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Amendment of the 2014 Resolution of Banco Espírito Santo, S.A.

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Brussels, 19.12.2015
C(2015) 9762 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid n° SA.43976 (2015/N) – Portugal
Amendment of the 2014 Resolution of Banco Espírito Santo, S.A.**

Sir,

The Commission wishes to inform the Portuguese authorities that, having examined the information supplied by your authorities on the measure referred above, it has decided not to raise objections to the measure for the reasons set out below.

1. PROCEDURE

- (1) The first Portuguese Guarantee Scheme was approved by the Commission on 29 October 2008, and it has subsequently been prolonged twelve times, most recently until 31 December 2015.¹ Under that scheme, Government Guaranteed Bank Bonds ("GGBBs") were issued by Banco Espírito Santo, S.A. on 23 December 2011, 6 January 2012 and 17 February 2012 for a maturity of three years. In December 2014, the maturity of the GGBBs was extended by one additional year, and the guarantee

¹ Initially approved by the Commission on 29 October 2008 in case NN 60/2008, OJ C 9, 14.01.2009, p. 1, a corrigendum to which appears in OJ C 25, 31.01.2009, p. 25. Subsequently prolonged several times every six months. The latest and twelfth prolongation was approved until 31 December 2015 in the decision of the Commission of 22 July 2015 in case SA.42404 (2015/N) – Portugal, Twelfth Prolongation of the Portuguese Guarantee Scheme, OJ C 369, 06.11.2015.

S. Ex.^a o Ministro dos Negócios Estrangeiros
Augusto SANTOS SILVA
Largo do Rilvas
P – 1399-030 - Lisboa

was renewed as well. Those bonds and the guarantee will thus expire on 23 December 2015, 6 January 2016, and 17 February 2016 respectively.

- (2) By decision of 3 August 2014² (the "2014 Decision"), the Commission approved the resolution of Banco Espírito Santo, S.A. and its subsidiaries ("BES") and the immediate creation and capitalisation of a temporary credit institution, i.e. a Bridge Bank, subsequently named Novo Banco S.A. ("Novo Banco")³, fully capitalized and owned by the Portuguese Resolution Fund⁴ ("Fundo de Resolução") ("Resolution Fund"). The 2014 Decision described the procedure for the orderly winding down of Novo Banco and the remainder of BES, i.e. the Bad Bank. In the framework of the procedure resulting in that decision, the Portuguese authorities provided a number of commitments⁵, including the sale of Novo Banco and the liquidation of the Bad Bank and of any parts of Novo Banco not sold within two years of the date of the 2014 Decision.
- (3) On 4 December 2014, the Resolution Fund launched a sale process for Novo Banco⁶.
- (4) On 15 September 2015, the Bank of Portugal announced publicly that the sale process of the bridge bank Novo Banco was suspended⁷, as it deemed to have received no satisfactory binding offer.
- (5) On 14 November 2015, the Single Supervisory Mechanism ("SSM") of the European Central Bank ("ECB"), which is the lead supervisor of Novo Banco, announced the results of the Comprehensive Assessment⁸, which identified a capital shortfall of EUR 1.4 billion in the adverse scenario for Novo Banco.⁹
- (6) On 21 November 2015, the Resolution Fund submitted to the Commission preliminary information on the approach envisaged for Novo Banco, in response to the capital shortfall identified by the Comprehensive Assessment. The initially envisaged approach included the possibility of new capital measures for Novo Banco, which would have required an assessment under State aid rules. Subsequently, and up to the adoption of this Decision, continuous exchanges have taken place between the Commission and the Portuguese authorities concerning Novo Banco.
- (7) On 6 December 2015, the Portuguese authorities submitted to the Commission a draft Restructuring Plan, which they subsequently amended on 9 December 2015, setting

² SA.39250 (2014/N) – Portugal, Resolution of Banco Espírito Santo, S.A., OJ C 393/2014, 7.11.2014, p. 1.

³ All references in this Decision to Novo Banco are to be understood as being to the Bridge Bank mentioned in the 2014 Decision where the context so requires.

⁴ The Resolution Fund was created in 2012, on the basis of Ministerial Order no. 420/2012, December 21, which established the Portuguese Resolution Fund Regulation; and the Decree-Law nr. 31-A/2012 of 10 February 2012, for the purpose of providing financial assistance to the application of resolution measures adopted by the Bank of Portugal.

⁵ See Annex I to the 2014 Decision.

⁶ Invitation to Submit Expressions of Interest for Novo Banco, by the Resolution Fund: http://www.fundoderesolucao.pt/en-US/ofundo/Documents/Announcement_ENG.pdf

⁷ Press Release of Banco de Portugal on the Novo Banco sale process: <http://www.bportugal.pt/en-US/OBancoeoEurosistema/ComunicadoseNotasdeInformacao/Pages/combp20150915.aspx>

⁸ The comprehensive assessment comprises two components: an Asset Quality Review ("AQR") and a stress test. Note on the 2015 Comprehensive Assessment by the ECB Banking Supervision, available at: https://www.bankingsupervision.europa.eu/pdf/ca/2015-11-14_note_comprehensive_assessment.en.pdf?903a66b1e1fcbd5ab4021d1dfa089819

⁹ Results of the comprehensive assessments 14 November 2015: https://www.bankingsupervision.europa.eu/pdf/ca/PT-Novo_Banco-CA-DISCLOSURE.xlsx.pdf

out the strategy for Novo Banco, from the date of resolution of BES until 2020, with a view to the consolidation of Novo Banco towards becoming a profitable bank compliant with all regulatory requirements.

- (8) On 19 December 2015, the Portuguese authorities notified the extension of the Government Guaranteed Bank Bonds for Novo Banco and a set of revised commitments concerning notably the bridge bank Novo Banco.
- (9) By letter of 19 December 2015, Portugal agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958¹⁰ and to have the present decision adopted and notified in English.

2. DESCRIPTION

2.1. Description of BES and the 2014 Decision on the resolution of BES

- (10) In March 2014, BES¹¹ 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. It was present in four continents and in 25 countries, employing almost 10 000 people.
- (11) However, BES had come under pressure as of May 2014. On 30 June 2014, the Common Equity Tier 1 ("CET1")¹² of BES stood at 5.0%, below the minimum requirement which was set by the Bank of Portugal at 7%. In the course of July 2014, BES's liquidity profile deteriorated. BES faced significant deposit withdrawals of retail customers and non-financial companies. At the end of July 2014, BES announced losses for the first half of 2014 amounting to EUR 3 577 million, leading to a significant deterioration of BES' capital¹³.
- (12) The Bank of Portugal assessed various options for the resolution of BES, but 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. Therefore, 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, Novo Banco¹⁴.
- (13) A large part of BES's business activities were transferred to Novo Banco in accordance with the recommendation by the Bank of Portugal ("the 2014 Resolution Measure"). Novo Banco received assets and liabilities such as cash, retail deposits and performing loans, central bank funding, GGBBs and T-Bills. Overall, it received EUR 64 billion of assets, and was capitalised by EUR 4.9 billion¹⁵ via the Resolution Fund.

