeiros
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- 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").
 - (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 group¹ ("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

¹ All companies within and including the Espírito Santo Financial Group and Espírito Santo International

- 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).
- (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 [38 000 – 45 000] million (excluding the intragroup operations), registering a decrease of EUR [1 000 – 1 900] 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 [3 000 – 5 000] million, out of which EUR [...] million Emergency Liquidity Assistance). Without taking the ECB/Bank of Portugal deposits into account, the bank lost [11 - 17]% of its deposits in July. The

outflow of retail clients (resident and non-resident) over the period was EUR [1 200 – 2 200] million, out of which EUR [900 – 1 500] million from retail clients of BES Spain and EUR [200 - 600] 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 Communication², 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 NN60/2008³ 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 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

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.
- (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 it 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 loan 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 [20-30]% by [...], and by [30-40]% by [...]

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 sale⁴ 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, 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 Communications⁵, 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

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

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.

requirements specified in point 44 of the 2013 Banking Communication⁶ (Burden Sharing).

- (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 [16 000 – 23 000] million to EUR [19 000 – 28 000] million in losses. It would also imply a disbursement of around EUR [9 000 – 18 000] 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

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

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 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 [8 – 12]%. 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 proceedings⁷.
- (79) The Bad Bank will gradually reduce its balance sheet and off-balance sheet exposure total by at least [20-30]% by [...] and by additional [30-40]% by [...].
- (80) The Bad Bank will not compete on the market or pursue any new activities⁸. 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 years⁹. 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.

⁷ See recital (35)

⁸ See recital (44)

⁹ See recital (35)

- (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.
- (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 practice¹⁰.
- (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

¹⁰ See recital (44)

Monitoring Trustee, who will be appointed by the Resolution Fund with the approval of the Commission, will monitor the commitments given by Portugal.

- (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:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I – List of commitments

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Lisbon, the 3th of August 2014

Subject: State aid case number SA.39250 – Commitments' Letter

Portugal hereby provides the following Commitments (the "Commitments") which are integral part of the resolution measures being applied to BES. The Commitments apply to the overall resolution measures ("bridge institution tool" requiring the split of BES assets and liabilities, part of which will be transferred to a "Bridge Bank" and part will remain in the existing institution, the "Bad Bank").

The Commitments shall take effect upon the date of adoption of the Commission's decision (the "Decision").

With respect to the Bridge Bank, the Commitments apply throughout the Existence Period of the Bridge Bank.

With respect to the Bad Bank, the Commitments apply throughout the Winding-up Period.

The resolution measures at stake in this case lead to the full burden-sharing by the equity, hybrid and subordinated debt holders of BES. Claims by related parties (e.g. shareholders and Board members) of a non-contractual nature will also contribute to the burden-sharing.

I. Definitions

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

- (1) **Bank:** Banco Espirito Santo S.A. and all its subsidiaries. Therefore, it includes the entire Banco Espirito Santo Group with all its Portuguese and non-Portuguese subsidiaries and branches, both banking and non-banking.
- (2) **Bridge Bank:** the legal entity to which selected assets and liabilities are transferred on the basis of the resolution measure authorized by the Decision.
- (3) **Bad Bank:** the legal entity where the remaining assets and liabilities of the Bank remain.
- (4) **Decision:** the decision of the European Commission authorizing the State aid measures.
- (5) **Effective Date:** the date of adoption of the Decision.
- (6) **Existence Period:** The Existence Period starts with the setup of the Bridge bank and ends when the Bridge Bank is sold entirely and its banking license is revoked and stops any banking activity.
- (7) **Winding-up Period:** The Winding-up Period starts with the setup of the Bridge Bank and ends when the Bad Bank is wound up entirely, its banking license is revoked and it stops any banking activity.
- (8) **Foreign businesses:** foreign banking and non-banking subsidiaries and branches of the Bank.
- (9) **Foreign subsidiaries:** all banking and non-banking subsidiaries of the Bank outside Portugal.
- (10) **Portuguese subsidiaries:** all Portuguese banking and non-banking subsidiaries of the Bank.
- (11) **Purchaser:** one or more natural or legal person(s) proposing to acquire, in whole or in part, parts of the Bank or Bridge Bank.

