



EUROPEAN COMMISSION

Brussels, 8.11.2010
C(2010) 7710 final

**Subject: State aid N 392/2010 – Spain
Restructuring of CajaSur**

Sir,

1. PROCEDURE

- (1) On 22 May 2010, the Spanish authorities notified to the Commission their intention to provide a capital injection and liquidity support to Caja de Ahorros y Monte de Piedad de Córdoba ("**CajaSur**"), through the *Fondo de Reestructuración Ordenada Bancaria*¹ ("**FROB**"). The legal basis for these measures is Article 7. 2 of the Royal Decree-Law 9/2009 of 26 June 2009, *sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito*.
- (2) On 23 May 2010, the Commission approved in its Decision 202/2010² ("**the Rescue Decision**") the rescue measures for CajaSur for a period of six months, pending the notification of a restructuring plan.
- (3) On 13 September 2010, Spain notified the restructuring plan for CajaSur.
- (4) Spain has accepted exceptionally that the decision will be adopted in English.

¹ FROB has been established, in the context of the financial crisis, to provide public support for the consolidation of the Spanish banking sector by, *inter alia*, strengthening the capital buffers of credit institutions. FROB has an initial funding capacity of €9 billion, of which €6.75 billion is contributed by the State Budget and the rest (€2.25 billion) is contributed by the Deposit Guarantee Funds. FROB can increase its budget by up to 10 times its initial finding by borrowing from the market. The Commission adopted on 28 January 2010 a decision not to raise objections (case N 28/2010, OJ C57 of 09.03.2010, p. 2) on FROB as a recapitalisation scheme for fundamentally sound institutions. However, the present case is not covered by that decision, since it involves actions taken by the FROB outside of the recapitalisation scheme on a non-fundamentally sound institution.

² N 202/2010 'Rescue measures on CajaSur'. JOCE C/224/2010.

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2. DESCRIPTION OF THE FACTS

2.1. THE BENEFICIARY AND ITS DIFFICULTIES

- (5) CajaSur is the twentieth biggest savings bank in Spain in terms of total assets³. As a savings bank, it has no shareholders but instead is governed by its stakeholders⁴. Its legal form is that of a private charity that holds a banking license and is entitled to provide a complete range of banking services. Annual profits are devoted to strengthen its capital base and the balance is used to fund its social activities through its charity or Obra Benéfico Social⁵ ("OBS").
- (6) CajaSur mainly operates in the Autonomous Community of Andalucía, and, particularly, in the region of Córdoba, where it has a strong footprint. CajaSur's main figures are:

	30.06.2010	
Total assets	17.617	billion €
Risk weighted assets	[...]*	billion €
Loans to customers	[...]	billion €
Retail deposits	[...]	billion €
Total wholesale funds	[...]	billion €
Employees	2,924	
Number of branches	474	

2.2. THE EVENTS TRIGGERING THE MEASURES

- (7) CajaSur's loan portfolio expanded considerably between 2002 and 2007, especially regarding its loans to the booming real estate sector. Its significant exposure to developers and other real estate-related transactions made CajaSur lose €96 million in 2009 and €91 million in the first semester of 2010. As a result, CajaSur's equity and total own-funds decreased to €84 million and to €44 million respectively as of 31 December 2009, leaving its solvency ratio at 3.7%. CajaSur, thus, breached the required 8% solvency ratio and the limits on large exposures to three economic borrowers⁶. Furthermore, CajaSur's reported delinquency rate for 2009, 8.3%, was among the highest in the sector.
- (8) On 20 April 2009, the credit rating agency Fitch downgraded CajaSur to non-investment grade, which made its access to the capital markets almost impossible⁷. In addition, its deposit base weakened considerably⁸.
- (9) Between 2004 and 2009, CajaSur experienced an unusually high turnover in its top management, where six directors-general were appointed and dismissed.

³ CajaSur was founded by the Cathedral Chapter of Córdoba, as a Monte de Piedad, on 1 September 1864 and it was classified as an independent non-profitable social institution by Royal Order of 25 January 1866. In 1878, It was founded as "Caja de Ahorros" by the same Ecclesiastical Chapter. Its first by-laws were approved by the Royal Orders of 14 July 1877.

⁴ These include, *inter alia*, its employees, depositors, founding members and public authorities.

⁵ OBS are charity institutions funded by each savings bank through the profits that are not used to build up reserves.

* Confidential information

⁶ Contravening solvency rules established by the Capital Requirements Directive 2006/48/EC.

⁷ CajaSur obtained funds to finance the growth of its loan portfolio mainly from wholesale markets. Wholesale funding as of 31 March 2010, covered [...] % of its loan portfolio.

⁸ More than €[...] million deposits were withdrawn since the beginning of 2010.

- (10) On 27 July 2009, CajaSur announced the beginning of merger negotiations with Monte de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera ("**Unicaja**"). Unicaja is Spain's eighth biggest savings bank also with strong footprint in south Spain. On 29 July 2009, the Bank of Spain ("**BOS**") approved the roadmap presented by the merging institutions, which included financial support from the Savings Banks Guarantee Deposit Fund in the region of €1 billion. However, after almost a year of merger negotiations that showed, inter alia, strong opposition from CajaSur's trade unions, management and founding institutions [...], the merger talks failed.
- (11) On 21 May 2010, CajaSur officially announced that the intended merger with Unicaja had not been approved by its Board of Directors.
- (12) On 30 June 2010, additional losses reduced CajaSur's equity to €24 million⁹, leaving its solvency ratio at 0%.

2.3. THE RESCUE OF CAJASUR BY THE FROB

- (13) On 21 May 2010, the BOS, in accordance with Article 7.2 of the Royal Decree-law 9/2009 of 26 June 2009, resolved to replace CajaSur's management with the FROB and to implement the following rescue measures ("**the Rescue Measures**"):
 - 2.3.1. THE RECAPITALISATION MEASURE**

- (14) CajaSur's failure to meet the 8% risk weighted assets ("**RWA**") solvency ratio required by Spanish banking laws triggered the need for its recapitalisation by the FROB, which was achieved through the subscription of €800 million of *cuotas participativas* ("**the Cuotas**")¹⁰, representing [...] % of CajaSur's RWA. As holder of the *Cuotas*, the FROB enjoys voting rights in CajaSur's General Assembly and controls the entity¹¹.