¹⁰ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

¹¹ A description of BES is included in recitals (11) to (17) of the 2014 Decision.

¹² Common Equity Tier 1 as defined in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1.

¹³ A description of events leading to the resolution of BES is included in recitals (18) to (26) of the 2014 Decision.

¹⁴ Novo Banco was created on 3 August 2014 pursuant to the Legal Framework of Credit Institutions and Financial Companies (approved by Decree-Law no. 298/92, of 31 December 1992, as subsequently amended).

¹⁵ A description of the set-up and aid measures for Novo Banco is included in recitals (27) to (32) of the 2014 Decision.

Until the sale of Novo Banco and/or the liquidation of the bad bank BES under national insolvency law, Bank of Portugal maintains a power to adjust the perimeter of assets and liabilities transferred to Novo Banco.

- (14) The remainder of BES became a so-called Bad Bank. In addition to the residual assets not subject to a transfer to Novo Banco, shareholders and subordinated creditors, as well as claims by related parties (e.g. shareholders or board members) also remained in the Bad Bank. The 2014 Decision approved resolution aid in light of, inter alia, a commitment that the banking license of the Bad Bank would be revoked no later than at the time of the conclusion of the sale process of Novo Banco, or after 24 months from the date of the 2014 Decision, whichever would occur earlier. The Bad Bank was to be orderly wound down under normal insolvency judicial proceedings.

2.2. The events leading to the amendment of the 2014 Decision

2.2.1. Description of the beneficiary, Novo Banco

- (15) At 30 June 2015 Novo Banco had net assets of EUR 61.9 billion, being the third-largest bank in Portugal by that criterion.¹⁶ It had deposits of EUR 28.9 billion EUR and net loans of EUR 33.7 billion. Novo Banco acts as a universal bank offering a diversified range of financial services, such as domestic commercial banking (including retail, corporate and institutional clients and private banking), international commercial banking, asset management, insurance.
- (16) As of 30 June 2015, Novo Banco had 7 527 employees and a network comprising of 669 branches¹⁷ in Portugal and abroad, including branches in London, Spain, New York, Nassau, the Cayman Islands, Cape Verde, Venezuela and Luxembourg, an offshore branch in the Madeira Free Trade Zone and 7 representative offices overseas¹⁸. Over EUR 46 billion (i.e. over 70%) of Novo Banco net assets at 30 June 2015 were in Portugal, while the other international presences which were significant within the group were Spain (with EUR 3.8 billion net assets), the United Kingdom (with EUR 4.5 billion net assets) and France and Luxembourg (totalling both EUR 4.8 billion net assets)¹⁹.
- (17) In terms of capital, at 30 June 2015, Novo Banco had a total regulatory capital of EUR 4 089 million (entirely composed of common equity Tier 1 and a CET 1 Ratio phased-in of 9.4% (not reflecting the deconsolidation impact of Banco Espírito Santo de Investimento, S.A. – "BESI" which had been sold). The capital position of Novo Banco had deteriorated compared to the EUR 4 442 million (CET1 of 9.5%) level of 31 December 2014 (the date of the first financial statements completed by Novo Banco, after its opening balance sheet resulted from the resolution of BES in August 2014)²⁰.

¹⁶ Novo Banco Institutional Presentation of October 2015, available at: <https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=733826&fext=.pdf>.

¹⁷ Interim Report and Accounts Novo Banco Group First Half 2015, p. 6, available at: <https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=760354&fext=.pdf>.

¹⁸ The list of subsidiaries, subgroups and other entities consolidated in Novo Banco is reflected in the Interim Report and Accounts Novo Banco Group First Half 2015, pp. 52-54, available at: <https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=760354&fext=.pdf>.

¹⁹ Based on Interim Report and Accounts Novo Banco Group First Half 2015, p. 96, available at: <https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=760354&fext=.pdf>.

²⁰ See footnote 16.

- (18) The capital of Novo Banco has been gradually deteriorating due to the losses registered by it: EUR 497.6 million in the August – December 2014 period, and EUR 251.9 million in the first half of 2015²¹, mainly driven by provisions for impairments.

2.2.2. *The sale process of Novo Banco*

- (19) As indicated in the 2014 Decision, the Portuguese authorities committed that Novo Banco would sell all the assets transferred to it, or the Resolution Fund would sell all of its shares in Novo Banco, no later than 24 months after the date of the 2014 Decision, i.e. by 2 August 2016 the latest. Novo Banco was to conduct an open, non-discriminatory and competitive selling process that would take place on market terms and seek to maximize the sales price for the assets and liabilities involved. If the assets were not be sold by that date, the Portuguese authorities committed to put Novo Banco in wind down in the month that follows.²²
- (20) On 4 December 2014, the Bank of Portugal opened the sales process of Novo Banco itself, by a public announcement²³. 17 expressions of interest were submitted to the Bank of Portugal until 31 December 2014. On 15 September 2015, the Bank of Portugal announced that the sales process was interrupted without accepting any of the three binding offers, as it deemed the terms and conditions of these offers not satisfactory.

2.2.3. *Comprehensive Assessment, capital shortfall, and capital raising plan of Novo Banco*

- (21) As mentioned in recital (5), on 14 November 2015, the SSM announced the results of the Comprehensive Assessment. Novo Banco fell short under the adverse scenario (CET1 ratio of 2.43%, compared with a 5.5% threshold), corresponding to a capital shortfall of EUR 1 398 million, i.e. about EUR 1.4 billion. In order to cover the capital shortfall, Novo Banco had to present a capital raising plan to the competent authority, the SSM.
- (22) In the context of the information exchanges leading up to the present decision, the Portuguese authorities have informed the Commission of the proposals for capital strengthening measures for Novo Banco which have been subject to an on-going dialogue with the SSM, with a view to arriving at acceptable and sufficiently robust measures to address the identified capital shortfall and strengthen Novo Banco's capital so as to comply with more stringent requirements in the future.
- (23) Portugal has provided a commitment to comply with the necessary capital requirements set by the supervisor by 1 January 2016 and commits further to raise the necessary capital at market terms from private sources, without prejudice to the possible use of the powers available to Bank of Portugal acting as the resolution authority responsible for the resolution of BES and for the sale of Novo Banco.²⁴

²¹ See footnote 16.

²² See commitments No. 3 and 7 in Annex I to the 2014 Decision.

²³ See footnote 6.

²⁴ See Annex I of the present decision.