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

II. Commitments related to the Bridge Bank

II.1. Commitments on Commercial Operations, Risk management and Governance

- (1) The Bridge Bank undertakes to manage the assets it receives with the objective of being divested, in a way that maximizes NPV of these assets.
- (2) Portugal will notify to the Commission any sale of an economic activity or entity which holds a significant market share in its respective market. For the purpose of these Commitments, a significant market share means 10%. This Commitment is without any prejudice to other notification requirements, for instance for concentration purposes.
- (3) The Bridge Bank shall conduct open, transparent, non-discriminatory and competitive selling processes, that take place on market terms and where the Bridge Bank seeks to maximise the sales price for the assets and liabilities involved.
- (4) Portugal will not provide any additional capital or liquidity support to the Bank, the Bridge Bank and / or the Bad Bank. In addition, the Bridge Bank will not provide any additional capital and/or liquidity to the Bad Bank except limited liquidity only for supporting ramp-down and operational costs.
- (5) No claim of shareholders and holders of subordinated debt or any hybrid instruments of the Bank or the Bad Bank may be transferred to the Bridge Bank.
- (6) The Bridge Bank will discontinue the name Banco Espirito Santo (or any combinations of it) not later than two months as of the Decision date.
- (7) The Bridge Bank will have sold all assets transferred to it, or the Resolution Fund will have sold all shares in the Bridge Bank, no later than 24 months after the Effective Date and will cease to exist by that date. 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.
- (8) For each foreign subsidiary in the Bridge Bank, the Bridge Bank shall not provide additional equity or subordinated capital¹¹ for an amount larger than the higher of (i) [0-5]% of the RWA of that subsidiary on 31 December 2013 or (ii) EUR [45-60] million. If evidenced by a letter from the local regulator, the present Commitment shall not apply:
 - a. When the capital increase is the direct consequence of an increase of the regulatory capital adequacy ratios for all the banks operating in that market.
 - b. When a capital increase is required by the regulator as a direct consequence of a stress test performed to all the banks in the country concerned, either in accordance with a one-off regulatory initiative or in accordance with the yearly stress testing.

¹¹ For the avoidance of doubt, a conversion of one capital instrument to another (included in the regulatory own funds) shall not be considered "a support to foreign subsidiaries".

- c. When there is a capital increase which is strictly linked to an upcoming sale transaction.
- (9) Granting loans¹² to enable borrowers to purchase shares or hybrid instruments of the Bridge Bank shall be prohibited, whoever those borrowers¹³ are.
- (10) The Bridge Bank will not pay any coupons on hybrid capital instruments (or any other instruments for which the coupon payment is discretionary) or dividends on own funds instruments and subordinated debt instruments other than where there is a legal obligation to do so and other than on those held by the Resolution Fund or by shareholders or subordinated debt holders which entered into the Bridge Bank after its set up. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, the Bridge Bank shall submit the proposed coupon or dividend payment to the Commission for approval.
- (11) The Bridge Bank shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the Bridge Bank on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.
- (12) The Bridge Bank has to continue the further improvement of its risk management activities and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.
- (13) For the purpose of acquiring any parts of the Bank or the Bridge Bank, the Purchaser shall not be previous qualified shareholders (above 2%), prior to the setup of the Bridge bank. The Purchaser shall not be financed directly or indirectly by the Bad Bank or the Bridge Bank. This does not apply to sale of real estate, in which case the Bridge Bank can provide financing to the purchaser, if this new lending is performed in line with prudent lending practice.
- (14) The Bridge Bank can only purchase investment grade securities or euro area sovereign securities.
- (15) 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.

¹² For the purpose of that Commitment, the term "loans" shall be interpreted *largo sensu*, as any kind of financing, e.g. credit facility, guarantee, etc.

¹³ For clarification, all borrowers, including the Bank's private banking clients are covered by that Commitment.

- (16) The Bridge Bank will not price deposits above market average and will not grant credit or other loan business below market average.