2.3.2. THE LIQUIDITY MEASURE

- (15) In order to meet CajaSur's expected liquidity needs of €2.3 billion for 2010, the FROB granted, against adequate collateral, a €1.5 billion credit facility to CajaSur. Interest equivalent to 100 basis points on top of the ECB's marginal credit facility¹² is charged by the FROB on that liquidity measure.

⁹ If the €800 million worth of securities subscribed for by the FROB on [...] 2010, as part of the rescue package are considered CajaSur's equity as of 30.06.10 would amount to €776 million, leaving its solvency ratio at [...] % for a total amount of own-fund of €[...] million.

¹⁰ *Cuotas participativas* are equity-like securities included among "core" Tier I capital under Spanish legislation. Remuneration is based on availability of distributable profits. Under Spanish banking legislation, the percentage of annual remuneration cannot be less than the percentage on distributable profits granted to the OBS.

¹¹ The FROB holds 100% of the voting rights in CajaSur's General Assembly.

¹² Currently at 1%.

- (16) Spain accepted that the Rescue Measures constituted State aid, albeit compatible with the internal market on the basis of Article 107(3)(b) TFEU. Spain submitted that CajaSur was systemically important within its financial system due to tensions in the financial markets at the time. Additionally, Spain submitted that the Rescue Measures were required to rescue CajaSur and avoid negative spill-over effects on other sound financial institutions which could reduce the confidence of depositors in the banking system as a whole. Moreover, the Rescue Measures were limited in size to ensure that CajaSur: i) met a solvency ratio of 8% of its RWA and ii) had sufficient liquid resources in order to meet its liabilities throughout the restructuring period. Finally, the Spanish authorities provided a number of commitments in relation to CajaSur, among which¹³, they accepted to submit a restructuring plan in line with the principles laid down in the Commission's Restructuring¹⁴ and Banking Communications¹⁵.
- (17) In addition to the Rescue Measures above, upon the intervention of the BOS on 21 May 2010, CajaSur's Board of Directors was dismissed¹⁶. The FROB appointed three interim administrators to supervise the management of CajaSur during the period in which the savings bank was under the control of the FROB.
- (18) On 23 May 2010, the Commission approved the Rescue Measures pursuant to its Rescue Decision.

3. MAIN FEATURES OF THE FROB

- (19) The FROB was established, in the context of the financial crisis by Royal Decree-Law 9/2009 of 26 June, *sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito* to provide public support in the form of capital resources for the consolidation of the Spanish banking sector and to manage the orderly restructuring of non-viable credit institutions. Accordingly, the beneficiaries of the FROB are both fundamentally and non-fundamentally sound credit institutions established in Spain.
- (20) The FROB has legal personality and full public and private capacity to implement its objectives. The FROB has an established original funding of €9 billion of which €6.75 billion is contributed by the State Budget and the rest (€2.25 billion) has been contributed by the Deposit Guarantee Funds. In addition, the FROB may resort to outside funding to finance its activities; however, outside funding may never exceed 10 times its original funding.

4. THE RESTRUCTURING OF CAJASUR

- (21) As from the date of CajaSur's intervention by the BOS, the FROB, assisted by Nomura International Plc. ("**Nomura**"), started drawing up the restructuring plan for CajaSur pursuant to which CajaSur should be able to overcome its financial difficulties by either merging with another financial institutions or by transferring all of its assets and liabilities to one or more credit institutions.

¹³ Namely: to a) notify any increase in the principal amount of the Rescue Measures, b) suspend payments to the OBS for new projects, c) consult the European Commission before making any payments on hybrid instruments unless these payments are legally required and not to exercise a call option on these instruments, and d) seek prior approval of the Commission before waiving any commitments constraints mentioned in the rescue decision.

¹⁴ Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

¹⁵ 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, OJ C 270 of 25.10.2008, p. 8.

¹⁶ [...].

- (22) The FROB's arguments supporting the latter option are the following:
- The transfer all of its assets and liabilities is the quickest means of restructuring CajaSur. Winding it down would be very expensive and could also be more time-consuming, which represents a less efficient use of public funds and might put the stability of the whole Spanish financial system at risk.
 - CajaSur's businesses involve mainly retail banking. It is not engaged in any other line of business substantial enough to warrant a spin-off.
 - CajaSur's legal status, as a savings bank, is such that a merger with other financial institutions cannot be carried out by transferring shares or other securities representing its equity.
- (23) According to the Spanish authorities, the FROB conducted an open, competitive, transparent, objective and non-discriminatory tender procedure with the aim of offering equal opportunities to all parties potentially interested in acquiring CajaSur's business ("**the Tender Procedure**"). The Tender Procedure, as described in paragraph (27) below, was intended to guarantee greater efficiency in the use of any public funds.
- (24) The main alternative to the Tender Procedure was the orderly wind-down of CajaSur. The cost estimated by Spain for the liquidation of CajaSur would have been €[...] billion. In addition, the Spanish authorities note that CajaSur has some assets and liabilities for which it may be difficult to find buyers in the market, thus, extending the period under the control of the FROB.
- (25) The Tender Procedure included the possible granting, by the FROB, of the following three types of aid measures ("**the restructuring measures**"):
- The temporary reinforcement of CajaSur's solvency through the subscription by the FROB of equity in the form of convertible preference shares, as provided for in Article 9 of Royal Decree-Law 9/2009¹⁷.
 - The setting up of an Asset Protection Scheme ("**APS**") for a five-year period relating to a portfolio closed at 31 May 2010, for a gross value of €5.54 billion. Under the APS, the FROB would compensate the buyer of CajaSur for 90% of losses arising from the portfolio up to the maximum amount specified in its bid. The APS would be prefunded by a loan from the FROB, remunerated at one-year Euribor plus [...] basis points. As a consequence, the buyer of CajaSur could be entitled to receive the gross amount guaranteed under the APS at the beginning of the deal, with amount written down yearly against the losses stemming from the covered portfolio and any outstanding balance at the end of the five-year period paid back to the FROB.
 - A credit line for a maximum of €800 million, equivalent to the amount that must be paid to FROB by CajaSur to pay back the *Cuotas*.
- (26) To limit the impact of the State support, the amount of the restructuring measures would be determined by the Tender Procedure in which priority would be given to the bidder requesting restructuring measures involving the least use of public resources, after applying predefined weighting criteria which were known to all the

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These securities would be different from the *Cuotas* already subscribed for the FROB as part of the Rescue Measures.

bidders. Therefore, the size of the recapitalisation, the APS and the credit line would be determined by the bidders.