3. THE AID MEASURE

- (24) The Portuguese Guarantee Scheme was first approved in 2008 by the Commission, and has been prolonged twelve times until 31 December 2015 the latest.²⁵ The GGBBs were issued originally by BES under the Portuguese Guarantee Scheme as follows: on 23 December 2011 (1.000 M EUR - ISIN PTBENFOM0027), 6 January 2012 (1.000 M EUR - ISIN PTBENHOM0017) and 17 February 2012 (1.500 M EUR - PTBEQHOM0014) for a maturity of 3 years.
- (25) With the objective of stabilising the liability side of the Novo Banco, the 2014 Decision also envisaged the transfer of the GGBBs of BES to Novo Banco. Since the GGBBs had been issued by BES under the Portuguese Guarantee Scheme, they represented existing aid at the time, and were therefore not subject to further assessment by the Commission in the 2014 Decision.
- (26) On 15 December 2014, Portugal extended the maturity of the bonds by one year, as well as the government guarantee under the Portuguese Guarantee Scheme.
- (27) In view of Novo Banco's situation, the Bank of Portugal as resolution authority has determined that the extension of the GGBBs is necessary to stabilise the liquidity situation of Novo Banco while ensuring that the sale is as fast as possible and is done at appropriate terms.
- (28) The extension of the maturity of the GGBBs cannot be done under the approved scheme²⁶ itself due to the commitment by the Portuguese authorities that the aid measures under the scheme can only benefit solvent credit institutions which have no capital shortfall: "*to grant aid measures under the scheme only to solvent credit institutions which have no capital shortfall*"²⁷.
- (29) For Novo Banco, the comprehensive assessment revealed a capital shortfall under the adverse scenario on 14 November 2015. Therefore, the GGBBs are not eligible for prolongation under the scheme.
- (30) In line with the legal requirements also reflected in the scheme for extraordinary granting of guarantees by the Portuguese State, the envisaged operation relies on the revision of the applicable interest rate (in accordance with the Portuguese Guarantee Scheme).
- (31) The table below summarizes the revised terms and conditions of Novo Banco's GGBBs in the operations undertaken both in 2014 and 2015:

²⁵ Initially approved by the Commission on 29 October 2008 in case NN 60/2008, OJ C 9, 14.01.2009, p. 1, a corrigendum to which appears in OJ C 25, 31.01.2009, p. 25. Subsequently prolonged several times every six months. The latest and twelfth prolongation was approved until 31 December 2015 in the decision of the Commission of 22 July 2015 in case SA.42404 (2015/N) – Portugal, Twelfth Prolongation of the Portuguese Guarantee Scheme, OJ C 369, 06.11.2015.

²⁶ SA.42404 (2015/N) – Portugal, Twelfth Prolongation of the Portuguese Guarantee Scheme, OJ C 369, 06.11.2015, recital 17(a).

²⁷ "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

Beneficiary Entity	ISIN	Amount (million Euro)	Issuance date	Initial terms		Revised Terms (2014)		Revised Terms (2015)	
				Initial Maturity date	Initial coupon	Revised Maturity date	Revised coupon	Revised Maturity date	Revised coupon
Novo Banco, S.A.	PTBENFOM0027	1.000	23-Dec-2011	23-Dec-2014	Euribor 3m+ 12%	23-Dec-2015	Euribor 3m+ 1,5%	23-Dec-2016	Euribor 3m+ 0,9%
Novo Banco, S.A.	PTBENHOM0017	1.000	06-Jan-2012	06-Jan-2015	Euribor 3m+ 12%	06-Jan-2016	Euribor 3m+ 1,5%	06-Jan-2017	Euribor 3m+ 0,9%
Novo Banco, S.A.	PTBEQHOM0014	1.500	17-Feb-2012	17-Feb-2015	Euribor 3m+ 12%	17-Feb-2016	Euribor 3m+ 1,5%	17-Feb-2017	Euribor 3m+ 0,9%

- (32) Portugal has notified the extension of the GGBBs for [...] as committed under this Decision. The Commission takes note that in practical terms, the maturities of the existing bonds are for the time being extended by only one additional year (from 23 December 2015, 6 January 2016 and 17 February 2016, to 23 December 2016, 6 January 2017, and 17 February 2017 respectively).
- (33) Portugal commits that Novo Banco will not issue new GGBBs and the material terms and conditions of the GGBBs, apart from the maturity and the coupon level, remain unaltered as described in the earlier approval decisions under the Portuguese Scheme.
- (34) In addition, Portugal has submitted a set of commitments, which are annexed to the present decision in Annex I. These commitments supersede the commitments annexed to the 2014 Decision.
- (35) In these commitments, Portugal commits to publicly launch the sales process by 15 January 2016, with the aim to reach agreement on a sale purchase agreement by [...]. However, at the same time, the Portuguese authorities amend the commitments to extend the deadline for selling Novo Banco by [...] with additional compensatory measures.

4. POSITION OF PORTUGAL

4.1. Existence of aid, its necessity and compatibility

- (36) According to the Portuguese authorities, the prolongation of the State guarantee on the aforementioned bonds is necessary to ensure the maintenance of adequate collateral levels for liquidity purposes in Novo Banco. Given its specificities as a bridge institution and the recent failure of the selling process, Novo Banco's access to the capital markets is profoundly constrained. Therefore, the maintenance of the GGBBs is decisive given that the financing operations in the capital markets have been done almost exclusively through the use of those instruments in repurchase operations.
- (37) The Portuguese authorities accept that the extension of the GGBBs constitute State aid and request the Commission to verify that 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 ("TFEU").
- (38) The Portuguese authorities are of the view that the extension of the deadline to sell Novo Banco by [...] is necessary with the view to maximise the sale price, and therefore keep the amount of aid to the minimum.

4.2. Commitments by the Portuguese authorities

- (39) The Portuguese authorities submitted the following commitments, as also detailed in Annex I to this Decision. Those commitments amend and supersede the commitments described in the 2014 Decision.
- (40) These Commitments enter into force on the date of adoption of this Decision and will end two years after the completion of the transaction by which a controlling shareholding of Novo Banco is acquired by a third party – unless stated otherwise in the relevant Commitment – subject to a successful assessment of viability by the Commission without additional measures to address distortions of competition being required.
- (41) The Portuguese authorities committed that one or more natural or legal person(s), independent from BES or Novo Banco, proposed by Portugal and approved by the Commission and appointed by the Resolution Fund. i.e. the Monitoring Trustee, will continue to have the duty to monitor the full compliance with the commitments during the Existence Period of Novo Banco, i.e. from the setup of Novo Banco until when Novo Banco is sold entirely or its banking license is revoked and stops any banking activity; as well as during the Winding-up Period, i.e. from the date of the 2014 Resolution Measure until when the Bad Bank is sold or wound up entirely whichever occurs last.