II.2 Remuneration of the Bridge Bank's employees and managers

- (17) The Bridge Bank will apply strict executive remuneration policies. The Bridge Bank will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than 15 times the average salary of employees in the Bridge Bank during the first year and 10 times the average salary of employees in the Bridge Bank during the second year.

II.3 Other behavioural restrictions

A. Acquisition ban

- (18) Portugal commits that the Bridge Bank shall not acquire¹⁴ any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertakings which have the legal form of a company and any package of assets which forms a business.
- (19) The acquisition ban shall not apply to acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms, including the conversion of existing debt into equity instruments, and where the purchase price paid by the Bridge Bank for any acquisition is less than 0,01% of the balance sheet size¹⁵ of the Bridge Bank at the Effective Date of the Commitments¹⁶, and where the cumulative purchase prices paid by the Bridge Bank for all such acquisitions starting with the Effective Date of the Commitments until the end of the restructuring period, is less than 0,025% of the balance sheet size of the Bridge Bank at the Effective Date of the Commitments.
- (20) Notwithstanding acquisition ban, the Bridge Bank may, after obtaining the Commission's approval, and, where appropriate, on a proposal of the Bank of Portugal, acquire businesses and undertakings if it is in exceptional circumstances necessary to restore financial stability or to ensure effective competition.

¹⁴ For clarification: this does not prevent the resolution authority from transferring further assets from the Bad Bank to the Bridge Bank.

¹⁵ For clarification, for the purpose of that Commitment, the size of the balance sheet is equal to the Bridge Bank's total assets.

¹⁶ For clarification, in case the Commission's approval to lift the acquisition ban is obtained, the balance sheet of the Bridge Bank at the Effective Date of the Commitments shall be calculated to include also the assets of the acquired entities or the acquired assets at the date of acquisition.

B. Advertising ban

- (21) Portugal commits that the Bridge Bank will refrain from advertising referring to state support and from employing any aggressive commercial strategies which would not take place without the state aid.

III. Commitments related to the Bad Bank

- (22) All Commitments related to the Bridge Bank shall apply *mutatis mutandis* to the Bad Bank and the Winding-up Period, with the exceptions and modifications set out in this section.
- (23) The banking license of the Bad Bank will be revoked by no later than the conclusion of the sale process of the Bridge Bank.
- (24) The Bad Bank will reduce its balance sheet and off-balance sheet exposure total by at least [20-30] % by [...] and by [30-40] % by [...]. The Bad Bank will enter into liquidation proceedings upon withdrawal of the authorisation which will occur by no later than 31/12/2016.
- (25) In general, the Bad Bank will not and cannot generate any New Business.
- (26) The following shall not be considered as New Business:
- (a) Additional financing to existing customers which is contractually committed at the day of the Decision or is strictly necessary to preserve the value of the loan collateral, or is otherwise related to minimising capital losses and/or enhancing the expected recovery value of a loan. Each of such forced renewal maturities must not exceed 12 months and their appropriateness should be evaluated at each renewal, ensuring that a renewal is likely to increase the NPV of the asset;
 - (b) Derivative transactions which are necessary in order to manage interest rate, currency and credit risks in the existing portfolio, e.g. asset swaps, provided that they have the effect of reducing the overall market risk position of the unit;
 - (c) All business which is necessary for regulatory or other legal reasons, including the extension of maturities or the modification of terms imposed as a member of a bank syndicate in certain investment projects or following decisions by administrative or judicial authorities;
 - (d) Debt to equity or debt to investment funds participation units transactions in the context of credit restructuring or recovery
- (27) A liquidation committee will be appointed by the Commercial Court of Lisbon to ensure a proper liquidation process.

- (28) For all the Portuguese activities, the Bad Bank shall enact a claim and litigation policy aiming at maximizing recovery and preventing any discrimination or preferential treatment in the management of litigations. The Bad Bank shall ensure that all necessary actions are taken to maximize the recoveries for the Bad Bank.
- (29) With respect to support to foreign subsidiaries of the Bad Bank, the Bad Bank shall not provide additional equity or subordinated capital at all.
- (30) The Bank shall not repurchase any of its own shares or exercise a call option in respect of those own funds instruments and subordinated debt instruments. The Bank shall not buy back hybrid capital instruments.