4.1. The Tender Procedure

- (27) On 4 June 2010, the FROB, with the assistance of Nomura launched the Tender Procedure. Nomura contacted 49 financial institutions¹⁸ to participate in the Tender Procedure, out of which 21 examined the preliminary information describing CajaSur's economic and financial standing and were informed about the details of the restructuring measures.
- (28) The first phase of the Tender Procedure began with a letter to the institutions that had shown initial interest in possibly bidding for CajaSur. Contacted institutions were asked to submit an initial expression of interest, based on which the FROB selected the potential bidders, which were then invited to participate in the second phase of the Tender Procedure.
- (29) On 17 June 2010, the second phase of the Tender Procedure began by asking the potential eight final bidders¹⁹ to submit their binding offers by 8 July 2010. Prior to submitting their bids, the bidders were able to: (i) examine a financial, tax, legal and employment due diligence reports; (ii) examine CajaSur's credit files; (iii) access an electronic data room containing information on CajaSur's business; (iv) hold meetings with CajaSur's management and the teams responsible for preparing the due diligence reports. They were also able to put questions to CajaSur and its advisers.
- (30) The FROB, with the assistance of Nomura, assessed the final five offers²⁰ using its pre-determined valuation criteria²¹ and selected Bilbao Bizkaia Kutxa ("**BBK**"), once the BOS had evaluated that all [...] final bids made offered solvent and viable projects²².

4.2. The Restructuring Plan for CajaSur

- (31) The restructuring plan put together by the FROB with the assistance of Nomura and approved by the BOS on 30 July 2010 ("**the Restructuring Plan**"), includes the following of measures:

4.2.1. The transfer of CajaSur's assets and liabilities to BBK

- (32) CajaSur undertook under a Sale Agreement ("**the Disposal**") dated 16.07.10, to transfer all its assets and liabilities ("**the Business**"), by way of a universal succession to a wholly-owned banking subsidiary of BBK ("**the Bank**"). The integration of CajaSur's assets into BBK is explained in section 4.2.6 below.
- (33) The transfer of the Business implies the dissolution of CajaSur. CajaSur and BBK agreed that, as CajaSur's equity is negative, the symbolic price of the Business shall

¹⁸ Namely, 21 Spanish credit institutions, 13 foreign credit institutions and 15 specialised investment funds.

¹⁹ Offers made by: [...].

²⁰ Final offers were made by [...]. [...] did not bid for CajaSur in the second phase.

²¹ All bidders knew the details of the Restructuring Measures and the valuation criteria to be used by the FROB prior to submitting their final bids.

²² The results of the valuation applied by the FROB to the five bid presented are as follows: [...].

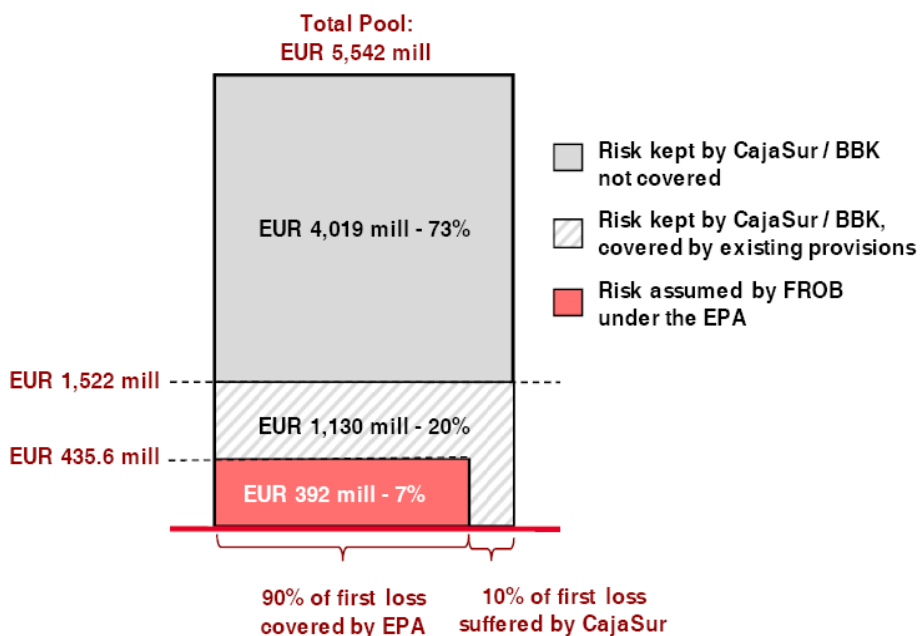
be €1. The Business does not include the rescue State aid, which shall be repaid by CajaSur before the effective date of the Disposal.