4.2.1. Novo Banco: Commitments related to commercial operations, risk management, governance

- (42) Within six months of the adoption of this Decision, Novo Banco will segregate its existing activities into two parts, the so-called Core Unit and the Non-Core Unit. Those Units will not be separate legal entities and funding, liquidity and solvency will be shared across both units.
- (43) Amongst others, the Core Unit will most importantly retain [...], as well as [...] - until [...] with respect to the latter. The Non-Core Unit will include [...]. The Portuguese authorities have committed to a staggered revision of the perimeter of the Core and Non-Core Units. In case the assets or the shares of Novo Banco have not been sold entirely by [...], [...] or [...], certain assets will successively be transferred from the Core Unit to the Non-Core Unit. A list of business lines and geographies in the Core and Non-Core Units, including the staggered revision of their perimeter, is provided in Annex 1 to this Decision containing the full list of commitments by the Portuguese authorities.
- (44) All business parts of the Non-core Unit will be either sold or run down on the balance sheet of Novo Banco (or its acquirer) unless stated otherwise in the list below. For every business part in the Non-Core Unit Novo Banco will ensure that total assets will not increase starting from 1 January 2016. The Non-Core Assets shall be managed with the objective of being divested, liquidated or wound down, in an orderly manner but maximising their value. The total assets in the Non-Core Unit will not exceed EUR [5-10] billion by [...] and EUR [5-10] billion by [...]. In case business lines are moved from the Core Unit to the Non-core Unit as foreseen in the commitment list, those limits shall be adjusted accordingly. At the same time, because the Non-Core Unit is run internally, there is an overriding principle of capital preservation. Respecting that principle entails, inter alia, allowing Novo Banco to retain flexibility to decide whether to sell, wind down and / or run down assets to take advantage of market opportunities.

In addition, business parts which are allocated to the Non-Core Unit may increase their balance sheet marginally if that is considered necessary to preserve their value when selling them on a going-concern basis.

- (45) Novo Banco will have sold all assets – core and non-core – or the Resolution Fund will have sold all shares in Novo Banco by no later than [...] after the date of the 2014 Decision. The necessary sales process will be open, non-discriminatory and competitive and will be launched publicly by 15 January 2016 with the aim of signing a share purchase agreement by [...]. In case the assets or the shares of Novo Banco have been sold entirely by [...], [...] or [...], the commitments on the business lines between the Core and Non-Core Units will be adjusted as provided therein. In case the assets or the shares of Novo Banco have not been sold by no later than [...] after the date of the 2014 Decision, Novo Banco in its entirety will cease new business and be put in wind down in the month that follows.
- (46) Novo Banco undertakes to manage its core assets in a way that maximizes the net present value of these assets.
- (47) Portugal will notify the Commission any sale of an economic activity or entity controlled by Novo Banco which holds a significant market share in its respective market. For the purpose of these Commitments, a significant market share means 10%.
- (48) Portugal will not provide any additional capital or liquidity support to BES, Novo Banco and/or the Bad Bank, except as provided in the present Decision. In addition, Novo Banco will not provide any additional capital and/or liquidity to the Bad Bank except limited liquidity only for supporting ramp down and operational costs.
- (49) Portugal commits to comply with the necessary capital requirements set by the supervisor by 1 January 2016, in accordance with the applicable regulatory framework, and commits further to raise the necessary capital at market terms from private sources, without prejudice to the possible use of the powers available to the Bank of Portugal acting as the resolution authority responsible for the resolution of BES and for the sale of Novo Banco.
- (50) No claim of shareholders and holders of subordinated debt or any hybrid instruments of the Bad Bank may be transferred to Novo Banco.
- (51) For each Foreign Subsidiary in the core unit of Novo Banco, Novo Banco may not provide additional equity or subordinated capital for an amount larger than either (i) [0-5]% of the risk weighted assets ("RWA") of that subsidiary on 31 December 2015, or (ii) EUR [45-60] million. Some exceptions are foreseen, as indicated in the full commitment list in Annex 1 to this Decision.

- (52) Granting loans to enable borrowers to purchase shares or hybrid instruments of Novo Banco shall be prohibited, whoever those borrowers are.
- (53) Novo Banco 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. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, Novo Banco shall submit the proposed coupon or dividend payment to the Commission for approval.
- (54) Novo Banco will apply strict executive remuneration policies. Novo Banco will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than 10 times the average salary of employees in Novo Banco.
- (55) Novo Banco 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 Novo Banco on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary.
- (56) Novo Banco will continuously improve its risk management activities and will conduct a commercial policy that is prudent, sound and oriented towards sustainability.
- (57) For the purpose of acquiring any parts of BES or Novo Banco, the Purchaser shall not be previous qualified shareholders (above 2%), within the two years immediately prior to the setup of Novo Banco. That limitation does not apply to possible shares awarded to creditors of Novo Banco in the context of a possible debt-to-equity conversion. Moreover, the Purchaser shall not be financed directly or indirectly by the Bad Bank or by Novo Banco. This does not apply to the sale of real estate, in which case Novo Banco can provide financing to the purchaser, if that new lending is performed in line with prudent lending practices.
- (58) Novo Banco can only purchase investment grade securities or euro area sovereign securities.
- (59) Novo Banco will not lend amounts higher than the average of the last two years of the business being transferred to Novo Banco.
- (60) Novo Banco will not price deposits above market average. The applicable monthly average interest rates are compiled by the Statistical Department of the Bank of Portugal, in accordance with the applicable regulation, which is based on Regulation (EC) 290/2009²⁸. The commitment will be monitored on a monthly basis.

²⁸ Regulation (EC) No 290/2009 of the European Central Bank of 31 March 2009 amending Regulation (EC) No 63/2002 (ECB/2001/18) concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations, OJ L 94, 8.4.2009, p. 75.

- (61) Novo Banco will not grant credit or other loan business under terms below market average, as calculated based on the statistics of the Bank of Portugal.
- (62) By [...] Novo Banco will comply with the following Key Performance Indicators ("KPIs") at group level:
- (a) It will have reduced the cost base by EUR [100-200] million, compared to the levels of 30 November 2015, excluding the costs deriving from restructuring such as from the reduction of full-time effectives ("FTEs");
 - (b) Its number of FTEs will have reduced by [800-1000] compared to the level of 30 November 2015;
 - (c) It will have reduced its number of branches to [500-600].
- (63) If by [...] Novo Banco still exists as a stand-alone entity, Novo Banco will comply with the following KPIs, at group level:
- (a) It will have reduced the cost base by EUR [200-250] million, compared to the levels of 30 November 2015, excluding the costs deriving from restructuring such as from the reduction of FTEs;
 - (b) Its number of FTEs will have reduced by [1000-1500] compared to the level of 30 November 2015;
 - (c) It will have reduced its number of branches to [450-500].

4.2.2. *Novo Banco: Other behavioural commitments*

- (64) Acquisition ban: Novo Banco shall not acquire²⁹ 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. The acquisition ban applies until 31 December 2018.
- (a) 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, the enforcement of collaterals, and where the purchase price paid by Novo Banco for any acquisition is less than 0.01% of the balance sheet size of Novo Banco at the Effective Date of the Commitments³⁰, and where the cumulative purchase prices paid by Novo Banco for all such acquisitions - starting with the date of the 2014 BES Decision, - of the Commitments, is less than 0.025% of the balance sheet size of Novo Banco at the date of the 2014 Decision.
 - (b) Notwithstanding the acquisition ban, Novo Banco 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

²⁹ For clarification: this does not prevent the resolution authority from transferring further assets from the Bad Bank to Novo Banco.