IV. Monitoring Trustee

- (31) One or more natural or legal person(s), independent from the Bank or the Bridge Bank, proposed by Portugal and approved by the Commission and appointed by the Resolution Fund; the Monitoring Trustee will have the duty to monitor the full compliance with the Commitments until the end of the Existence Period or the Winding-up Period, whichever occurs last.

Best wishes,

Minister of State and Finance



(Maria Luís Albuquerque)

Annex II - Monitoring Trustee

1. MONITORING TRUSTEE

- (1) Portugal is to ensure that the full and correct implementation of the Decision and all the Commitments are continuously monitored by independent and sufficiently qualified Monitoring Trustee(s).
- (2) The appointment, duties, obligations, replacement, discharge and reappointment of the Monitoring Trustee, as well as both the Bridge Bank's and the Bad Bank's duties and obligations in this context, must follow the conditions and procedures set out in this Annex.
- (3) If in the course of implementing the Commitments there are reasons to assume that either the Bridge Bank or the Bad Bank are reasonably likely to fail to meet any Commitment, they have to work out on their own initiative a plan with Remedial Actions that are apt to ensure that all targets will be met. The Remedial Actions have to be presented to the Monitoring Trustee who will analyse them and report to the Commission on its views concerning their adequacy.
- (4) Portugal, the Bridge Bank and the Bad Bank are to ensure that during the implementation of the Decision, the Commission and the Monitoring Trustee have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustees may ask the Bad Bank and/or the Bridge Bank for explanations and clarifications. Portugal, the Bridge Bank and the Bad Bank are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of the Decision and the Commitments.

2. APPOINTMENT OF THE MONITORING TRUSTEE

- (5) Portugal undertakes to ensure that the Resolution Fund approve a single Monitoring Trustee for the Bridge Bank and the Bad Bank as set out below.
- (6) The mandate of the Monitoring Trustee applies until the end of the Existence Period of the Bridge Bank or the Winding-up Period of the Bad Bank, whichever occurs last. At the end of the mandate, the Trustee will submit a final report to the Commission.
- (7) The Monitoring Trustee may be natural person(s) or legal person(s) or institution(s).
- (8) The Monitoring Trustee must be independent of the Bank, the Bridge Bank and the Bad Bank. The Monitoring Trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge, expertise and manpower that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest.
- (9) The Monitoring Trustee is to be remunerated by the Bad Bank in a way that must not impede the independent and effective fulfilment of its mandate.
- (10) Portugal will submit at least two proposals to the Commission for approval as Monitoring Trustee no later than four weeks after the date of adoption of the Decision. These proposals must contain sufficient information about the potential trustees to enable the Commission to verify whether they fulfil the requirements, and must in particular include the following:
 - a. the full terms of the proposed mandate with all the provisions which are necessary to enable the Monitoring Trustees to fulfil their duties; and
 - b. the draft of a work plan describing how the proposed trustee intends to carry out their assigned duties if s/he are appointed as the Monitoring Trustee.
- (11) The Commission has the discretion to approve or reject the proposed persons and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Monitoring Trustee to fulfil its obligations. If only one name is

approved, the Bridge Bank and/or the Bad Bank will appoint for their institution, the person concerned as Monitoring Trustee or cause that person to be appointed, in accordance with the mandate approved by the Commission, or submit alternative proposal(s) to be reviewed and approved by the Commission. If more than one name is approved, Portugal is free to decide which of the approved persons should be appointed as Monitoring Trustee for which institution. The Monitoring Trustees will be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

- (12) If all the proposed persons are rejected, Portugal shall submit the names of at least two different persons within two weeks of being informed of the changes or the rejection.
- (13) If all further proposed persons are also rejected by the Commission, the Commission will nominate a Monitoring Trustee which the Resolution Fund will appoint, in accordance with a trustee mandate approved by the Commission.