4.2.2. The financial support measures offered to BBK

- (34) BBK's final offer to purchase the Business was conditional on, *inter alia*, the FROB providing to the Business some of the restructuring measures described in paragraph (25) above.
- (35) Accordingly, on 16 July 2010, CajaSur, BBK and the FROB signed a protocol ("**the Protocol**"), pursuant to which the latter will grant the Business the following restructuring measures:
- The APS under the general conditions defined in paragraph (25) above. The yearly remuneration on the APS that FROB will receive is set at [...] % on the average balance of the APS not used in the period. The volume of the APS requested by BBK was €392 million. The book value of the portfolio covered under the APS is €5.54 billion. The breakdown of the portfolio by type of assets is as follows (all figures in €million):

CREDIT PORTFOLIO	Total	Non-performing	Provisions	Provisions /Total	Provisions/ non-performing
Construction	[...]	[...]	[...]	[...]	[...]
Trade	[...]	[...]	[...]	[...]	[...]
Real estate and corporate services	[...]	[...]	[...]	[...]	[...]
SUBTOTAL	[...]	[...]	[...]	[...]	[...]
OTHER ASSETS	[...]	[...]	[...]	[...]	[...]
Shares of entities within the group	[...]	[...]	[...]	[...]	[...]
Assets for sale	[...]	[...]	[...]	[...]	[...]
Inventories	[...]	[...]	[...]	[...]	[...]
SUBTOTAL	[...]	[...]	[...]	[...]	[...]
TOTAL	5,541,518	N/A	1,130,322	20%	N/A

- The APS covers 90% of the total first loss²³ stemming from the guaranteed portfolio and up to the €392 million-limit. Thus, if 90% of the losses were below €392 million, BBK will bear the remaining 10%. If total losses exceed €435 million²⁴, BBK will have to bear €43.5 million plus the whole difference between the total amount of losses and €435 million, either by applying any existing provisions or by additional write-downs.



- A loan as defined in paragraph (25), to pre-fund the APS.

(36) BBK did not request any of the other restructuring measures offered by the FROB for the Business, such as the reinforcement of CajaSur's solvency through subscription of equity-like securities or the provision of a liquidity facility.

4.2.3. The repayment of the rescue aid

(37) The Protocol regulates the terms and conditions under which the Rescue Measures shall be repaid. Accordingly, once the restructuring measures have been definitively granted and the Disposal completed²⁵, the Rescue Measures will automatically be cancelled and repaid by CajaSur to the FROB.

4.2.4. The ban on discretionary coupon payments on hybrid capital

(38) Hybrid securities (in Spanish "Participaciones Preferentes"), issued by CajaSur in 2000 for a total amount of €150 million and held mainly by retail investors remain outstanding ("**Hybrid Securities**"). Coupons on the Hybrid Securities are paid quarterly, provided CajaSur has enough distributable profits.

(39) Coupon payments have been made since the Hybrid Securities were first issued in 2000, including payments made in 2009 and 1Q10.

²³ Excluding the effect of provisions
²⁴ €392 million is 90% of €435.5 million.
²⁵ Estimated date: 1 January 2011.

- (40) Following CajaSur's intervention by the BOS and in light of the Rescue Measures, the Commission requested, in its Rescue Decision, to be consulted prior to: a) further coupon payments and b) any buy-backs on the Hybrid Securities.
- (41) Finally, CajaSur announced on 28 June and 29 September 2010, through the National Stock Market Commission ("CNMV"), that the coupon payment on the Hybrid Securities due on 30 June and 30 September 2010 will be suspended. Spain has agreed to suspend any payment of coupons until the Commission has cleared the case with its decision on restructuring aid.

4.2.5. The limited continuation of the Obra Benefico-Social

- (42) Upon completion of the Disposal, CajaSur will be liquidated and its OBS will also cease to exist. Moreover, the Bank has been incorporated as a commercial bank with no legal obligation to establish an OBS or to continue with CajaSur's OBS obligations other than those transferred to the Bank pursuant to the Disposal. However, the BBK Group has announced that it will set up a foundation which may continue some of the projects currently supported under CajaSur's OBS. The Spanish authorities have confirmed that CajaSur's OBS has been considerably scaled down from previous years²⁶ due to its financial difficulties and that it has maintained some activity in 2010 due to reserves generated in previous years.

4.2.6. The restructuring and integration of CajaSur into BBK

- (43) On 4 October 2010, the FROB announced its intentions to dispose of CajaSur's equity stake in the Banco Europeo de Finanzas²⁷ for €[...] million.
- (44) Furthermore, BBK drew a restructuring and integration plan for CajaSur, the highlights of which, are as follows:
- Maintain CajaSur's footprint in the territories where it currently operates (mainly in the Cordoba area). BBK will keep CajaSur's brand and develop a local council of advisors in Cordoba to foster its presence in the area.
 - A foundation will be established by the Bank to fund social projects.
 - Adjust CajaSur's credit portfolio to the size of its balance sheet and to reduce its exposure to real estate by enhancing internal controls and risk policies.
 - Integrate BBK and CajaSur's branch networks where they overlap, but maintaining CajaSur's branches in its area of influence. Outside that area, consolidation will be done based on branch profitability. In particular [...] branches out of 474 branches will be closed and CajaSur's exposure to real estate sector will be reduced.
 - [...] ²⁸.

²⁶ 2010 Budget for CajaSur's OBS is in the region of €[...] million according to the Restructuring Plan. Profits allocated to the OBS over the past years have decreased considerably €13 million in 2009 and 2008, €26 million in 2007, €26 million in 2006 and €21 million in 2005.

²⁷ In order to recover part of the aid FROB decided to sell the equity stake held into Banco Europeo de Finanza which is a financial project of cooperation between the Andalusian savings banks.

²⁸ [...]

- The integration will be implemented in two separate phases. *Phase one*²⁹ will be devoted to the continuation of the ordinary business of CajaSur and the preparation for the integration in Phase two under the supervision of a steering committee composed of directors from BBK and CajaSur. *Phase two*³⁰ will integrate CajaSur into the BBK Group. During phase two it is expected that around [...] employees of CajaSur will be made redundant³¹.

5. POSITION OF THE SPANISH AUTHORITIES

- (45) Spain is of the view that a positive decision should be adopted by the Commission on the Restructuring Plan and the restructuring measures accompanying it, stating that there are no elements that constitute State aid or, alternatively, that these elements are compatible with the provisions of the TFEU.
- (46) Regarding the expected losses on the portfolio covered by the APS, the Spanish authorities have determined an intermediate and a stressed scenario. In the first one, the expected loss on the covered portfolio is €[...] billion and in the second one, €[...] billion. Under both scenarios the €435 million threshold would be breached, and consequently the capacity of the APS would be exhausted.
- (47) Furthermore, the Spanish authorities believe that the Restructuring Plan complies with the Commission's requirements in its Restructuring Communication as it:
- contains a thorough analysis of CajaSur's financial situation and an explanation of the grounds for the FROB's intervention.
 - contains an analysis of the different options for the restructuring of CajaSur and an explanation of the reasons why the Disposal is the most appropriate and efficient solution in economic terms.
 - describes the process for selecting BBK via the Tender Procedure in accordance with the Commission's Communication on Restructuring and Banking Communications³². It also describes the criteria for selecting and evaluating the various bids submitted.
 - complies with the burden-sharing principle, guaranteed by the existence of an open and competitive procedure in which the successful bidder will be the one that requires the least public support and, therefore, the [...] price paid by the successful bidder is the market price³³.
 - provides for a process of restructuring and significant integration of the Business so that its long-term viability can be assured, as BBK is one of the most solvent entities in the Spanish financial system.