³⁰ For clarification, in case the Commission's approval to lift the acquisition ban is obtained, the balance sheet of Novo Banco 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.

circumstances necessary to restore financial stability or to ensure effective competition.

- (65) Advertising ban: Novo Banco will refrain from advertising referring to State support and from employing any aggressive commercial strategies which would not take place without the State aid.

4.2.3. *Commitments related to the Bad Bank, i.e. the remainder of BES*

- (66) All Commitments related to Novo Banco shall apply *mutatis mutandis* to the Bad Bank and the Winding-up Period, i.e. the period from the date of the 2014 Decision until the Bad Bank is entirely sold or wound up, with the exceptions and modifications set out in this section.
- (67) The banking license of the Bad Bank will be revoked by no later than the conclusion of the sale process of Novo Banco.
- (68) The Bad Bank will enter into liquidation proceedings upon withdrawal of the authorisation which will occur by no later than two years after the Effective Date (the date of the 2014 decision).
- (69) The Bad Bank will not generate any new business. The following shall not be considered as new business:
- (a) Additional financing to existing customers which is contractually committed at the day of the 2014 Decision, i.e. 3 August 2014, 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 Net Present Value 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.

- (70) A liquidation committee will be appointed in accordance with the Portuguese insolvency law to ensure a proper liquidation process.
- (71) 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.
- (72) With respect to support to foreign subsidiaries of the Bad Bank, the Bad Bank shall not provide additional equity or subordinated capital at all.
- (73) BES shall not repurchase any of its own shares or exercise a call option in respect of those own funds instruments and subordinated debt instruments. BES shall not buy back hybrid capital instruments.

5. EXISTENCE AND AMOUNT OF STATE AID

- (74) Article 107(1) TFEU provides that 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 is, insofar as it affects trade between Member States, incompatible with the internal market. Thus, in order for a measure to fall within the scope of Article 107(1) TFEU, four cumulative criteria must be met: First, the measure must involve the use of State resources; second, the measure must distort or threaten to distort competition by conferring an advantage on undertakings; third, the measure must provide a selective advantage to certain undertakings; and fourth, the measure must be likely to affect trade between Member States and distort competition.
- (75) The Portuguese Guarantee Scheme is financed with State resources. For the reasons indicated in the first Commission decision on approving the Portuguese Guarantee Scheme, it provides an advantage to the credit institutions benefitting from the guarantee, which, without State support, might otherwise face restrictions of access to liquidity in the financing markets. The measure thus gives an economic advantage to the beneficiaries and strengthens their position compared to that of their competitors in Portugal and other Member States not receiving the same type of aid. Given the characteristics of the financial sector, any advantage from State resources to a bank affects intra-Union trade and therefore threatens to distort competition.
- (76) GGBBs of BES were transferred to Novo Banco based on the 2014 Decision, in the amount of EUR 3 500 million.
- (77) On the basis of the foregoing, the Commission finds that the extension of the GGBBs of Novo Banco fulfil all the conditions laid down in Article 107(1) TFEU and that they qualify as State aid in favour of Novo Banco.
- (78) The Portuguese authorities do not dispute the existence of State aid.

6. ASSESSMENT OF COMPATIBILITY

6.1. Legality of the aid

- (79) The Portuguese authorities sought the approval of the Commission before implementing the extension of the GGBBs, thereby complying with its notification obligation as set out in Article 108(3) TFEU.

- (80) The Commission will have to assess separately the extension of the GGBBs and the amended commitment catalogue as notified by Portugal.

6.2. Legal basis and compatibility assessment of the extension of the GGBBs

- (81) 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 Communications³¹, as well as in the 2013 Banking Communication.
- (82) According to the Portuguese Guarantee Scheme, only those credit institutions may participate, which are solvent and have no capital shortfall.³² Thus, Novo Banco is at present not eligible for the Portuguese Guarantee Scheme, as it has a capital shortfall under the adverse scenario of the Comprehensive Assessment as established by the SSM. Therefore, the extension of the GGBBs has to be assessed separately, outside the Portuguese Guarantee Scheme.
- (83) However, the compatibility assessment laid down by the Commission in the last prolongation of the Portuguese Guarantee Scheme, concluding that the guarantee was appropriate, necessary, and proportionate, remains valid³³. Given that the elements which allowed the Commission to make that determination overlap with the criteria set out in point 59 of the 2013 Banking Communication, the Commission does not raise objections to the extension of the GGBBs.
- (84) In light of the above, the Commission considers that the extension of the GGBBs for the duration of the Existence Period of Novo Banco, i.e. until it is finally sold or wound-down, is considered compatible with Article 107(3)(b) TFEU.

³¹ 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, OJ C 72, 26.3.2009, p. 1. ("Impaired Assets Communication"); Commission 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, OJ C 195, 19.8.2009, p. 9. ("Restructuring Communication"); 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., 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 ("Banking Communication"), OJ C 216, 30.7.2013, p. 1.

³² See recital (17)(a) of State aid case SA.42404 (2015/N) – Twelfth prolongation of the Portuguese Guarantee Scheme. "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

³³ See section 4.2 of the Commission's Decision on the twelfth prolongation of the Portuguese Guarantee Scheme.