3. DUTIES AND OBLIGATIONS OF THE TRUSTEE

- (14) The Monitoring Trustee is to assist the Commission to ensure the Bridge Bank's and the Bad Bank's respective compliance with the Commitments. The Monitoring Trustee is to carry out the duties under their mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the Commission. The Commission may, on its own initiative or at the request of Portugal, issue orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments. Neither the Bridge Bank, nor the Bad Bank are entitled to issue instructions to the Monitoring Trustee.
- (15) The duty of the Monitoring Trustees is to monitor full and correct compliance with the obligations set out in the Commitments, and full and correct implementation of the Decision. The Commission may, on its own initiative, or at the request of the Monitoring Trustee, issue any orders or instructions to the Monitoring Trustee or the Bridge Bank and/or the Bad Bank in order to ensure compliance with the Commitments attached to the Decision.

(16) The Monitoring Trustee shall:

- a. propose to the Commission in its first report a detailed work plan describing how it intends to monitor compliance with the Commitments;
- b. monitor the full and correct implementation of the Decision;
- c. assume the other functions assigned to the Monitoring Trustee in the Commitments attached to the Decision;
- d. submit a half-yearly draft written report on the Bridge Bank and the Bad Bank respectively to the Commission, Portugal, the bank in question within thirty days after the end of each semester. The Commission, Portugal, the Bridge Bank and the Bad Bank can submit comments on the drafts within ten working days of receipt. Within five working days of receipt of the comments, the Monitoring Trustee is to prepare the final reports and submit them to the Commission and to Portugal. Only afterwards the Trustee is to send a copy of the final reports to the respective banks. If the draft reports or the final reports contain any information that may not be disclosed to the Bridge Bank or the Bad Bank, only a non-confidential version of the draft report or the final report is to be sent to the respective banks. Under no circumstances is the Monitoring Trustee to submit any version of the report to Portugal and/or the respective banks before submitting it to the Commission;
- e. the reports are to focus on compliance with the Commitments by the Bridge Bank and the Bad Bank, thus enabling the Commission to assess whether the Bridge Bank and the Bad Bank are being managed in accordance with the Commitments. If necessary, the Commission may specify the scope of the reports in more detail. In addition to these reports, the Monitoring Trustee is to report promptly in writing to the Commission if they have reasons to suppose that the Bridge Bank and/or the Bad Bank are failing to comply with the Commitments.

4. DUTIES AND OBLIGATIONS OF THE BRIDGE BANK AND THE BAD BANK

(17) The Bridge Bank and the Bad Bank are to provide and to require their advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as

the Monitoring Trustee may reasonably require to perform his/her tasks under the mandate. The Monitoring Trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of the respective bank or of the business to be sold that are necessary to fulfil the duties under the mandate. The bridge bank and the bad bank are to make available to the Monitoring Trustees one or more offices at their business premises and all employees of the respective banks are to be available for meetings with the Monitoring Trustees in order to provide them with all the information it needs to perform its duties.

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

5. REPLACEMENT, DISCHARGE AND REAPPOINTMENT OF THE MONITORING TRUSTEE

- (19) If the Monitoring Trustee terminates his/her mandate or there are any other significant grounds, such as a conflict of interest on the part of the Monitoring Trustees, the Commission can, after hearing the Monitoring Trustee, Portugal and the respective bank, require its replacement.
- (20) If the Monitoring Trustee is removed, he/she may be required to continue in the function until a new Monitoring Trustee is in place to whom the previous Monitoring Trustee has effected a full handover of all the relevant information. The new Monitoring Trustee is to be appointed in accordance with the procedure referred to in section II of the present Annex.
- (21) Besides replacement in accordance with paragraph (19) of the present Annex, the Monitoring Trustee is to cease its activities only after the Commission has discharged

him/her from his/her duties. This discharge is to take place when all the obligations with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it is subsequently found that the relevant Commitments have not been fully and properly implemented.

Annex III – Preliminary Individual Balance Sheet

[...]

Annex IV – Preliminary Consolidated Balance Sheet

[...]