²⁹ Phase one started on the date of the approval of BBK's bid for CajaSur and will run until Disposal's date.

³⁰ Phase two shall commence on the date of the disposal and it is estimated that will last for about 18 months.

³¹ The [...] position breakdown as follows: [...] will go from the overlapped network and [...] from central services.

³² See P. 20 of the Communication on Restructuring and P. 49 of the Banking Communication.

³³ In line with paragraph 20 of the Restructuring Communication.

6. COMMITMENTS OF THE SPANISH AUTHORITIES

- (48) The Spanish authorities commit to reporting yearly on the evolution of the APS provided by the FROB as well as on the termination of CajaSur as a legal entity, starting from the date of the present Decision until the date on which the protection offered by the APS be terminated.
- (49) In addition, the Commission take note of the commitments by Spain with regard to the Bank that it will not carry out any new expansion of economic activities or any aggressive commercial policy while the aid is in place nor will it use the fact that it is being supported by the FROB in any way for the duration of the APS.

7. ASSESSMENT OF THE AID

7.1. Existence of restructuring aid and potential beneficiaries

- (50) Article 107(1) TFEU lays down 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 or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (51) The measure to be assessed is the APS granted to the Business as described in paragraph 36. That measure consists of a liquidity measure and an IA measure ("the restructuring measures"). The Rescue Measures were already analysed in the Rescue Decision, where the Commission concluded positively on their State aid nature.
- (52) The Commission identifies five parties that could potentially benefit from the aid:
- 1) the purchaser of the Business, BBK; 2) CajaSur; 3) retail depositors; 4) subordinated bond-holders; 5) the Business itself.
- With regard to the purchaser of the Business, BBK, an advantage could exist if the price paid was too low. On the basis of the information provided by Spain, the Commission considers that the Tender Procedure was an open and non-discriminatory tender which resulted in the best bid winning the tender. The fact that the offer made by BBK does not correspond to the (negative) accounting value of CajaSur does not preclude that the sale price reflects its market value as no other participant made an offer requesting less public support. The Commission has, therefore, no reason to believe that the offer made and the price paid did not reflect the market price. Consequently, the Commission concludes that BBK will not receive aid.
 - With regard to CajaSur, the Commission notes that the savings banks will be liquidated and will cease to carry out any economic activity. In particular, after the disposal the Business CajaSur will be liquidated and it will cease to exist a legal entity. Therefore, CajaSur was the beneficiary of rescue aid but not of restructuring aid.
 - With regard to retail depositors, the Commission, in line with its previous Decisions regarding Bradford & Bingley, Kaupthing Luxemburg and

Dunfermline³⁴, is of the view that there is no State aid to the retail depositors of CajaSur because they are individuals and not undertakings. Even if there are enterprises among the depositors, the aid should be considered *de minimis* and therefore outside State aid control.

- As regards subordinated debt-holders, CajaSur issued hybrid securities for a total amount of €150 million. In addition, CajaSur announced on 28 June and 29 September 2010, through the National Stock Market Commission ("CNMV"), that the coupon payment on its hybrid securities due on 30 June and 30 September 2010 will be suspended. Spain has agreed to suspend any payment of coupons until the Commission has cleared the case with its decision on restructuring aid. Consequently, the Commission observes that the subordinated creditors only receive payments after all other more senior creditors have been paid. The Commission therefore concludes that the subordinated creditor will not have a special position in this case and consequently no advantage has been conferred on them. Therefore no aid has provided to the holders of subordinated debt.
- As regards the Business, the Commission has to investigate whether it continues to undertake economic activities. If the Commission concludes that this is the case, it has to establish whether the economic activities transferred can be considered as a potential beneficiary of State aid. The Commission notes that the Business comprises all of CajaSur's banking activities. After the Disposal, CajaSur's branches will continue to operate as normal, now as a subsidiary of the BBK group, while CajaSur will cease to exist as legal entity. The Bank will thus be allowed to continue providing the same products to its customers as CajaSur did before the Disposal. Therefore, the Business will undertake economic activities, as it will provide a variety of financial services to its customers.

- (53) The Commission considers that the restructuring measures constitute State aid within the meaning of Article 107(1) TFEU are financed through State resources³⁵, are imputable to the State, are selective in nature since the Business is the beneficiary of the Restructuring aid and provide it with a clear advantage distorting or threatening to distort competition and affecting trade between Member States.

7.2. The amount of aid

- (54) As a result of the Rescue Measures implemented by the FROB on May 2010, CajaSur received State aid in the form of a capital injection for €800 million and a liquidity facility of € 1.5 billion, totalling € 2.3 billion and representing approximately 13% of CajaSur's total assets and approximately [...] % of its RWA. The Rescue Measures will be paid back to the FROB or terminated as of the date of the Disposal.
- (55) As a result of the Restructuring Plan, the Business will receive as a restructuring measure State aid in the form of an APS as defined in paragraph (35) for an amount of €392 million representing [...] % of CajaSur's total assets and 3.3% of its RWA.

³⁴ Commission Decision in Case NN41/2008, Rescue aid to Bradford & Bingley, OJ C290, 13.11.2008, p. 2, Commission Decision in Case NN344/2009, Restructuring of Kaupthing Luxemburg, OJ C247, 15.10.2009, p.3 and Commission Decision in Case NN19/2009, Restructuring of Dunfermline Building Society, OJ C101, 20.04.2010, p.8

³⁵ See Decision in Case N 28/2010, oj C57of 09.032010, p.2.