6.3. Legal basis and compatibility assessment of the amended commitment catalogue

- (85) The Portuguese authorities committed in the 2014 Decision to sell the Bridge Bank, i.e. Novo Banco, within two years from the date of the 2014 Decision the latest. The compatibility assessment of the aid provided under the 2014 Decision was based on section 6 of the 2013 Banking Communication, i.e. aid for liquidation.
- (86) The Commission considers that the extension of the deadline to sell by [...] constitutes an amendment of the 2014 Decision. While the compatibility assessment laid down in the 2014 Decision remains valid, the Commission takes positive note of Portugal's decision to strengthen the commitments with the view to take account of the additional time Novo Banco may stay on the market, and therefore the prolonged effects of distortion of competition.
- (87) According to point 73 of the Banking Communication, the winding-up phase should be limited to the period strictly necessary for the orderly liquidation. In that respect, the Portuguese authorities have committed to sell Novo Banco via an open, non-discriminatory and competitive sale process - to be launched by 15 January 2016, - by no later than [...] after the date of the 2014 Decision. In case Novo Banco is not sold by that date, the Portuguese authorities have committed that Novo Banco will cease new business and be put in wind-down the month that follows.
- (88) The Commission considers it important that Portugal re-launches the sales process for Novo Banco without delay and welcomes the commitment by Portugal to do so on 15 January 2016. At the same time and given the failure of the first sales process, the Commission is willing to extend the existence period for Novo Banco as a safety measure in order to complete the sales process. In this regard, the Commission notes positively the staggered strengthening of commitments by gradual reduction of Novo Banco's balance sheet at certain milestone dates, in case Novo Banco is not entirely sold by these respective dates. This should encourage a rapid sales process.
- (89) New activities will be allowed for Novo Banco, but only to maximise its net present value and thus reduce the resolution costs according to the exception laid down in point 67 of the 2013 Banking Communication. However, the growth of loans will be restricted to limit distortions of competition as described in recital (59). Moreover, as described in recital (60), strict deposit and loan pricing will be implemented and strictly monitored so as to ensure that Novo Banco does not enter into aggressive commercial practices going forward.
- (90) The Commission also notes positively that the banking licence of the Bad Bank will be revoked as foreseen in the 2014 Decision, and will enter into liquidation upon withdrawal of its authorisation which will occur no later than two years after the 2014 Decision.
- (91) In light of the above, the Commission considers that the distortions of competition stemming from the extended market presence of Novo Banco during its orderly winding-down are limited.
- (92) Based on the 2014 Decision, all shareholders and subordinated creditors of BES were left in the Bad Bank³⁴ and the Resolution Fund, 100% owned by the Portuguese State,

³⁴ See recital (89) of the 2014 Decision.

became the sole shareholder of Novo Banco. Claims by related parties (that is to say shareholders and board members) of a non-contractual nature also remained in the Bad Bank. As a result, the contribution of shareholders and of subordinated debt-holders was achieved and the State aid provided under the 2014 Decision did not benefit shareholders and subordinated debtholders, thereby minimising moral hazard.

- (93) It is to be noted that the new amended list of commitments are without prejudice to the burden-sharing by the equity, hybrid and subordinated debt holders of BES as provided for by the 2014 Decision. The contribution by claims by related parties (e.g. shareholders and Board members) of a non-contractual nature to the burden-sharing is not affected either.
- (94) Therefore, the Commission considers that an adequate burden-sharing is ensured.
- (95) In light of the above, the Commission considers that the extension of the deadline to the Bridge Bank by [...] compared to as foreseen in the 2014 Decision, is compatible with the internal market pursuant to Article 107(3)(b) TFEU in light of the 2013 Banking Communication.

7. Compliance of the extension of GGBBs and the amended commitment catalog with the provisions of Directive 2014/59/EU³⁵ on bank recovery and resolution

- (96) Although Portugal has already transposed Directive 2014/59/EU into national law, the Commission needs to assess whether the measure violates indissolubly linked provisions of Directive 2014/59/EU.
- (97) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held³⁶ "*that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108 TFEU] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108]*".³⁷
- (98) To ascertain whether a violation of a provision of Union law is indissolubly linked to the object of the aid, a relation of necessity has to be established. It means that the State aid measure has to be connected with a national measure in a way that necessarily breaches a specific provision of Union law which is relevant for the compatibility analysis under paragraphs 2 and 3 of Article 107 of the Treaty.
- (99) In this decision, according to the information provided by Portugal, the Commission has identified the use of at least the following provisions of Directive 2014/59/EU:
- (100) It is important to assess whether the additional aid measure proposed by Portugal triggers resolution under Directive 2014/59/EU. In this regard, the Commission notes

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

³⁶ See *inter alia* Joined Cases C-134/91 and C-135/91 *Keramina-Keramische v Greece* EU:C:1992:434, paragraph 20; Case T-184/97 *BP Chemicals v Commission* EU:T:2000:217, paragraph 55; and Case T-289/03 *BUPA and others v Commission* EU:T:2005:78, paragraphs 313 and 314.

³⁷ Case 74/76 *Ianelli v Meroni* EU:C:1977:51 paragraph 14.

that the prolongation of the GGBBs seems to fall under the exception of Article 32(4)(d)(ii) of Directive 2014/59/EU. That Article provides that where an extraordinary public financial support is required and it takes the form of State guarantee on newly issued liabilities, the provision of such support does not qualify the beneficiary institution as failing or likely to fail within the meaning of Article 32(1)(a), and therefore does not trigger resolution.

- (101) In addition, the second subparagraph of Article 32(4) of Directive 2014/59/EU provides that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature and must be proportionate to remedy the consequences of the serious disturbance and must not be used to offset losses that the institution has incurred or is likely to incur in the near future.
- (102) The Commission notes that the SSM announced on 14 November 2015 that Novo Banco had a capital shortfall of about EUR 1.4 billion. However, that shortfall has resulted from the adverse, and not the baseline scenario. As long as the baseline scenario is not breached, Novo Banco is considered still solvent. In this regard, the Commission also notes that the Portuguese authorities have committed to comply with the necessary capital requirements set by the supervisor by 1 January 2016, in accordance with the applicable regulatory framework, and to raise the necessary capital at market terms from private sources, without prejudice to the possible use of the powers available to Bank of Portugal acting as the resolution authority responsible for the resolution of BES and for the sale of Novo Banco. On that basis, the Commission comes to the preliminary conclusion that Novo Banco is a solvent institution and the conditions for considering Novo Banco as failing or likely to fail are not triggered.
- (103) This assessment is without prejudice to the prerogative of the Commission to initiate infringement procedures against a Member State for breach of Union law, including breach of the provisions of Directive 2014/59/EU.

8. CONCLUSION

The Commission has accordingly decided to consider the extension of the GGBBs with one additional year, as well as the extension of the deadline to sell or wind-down Novo Banco by [...] to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union, and not to raise objections.

The Commission notes that Portuguese authorities exceptionally accept 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 electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



Mrs. Margrethe Vestager
Commissioner for Competition
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

Lisbon, 18 December 2015

**Subject: State aid SA.43976 – Portugal
Resolution of Banco Espírito Santo, S.A.
Commitments by the Portuguese Republic**

Dear Commissioner,

Further to the decision adopted by the European Commission on 3 August 2014 in the above referred case, the Portuguese Republic (“Portugal” or “the Portuguese authorities”) hereby submits the following Commitments (the "Commitments") in connection with the notification on aid to Novo Banco, S.A. (“Novo Banco”).

Novo Banco is the bridge bank created on 3 August 2014 pursuant to Article 145-G of the Legal Framework of Credit Institutions and Financial Companies (approved by Decree-Law no. 298/92, of 31 December 1992, and amended subsequently), in the context of the resolution measure applied by the Banco de Portugal to Banco Espírito Santo, S.A. (“BES” or “Bad Bank”), as approved by the European Commission.

With respect to Novo Banco, 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.

S. Ex.^a o Ministro dos Negócios Estrangeiros
Augusto SANTOS SILVA
Largo do Rilvas
P – 1399-030 - Lisboa

The commitments submitted herewith are without prejudice to the burden-sharing by the equity, hybrid and subordinated debt holders of BES as provided in the initial resolution measures, as approved by the European Commission. The contribution by claims by related parties (e.g. shareholders and Board members) of a non-contractual nature to the burden-sharing is not affected either.