- (56) The table below summarizes the losses that the Commission expects on the covered portfolio:

[...]

- (57) The Commission has assessed the total losses on the covered portfolio under two different scenarios (base and stressed), resulting in total losses amounting to €2.024 and €2.292 billion respectively. Total losses under those scenarios would exceed existing provisions by €0.89 and €1.16 billion respectively and consequently in all cases the €435 million threshold mentioned in paragraph (35) would be breached and the whole guarantee (€392 million) would be used.

Legality of the aid

- (58) The Commission notes that Spain notified the intended aid measures to the Commission, for its approval, prior to putting it into effect and, thus, complying with its obligations under Article 108(3) TFEU.

8. COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET

8.1. Application of Article 107(3)(b) TFEU

- (59) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "*to remedy a serious disturbance in the economy of a Member State*". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy this disturbance. This has been confirmed in the Banking Communication³⁶, the Recapitalisation Communication³⁷, the Impaired Asset Communication³⁸ (IAC) and the Restructuring Communication³⁹, adopted by the Commission. In respect of the Spanish economy that assessment was confirmed in the Commission's various approvals of the measures undertaken by the Spanish authorities to combat the financial crisis⁴⁰. Therefore, the legal basis for the assessment of these measures should be Article 107(3)(b) TFEU.

8.1.1. Compatibility under the Restructuring Communication

- (60) As regards compatibility of the restructuring measures with the internal market, the Commission has to assess whether they are in line with the conditions set out in amongst others, the Restructuring Communication.
- (61) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the

³⁶ 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, OJ C 270 of 25.10.2008, p. 8.

³⁷ Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10 of 15.1.2009, p. 2.

³⁸ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72 of 26.3.2009, p. 1.

³⁹ Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

⁴⁰ See i.a. Commission Decision of 28.01.2008 in State aid case N 28/2010, *Recapitalisation measures in favour of the banking sector in Spain*, OJ C 57/1 of 9.3.2010, p. 2.

Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:

- (i) Lead to a restoration of the viability of the bank and/or its orderly liquidation;
 - (ii) Include sufficient own contribution by the former shareholders and capital holders of the bank (burden-sharing);
 - (iii) Contain sufficient measures limiting the distortions of competition.
- (62) The Commission notes that the APS undertaken as part of the restructuring of CajaSur follow the Rescue Measures previously granted by the FROB in May 2010. As established in the case-law of the Union courts⁴¹, when assessing the support provided by the State the Commission should take into account any earlier aid measures provided by the State to the same beneficiary. Thus, the Commission considers that the Restructuring Measures must be seen in the context of the earlier State aid granted to CajaSur.
- (63) The Commission considers that the rescue and restructuring measures implemented by the FROB on CajaSur should be regarded as a whole and seen as an action taken not within the logic of market, but within a systemic logic which is typical of the intervention of the public authorities.

8.1.1.1. The restoration of viability/wind-up in an orderly fashion

- (64) The Restructuring Communication provides in paragraphs 9 and 10 that the Member State should provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should, furthermore, also identify the causes of the difficulties faced by a financial institution and provide a business model that restores the bank's long-term viability.
- (65) In the present case the Commission observes that the Spanish authorities have chosen to sell the Business via the Tender Procedure and to liquidate CajaSur. The Commission, therefore, has to assess whether a) the Business transferred to the Bank will be viable, and b) CajaSur is liquidated in an orderly fashion.

a) Viability of the Business: Restoration of its long-term viability within the new BBK Group

- (66) According to the Restructuring Communication⁴² the sale of a financial institution to a third party can help to restore its long-term viability. In light of the nature of the Business and the financial standing of BBK Group, the Commission is satisfied that the requirements in the Restructuring Communication are met.

⁴¹ See Case T-11/95 *BP Chemicals Ltd v Commission* [1996] ECR II-599.
⁴² Paragraph 17 therein

- (67) BBK is a savings banking group incorporated in Bilbao with 412 branches and 2,431 employees as of 31 December 2009. As of 30 June 2010, the total balance sheet total was €28.6 billion with a consolidated profit of €86 million. The impact of the acquisition of the Business on BBK's balance sheet is significant (more than 60%) based on a consolidated balance sheet as of 30 June 2010.
- (68) BBK appears to be one of the most solid credit institutions in the Spanish financial system, enjoying a high, profitability, solvency, efficiency and productivity ratios, and relatively little exposure to the troublesome real estate sector.

		<i>BBK</i>	<i>Cajas</i>	<i>Banks</i>
Profitability	ROA	0.98	0.25	0.73
	ROE	9.35	4.49	13.8
Solvency	BIS ratio	22.2	12.2	13.4
	Tier 1	14.6	9.3	9.7
	Core capital	14.6	7.4	8.4
Efficiency	Efficiency ratio	39.56	48.13	41.3
	Expenses / assets	1.14	1.19	1.47
Productivity	Deposits per employee (€ million)	9.5	7.8	8.5
Risks	% loans to developers / total loans	7.9	19.9	16.6

- (69) By acquiring the Business, the new BBK group will substantially increase the size of its balance sheet⁴³ becoming Spain's seventh savings bank⁴⁴.

Main figures as of June 2010 (€ million)	CS-BBK	Main ratios as of June 2010	CS-BBK
Total Assets	[...]	Solvency ⁴⁵	[...]
Loans	[...]	TIER I	[...]
Securities	[...]	TIER II	[...]
Deposits	[...]	Delinquency rate	[...]
Pre-tax income	[...]	ROA**	[...]
Total capital	[...]		[...]
Tier I (ex <i>cuotas participativas</i>)	[...]		[...]
<i>Cuotas participativas*</i>	[...]		[...]
Tier II	[...]		[...]

*Held by FROB

** After taxes

⁴³ BBK's total assets before the Disposal were €[...] million, thereafter, estimated assets (including the Business) will be around €[...] bn.

⁴⁴ The figures in the tables below are pro-forma.

⁴⁵ The Cuotas subscribed by the FROB as part of the Rescue Measures are included in this calculation.

- (70) The Commission notes that the quality of BBK's credit portfolio presents a level of non-performing loans (NPL) which is low (2.57% as of 30.06.10) and its level of provisioning on NPLs ("ratio de cobertura") is well above the sector's average (104.3% vs. 57.5%). Moreover, the current long-term rating granted by Fitch to BBK is A+ whilst Moody's assigned A1 for the same maturity. In addition its legacy exposure from the past was also addressed by timely write-downs⁴⁶.
- (71) The Commission believes that, on the basis of the information provided by the Spanish authorities, BBK has the know-how required to own and manage the Business in compliance with regulatory and prudential requirements. The Commission also considers the BBK Group - after the intended restructuring - to be viable⁴⁷. Restructuring measures initiated by the interim administrators appointed by the FROB will be continued⁴⁸ by BBK under *Phase two* of the Restructuring Plan.
- (72) The Commission notes that the Restructuring Plan is based on reasonable underlying macroeconomic assumptions. In particular, the Restructuring Plan will allow BBK to comply with the relevant regulatory requirements even in stress scenarios⁴⁹ with a protracted global recession in line with point 13 of the Restructuring Communication. The Commission considers that the Plan demonstrates how BBK will show adequate profitability, allowing it to cover all its costs including depreciation and financial charges.
- (73) As regard the viability of the BBK Group, it should be noted, as the Restructuring Plan records (see graphic below), that the group complies, as from the date of the Disposal, with legal solvency requirement and that its own resources are well in excess of what is required. Future solvency (Tier I) for the BBK Group will be [...] % for 2010 and [...] % for 2011.

€ thousands	2010 E	2011 E	2012 E	2013 E	2014 E	2015 E
Tier 1	[...]	[...]	[...]	[...]	[...]	[...]
Tier 2	[...]	[...]	[...]	[...]	[...]	[...]
Total capital	[...]	[...]	[...]	[...]	[...]	[...]
Risk-weighted assets	[...]	[...]	[...]	[...]	[...]	[...]
Available capital	[...]	[...]	[...]	[...]	[...]	[...]
Tier 1 ratio	[...]	[...]	[...]	[...]	[...]	[...]
Solvency ratio	[...]	[...]	[...]	[...]	[...]	[...]

- (74) Furthermore, BBK expects to make a profit from the date of the Disposal onwards:

€ thousands	2011 E	2012 E	2013 E	2014 E	2015 E
Net income	[...]	[...]	[...]	[...]	[...]

⁴⁶ Amounting to more than €[...] billion

⁴⁷ The expected capital base ([...]%) and the total capital ratio of the BBK Group after the integration of the Business ([...]%), will be well above the minimum capital requirements.

⁴⁸ For instance, at the end of 2009, CajaSur had some 474 branches. As of 30 June 2010, its branches were 470. After the restructuring, a total of [...] branches will be closed as non-profitable and [...] branches will be dismissed for overlapping with BBK. Around [...] % of the branches will be closed.

⁴⁹ BBK was the best-performing Spanish savings bank in the EU-wide stress test exercise run by the Committee of European Banking Supervisors (CEBS) with a Tier1 ratio in 2011 under the adverse scenario and a shock for sovereign exposure of 14.1%.

(75) On the basis of the above, the Commission is satisfied that the restructuring put in place by BBK is capable of ensuring the long-term viability of the integrated entity.

b) Orderly liquidation of CajaSur

(76) With the Disposal, all banking activities (the Business) of CajaSur will be transferred to BBK. As a consequence, following the Disposal CajaSur will cease to exist as a savings bank. On this basis, the Commission has no reason to doubt that CajaSur is being liquidated in an orderly manner.

(77) The Commission notes that the Spanish authorities will report on the termination of CajaSur as a legal entity, as expressed in paragraph (107).

8.1.1.2. Own contribution and burden-sharing

(78) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to minimum and to address distortions of competition and moral hazard. To that end, firstly, the restructuring costs should be limited while, secondly, the aid amount should be limited and a significant own contribution is necessary.

(79) The Restructuring Communication indicates (paragraph 23 therein) that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.

(80) The Restructuring Communication also indicates that, in order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved by absorbing losses with available capital and by paying an adequate remuneration for State interventions.

(81) As regards the contribution of CajaSur to the financing of the restructuring costs, the Commission observes that the stakeholders of the credit institution lost ownership and that the banking business was sold via a tender process, thus minimising the costs for the State. Therefore the tender process has helped to limit the contribution of Spain to the sale process.

(82) CajaSur's Board of Directors⁵⁰ was dismissed upon the intervention of the BOS on 21 May 2010. Furthermore, since the FROB subscribed for the *Cuotas* it controls 100% of the voting rights in CajaSur's General Assembly.

(83) As regards the holders of the Hybrid Securities, since the date on which CajaSur was intervened by the BOS, quarterly payments of coupons on the Hybrid Securities have been suspended and no Hybrid Securities have been called by CajaSur. Therefore, burden sharing has also been applied to the holders of the Hybrid Securities.

⁵⁰ The composition of CajaSur's Board of Directors and General Assembly prior to the intervention of the BOS represented the following stakeholders: municipal corporations (20.9%), depositors (24.7%), founding institutions (30.4%), employees (5.1%), the Council of Cordoba (5.1%), the Government of Andalusia (10.1%), and the founding patron (3.8%).

8.1.1.3. Remuneration of the aid measures granted

- (84) As concerns the remuneration of the aid measures, the Commission considers that the pricing of the State measures granted for a credit institution under liquidation should in principle be market-oriented.

The liquidity measures

- (85) The Banking Communication sets out the framework for assessing the provision of funds to financial institutions in difficulties in the framework of the financial crisis.
- (86) The Commission notes that the pricing⁵¹ for the liquidity measure forming part of the Rescue Measures is not in line with market conditions, especially in view of the distressed situation of the bank.
- (87) The ECB Recommendation of 20 November 2008 indicates a flat fee of 50 basis points for guarantees of less than a year when the guarantee is granted to solvent entities. In this case, the pricing for a guarantee can be considered a proxy for the pricing of the liquidity line. However, as CajaSur was distressed, the remuneration of the State liquidity line (100 basis points on top of the ECB's marginal credit facility) is lower than would generally be considered as adequate for distressed entities.
- (88) It should be noted that according to Spain the liquidity measure was never used by CajaSur and will be terminated before the Disposal.
- (89) The liquidity line that the APS measure includes is remunerated according to the terms that were announced to all bidders by FROB in the context of the tender procedure. Therefore the offer presented by BBK, as expressed in paragraph (25) was determined taking into account the existence of the liquidity measure. As a consequence, the liquidity measure has to be assessed together with the guarantee (i.e. the liquidity measure and the guarantee together form the APS). It must also be assessed within the context of the offer presented by BBK to take over CajaSur, which was the result of a competitive process, open to market participants.