The Commitments supersede the Commitments submitted as part of the Decision of the European Commission dated 03.08.2014 which are by this means invalidated.

I. Definitions

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

- (1) **Bad Bank:** Banco Espírito Santo, S.A. as it remained after the resolution decision taken by Banco de Portugal on 03.08.2014 and in which the remaining assets and liabilities of the Bank were kept.
- (2) **Bank:** Banco Espírito Santo S.A. (“BES”) and all its subsidiaries. Therefore, it includes the entire Banco Espírito Santo Group with all its Portuguese and non-Portuguese subsidiaries and branches, both banking and non-banking.
- (3) **Core Unit:** has the meaning defined in recital (3) below
- (4) **Cost income ratio:** the ratio of operating expenses (administrative costs, such as labour cost, materials and depreciations) to operating income (the sum of interest surplus, commission income, the trading result and any other income from operations).
- (5) **Effective Date:** the date of adoption of the 2014 Decision.
- (6) **Existence Period:** the Existence Period started with the setup of Novo Banco and ends when Novo Banco is sold entirely or its banking license is revoked and stops any banking activity.
- (7) **Foreign Businesses:** foreign banking and non-banking subsidiaries and branches of the Bank.
- (8) **Foreign Subsidiaries:** all banking and non-banking subsidiaries of the Bank outside Portugal.
- (9) **FTE:** “Full-Time Equivalent”, a unit that indicates the workload of an employee included in the payroll of Novo Banco (e.g., 1.0 FTE means that the person is equivalent to a full-time employee).
- (10) **NPV:** “Net Present Value” of an asset or liability taking into account all appropriate market parameters that influence it. It contrasts to the accounting value of the asset or liability.
- (11) **Non-Core Unit:** all business and subsidiaries of the Bank not included in the Core Unit.
- (12) **Novo Banco:** Novo Banco, S.A., being the legal entity created on 03.08.2014 pursuant to a decision adopted by Banco de Portugal, acting as the resolution authority, and to which selected assets and liabilities of BES were transferred on the basis of the same resolution measure authorized by the Decision SA. 39250 dated 03.08.2014.
- (13) **Portuguese Subsidiaries:** all Portuguese banking and non-banking subsidiaries of the Bank.
- (14) **Purchaser:** one or more natural or legal person(s) proposing to acquire, in whole or in part, shares of Novo Banco.

- (15) **Winding-up Period:** The Winding-up Period started on the date of the 2014 Resolution Measure and ends when the Bad Bank is sold entirely or is wound up entirely.
- (16) **2014 Decision:** the decision of the European Commission dated 03.08.2014 authorizing the State aid measures granted in the context of the resolution of BES.
- (17) **2014 Resolution Measure:** the resolution measure applied by Banco de Portugal to BES in 03.08.2014, in accordance to which the assets, liabilities, off-balance sheet items and assets under management of BES were transferred to Novo Banco, except for those which have been expressly excluded in the decision by Banco de Portugal of 03.08.2014, as amended.
- (18) **2015 Decision:** the decision of the European Commission authorizing the State aid measures granted in the context of the use of resolution instruments on Novo Banco.

II. General

- (1) Portugal ensures that the Commitments are fully observed.
- (2) The Commitments enter into force from the date on which the 2015 Decision is adopted and will end 2 years after completion of a transaction by which a controlling shareholding of Novo Banco is acquired by a third party and which is subject to a successful assessment of viability by the European Commission without additional measures to address distortions of competition being imposed.

III. Commitments related to Novo Banco

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

- (3) Within six months of the 2015 Decision, Novo Banco will segregate its existing activities into two parts, the Core Unit and the Non-Core Unit. Such Units will not be separate legal entities and funding, liquidity and solvency will be shared across both units. A list of business lines and geographies in the Core and Non-core units is provided in Commitments (5) and (6).
- (4) All business parts of the Non-core Unit will be either sold or run down on the balance sheet of Novo Banco (or its acquirer) unless stated otherwise in the list below. For every business part in the Non-Core Unit Novo Banco will ensure that total assets will not increase starting from 01.01.2016. The Non-Core Assets shall be managed with the objective of being divested, liquidated or wound down, in an orderly manner but maximising their value. The total assets in the Non-Core Unit will not exceed EUR [5-10] billion by [...] and EUR [5-10] billion by [...]. In case business lines are moved from the Core Unit to the Non-core Unit as per Commitment (5), those limits shall be adjusted accordingly. At the same time, because the Non-Core Unit is run internally, there is an overriding principle of capital preservation. Respecting this principle entails, inter alia, allowing Novo Banco to

retain flexibility to decide whether to sell, wind down and / or run down assets to take advantage of market opportunities. In addition, business parts which are allocated to the Non-Core Unit may increase their balance sheet marginally if that is considered necessary to preserve their value when selling them on a going-concern basis.

(5) The Core Unit comprises the following business lines and geographies:

- (i) [...]
- (ii) [...]
- (iii) [...] (will be moved to the Non-core Unit if Novo Banco shares are not sold entirely by [...])
- (iv) [...] (will be moved to the Non-core Unit if Novo Banco shares are not sold entirely by [...])
- (v) [...]
- (vi) [...]
- (vii) [...]
- (viii) [...]

(6) The Non-Core Unit shall include:

- (i) [...]
- (ii) [...]
- (iii) [...]
- (iv) [...]
- (v) [...]
- (vi) [...]
- (vii) [...]
- (viii) [...] (if shares of Novo Banco are sold entirely by [...]).
- (ix) [...].

(7) Novo Banco will have sold all assets – core and non-core – or the Resolution Fund will have sold all shares in Novo Banco by no later than [...] after the Effective Date. The necessary sales process will be open, non-discriminatory and competitive and shall have been launched publicly by 15.01.2016 with the aim of signing a share purchase agreement by [...]. In case the assets or the shares of Novo Banco have been sold entirely by [...], [...] or [...], commitments (5) and (6) will be adjusted as provided therein. In case the assets or the shares of Novo Banco have not been sold by no later than [...] after the Effective Date, Novo Banco in its entirety will cease new business and be put in wind down in the month that follows.

(8) Novo Banco undertakes to manage its core assets in the context of the Resolution Measures in a way that maximizes the NPV of these assets.

(9) Portugal will notify the Commission any sale of an economic activity or entity controlled by Novo Banco 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 merger control purposes.

(10) Portugal will not provide any additional capital or liquidity support to the Bank, Novo Banco and/or the Bad Bank except as provided in the 2015 Decision. In addition, Novo Banco will not provide any additional capital and/or liquidity to the Bad Bank except limited liquidity only for supporting ramp down and operational costs.

(11) Portugal commits to comply with the necessary capital requirements set by the supervisor by 1 January 2016, in accordance with the applicable regulatory framework, and commits further to raise the necessary capital at market terms from private sources, without prejudice to the possible use of the powers available to Banco de Portugal acting as the resolution authority responsible for the resolution of BES and for the sale of Novo Banco.

(12) No claim of shareholders and holders of subordinated debt or any hybrid instruments of the Bank or the Bad Bank may be transferred to Novo Banco.

(13) For each Foreign Subsidiary in the core unit of Novo Banco, Novo Banco shall not provide additional equity or subordinated capital for an amount larger than the higher of (i) [0-5]% of the RWA of that subsidiary on 31.12.2015 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.

In addition, Novo Banco shall have the option of proposing provision of additional equity or subordinated capital for approval to the Commission, with the endorsement of the Monitoring Trustee in cases where a capital increase in excess of the above limits, for a Foreign Subsidiary, part of the Core Unit, is determined by the regulator and is necessary to preserve the value of the investment for Novo Banco, or is strictly linked to an upcoming sale transaction.

(14) Granting loans to enable borrowers to purchase shares or hybrid instruments of Novo Banco shall be prohibited, whoever those borrowers are.

(15) Novo Banco 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. 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.

(16) Novo Banco will apply strict executive remuneration policies. Novo Banco will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than 10 times the average salary of employees in Novo Banco.

(17) Novo Banco 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 Novo Banco 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.

(18) Novo Banco will continuously improve its risk management activities and will conduct a commercial policy that is prudent, sound and oriented towards sustainability.

(19) For the purpose of acquiring any parts of the Bank or Novo Banco, the Purchaser shall not be previous qualified shareholders (above 2%), within the two years immediately prior to the setup of Novo Banco, as approved by the Resolution Decision. This limitation does not apply to possible shares awarded to creditors of Novo Banco in the context of a possible debt to equity conversion. Moreover, the Purchaser shall not be financed directly or indirectly by the Bad Bank or by Novo Banco. This does not apply to sale of real estate, in which case Novo Banco can provide financing to the purchaser, if this new lending is performed in line with prudent lending practice.

(20) Novo Banco can only purchase investment grade securities or euro area sovereign securities.

(21) Novo Banco will not lend amounts higher than the average of the last two years of the business being transferred to Novo Banco.

(22) Novo Banco will not price deposits above market average. The applicable monthly average interest rates are compiled by the Statistical Department of Banco de Portugal, in accordance with the applicable regulation, which is based on Regulation (EC) No 290/2009 of the European Central Bank of 31 March 2009 amending Regulation (EC) No 63/2002 (ECB/2001/18) concerning statistics on interest rates applied by monetary financial institutions to deposits and loans *vis-à-vis* households and non-financial corporations. The commitment will be monitored on a monthly basis.

(23) Novo Banco will not grant credit or other loan business under terms below market average, as calculated based on the statistics of the Bank of Portugal.

(24) By [...] Novo Banco will comply with the following KPIs, at group level:

(i) It will have reduced the cost base by EUR [100-200] million, compared to the levels of 30.11.2015, excluding the costs deriving from restructuring such as from the reduction of FTEs;

(ii) Its number of FTEs will have reduced by [800-1000] compared to levels of 30.11.2015;

(iii) It will have reduced its number of branches to [500-600].

(25) If by [...] Novo Banco still exists as a stand-alone entity, Novo Banco will comply with the following KPIs, at group level:

(i) It will have reduced the cost base by EUR [200-250] million, compared to the levels of 30.11.2015, excluding the costs deriving from restructuring such as from the reduction of FTEs;

(ii) Its number of FTEs will have reduced by [1000-1500] compared to levels of 30.11.2015;

(iii) It will have reduced its number of branches to [450-500].

III.2 Other behavioural restrictions

A. Acquisition ban

(26) Novo Banco shall not acquire¹ 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. The acquisition ban is applying until 31.12.2018.

(27) 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, the enforcement of collaterals, and where the purchase price paid by Novo Banco for any acquisition is less than 0.01% of the balance sheet size of Novo Banco at the Effective Date of the Commitments², and where the cumulative purchase prices paid by Novo Banco for all such acquisitions starting with the Effective Date of the Commitments, is less than 0.025% of the balance sheet size of Novo Banco at the Effective Date of the Commitments.

(28) Notwithstanding the acquisition ban, Novo Banco may, after obtaining the Commission's approval, and, where appropriate, on a proposal of Banco de Portugal, acquire businesses and

¹ For clarification: this does not prevent the resolution authority from transferring further assets from the Bad Bank to Novo Banco.

² For clarification, in case the Commission's approval to lift the acquisition ban is obtained, the balance sheet of Novo Banco 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.

undertakings if it is in exceptional circumstances necessary to restore financial stability or to ensure effective competition.

B. Advertising ban

(29) Novo Banco will refrain from advertising referring to state support and from employing any aggressive commercial strategies which would not take place without the state aid.

IV. Commitments related to the Bad Bank

(30) All Commitments related to Novo Banco shall apply mutatis mutandis to the Bad Bank and the Winding-up Period, with the exceptions and modifications set out in this section.

(31) The banking license of the Bad Bank will be revoked by no later than the conclusion of the sale process of Novo Banco.

(32) The Bad Bank will enter into liquidation proceedings upon withdrawal of the authorisation which will occur by no later than 2 years after the Effective Date.

(33) The Bad Bank will not generate any new business.

(34) The following shall not be considered as new business:

- a. Additional financing to existing customers which is contractually committed at the day of the Resolution 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.

(35) A liquidation committee will be appointed in accordance with the Portuguese insolvency law to ensure a proper liquidation process.

(36) 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.

(37) With respect to support to Foreign Subsidiaries of the Bad Bank, the Bad Bank shall not provide additional equity or subordinated capital at all.

(38) 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.

V. Monitoring Trustee

(39) 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 continue to 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.

Yours faithfully,

The Minister of Finance

Annex: I. Monitoring trustee template agreement

Annex - 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 Novo Banco'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 Novo Banco 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, Novo Banco 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 Novo Banco for explanations and clarifications. Portugal, Novo Banco 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 Novo Banco and the Bad Bank as set out below.
- (6) The mandate of the Monitoring Trustee applies until the end of the Existence Period of Novo Banco 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, Novo Banco 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) If applicable, Portugal will submit at least two proposals to the Commission for approval as Monitoring Trustee. 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, Novo Banco 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 Novo Banco'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 Novo Banco, 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 Novo Banco 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 Novo Banco 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, Novo Banco 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 Novo Banco 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 Novo Banco and the Bad Bank, thus enabling the Commission to assess whether Novo Banco 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 Novo Banco and/or the Bad Bank are failing to comply with the Commitments.

4. DUTIES AND OBLIGATIONS OF NOVO BANCO AND THE BAD BANK

- (17) Novo Banco 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. Novo Banco 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 Novo Banco 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.