The Capital injection

- (90) The capital injection, undertaken under the rescue of CajaSur, is not in line with the Recapitalisation Communication. In particular, the remuneration for the *Cuotas* is based on availability of distributable profits in CajaSur and not linked to a coupon payment like for example, the Hybrid Securities.
- (91) Under the Recapitalisation Communication, it is possible to accept that a distressed bank pays a lower remuneration than is normally necessary, provided it is required to ensure financial stability and is accompanied by the presentation of a thorough and far-reaching restructuring plan, including a change in management and corporate governance where appropriate.
- (92) In the case of CajaSur the Commission notes that Spain has submitted a far-reaching restructuring plan including the changing of ownership and the corporate governance of the bank.

⁵¹ Interest rate for Emergency Liquidity Assistance plus [...] basis points.

- (93) In particular, after the implementation of Restructuring Plan, CajaSur will be liquidated and the capital injection will be reimbursed, thus limiting the aid.

The impaired asset measure (APS)

- (94) The specific conditions applying to asset relief measures are laid down in the Impaired Assets Communication. Pursuant to section 5.2 of the Impaired Assets Communication, an asset relief measure should ensure ex-ante transparency and should provide for adequate burden-sharing followed by the correct valuation of the eligible assets and the correct remuneration of the State so that the asset relief.
- (95) Regarding the compatibility of the impaired asset measure, i.e. the APS, the Commission notes that the remuneration on the APS does not compensate for the capital relief effect that it will generate. It is thus not aligned with the Impaired Assets Communication. However, the Commission has considered that the remuneration on the APS was part of the package of measures in the competitive tender procedure submitted by BBK. Therefore the offer of BBK and the resulting State aid fully take into account the conditions regarding the remuneration of the APS, which result from a competitive open-market tender process. As a consequence the Commission considers that the aid is limited to the minimum.

Conclusion on remuneration

- (96) The Commission concludes that the measures assessed above have not been remunerated adequately. However, the Commission notes that it is possible to accept that a bank pays a lower remuneration than is normally necessary, provided that this is compensated for by a thorough and far-reaching restructuring.

8.1.1.4. Measures limiting distortions of competition

- (97) The Restructuring Communication requires that the restructuring plan proposes measures limiting distortions of competition and ensuring a competitive banking sector. In this context, it should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.
- (98) Paragraph 30 of the Restructuring Communication stipulates makes clear that the Commission has to take into account in its assessment the amount of aid and the conditions and circumstances under which that aid was granted and the effects of the position the financial institution will have on the market after the restructuring. On the basis of that analysis, the Commission should verify that the potential distortion of competition arising from the aid is not disproportionate.
- (99) Paragraph 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting distortions, the Commission has to take into account both the absolute and relative amount in relation to the beneficiary's RWA. In that respect the Commission notes that the rescue aid received amounts to approximately [...]% CajaSur's RWA and it will be repaid by the date on which the Disposal is completed. The Commission also notes that the restructuring aid received amounts to [...]% of CajaSur's RWA.
- (100) In relation to CajaSur, the entity will be liquidated. The Commission finds that the exit of a failed entity which engaged in excessive risk-taking is a clear indication that moral hazard is addressed, in that commercial failure results in a break-up and

liquidation. As a result, the distortion of competition resulting from the State aid is greatly reduced.

- (101) In addition, the sale of the Business to a competitor has been undertaken in an adequately open, transparent and non-discriminatory tender procedure. That procedure has given competitors the opportunity to acquire the Business. The procedure, which closely simulates the situation on the market without aid, has the effect of limiting the distortions of competition as it aims to ensure the establishment of a market price for the assets and liabilities taken over by the purchaser.
- (102) As regards the Business transferred to BBK, that entity owes its existence to State aid. It is therefore necessary to assess whether appropriate measures to limit the distortion of competition are necessary in light of the characteristics of the market on which the beneficiary will operate.
- (103) In this respect, the Commission considers that the distortions of competition due to the Business' continued market presence are limited. CajaSur has a limited market presence in the Spanish market. In June 2010, before the implementation of the restructuring plan, CajaSur's consolidated assets were €17.6 billion, representing 0.6% of the total assets in the Spanish financial system.
- (104) As regards the Restructuring Plan of CajaSur, the Commission takes note of the significant downsizing of the Business transferred to BBK. In particular [...] branches out of 474 branches will be closed and Cajasur's exposure to real estate sector will be reduced. The Commission also notes that the regions where CajaSur has the strongest position are well targeted by the Restructuring Plan.
- (105) In addition, the Commission takes note of the commitments by Spain with regard to the Bank that it will not carry out any new expansion of economic activities or any aggressive commercial policy while the aid is in place nor will it use the fact that it is being supported by the FROB in any way for the duration of the APS.
- (106) On the basis of the above elements, the Commission considers that the scale and nature of measures proposed in the Restructuring Plan are sufficient and adequate to address the distortions of competition created by the aid.

8.1.2. Monitoring

- (107) The Restructuring Plan will need to be properly implemented. In order to ensure a proper implementation, Spain committed that it will report yearly as from the date of the Disposal on the evolution of the APS as well as on the occasion of the termination of CajaSur as a legal entity. The Commission considers that these reports will allow it to monitor the progress of the APS, its impact on competition and the fulfilment of the commitments which have been made by the Spanish authorities.

9. CONCLUSION

The Commission has accordingly decided to consider the aid measures implemented by Spain in the context of the restructuring of CajaSur to be compatible with the internal market.

The Commission notes that for reason of urgency Spain exceptionally accepts the adoption of the Decision 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:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
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