



EUROPEAN COMMISSION

Brussels, 30.9.2011
C(2011) 7061 final

**Subject: State aid n° SA.33095 (2011/N) – Spain
Recapitalisation of UNNIM Banc**

Madam,

1 PROCEDURE

- (1) On 26 March 2010 Spain informed the Commission that the *Fondo de Reestructuración Ordenada Bancaria ("the FROB")*¹ had decided to intervene in the capital of UNNIM which had been created as a result of the merger between Caixa d'Estalvis Manlleu, Caixa d' Estalvis Sabadell and Caixa d'Estalvis Terrasa ("UNNIM").
- (2) The FROB decided to subscribe for EUR 380 million of convertible preference shares.
- (3) On 30 March 2010, the Commission services – based on the information received - sent a letter to the Spanish authorities taking note that the Bank of Spain in its assessment on the solvency and capital adequacy of the merging saving banks had concluded that those banks were fundamentally sound and their integration plan was viable.
- (4) On 18 February 2011, Spain adopted a reinforced framework² for its entire banking sector, which inter alia, obliged all credit institution to meet higher solvency levels by 30 September 2011. As a result of the new legislation, the Bank of Spain informed UNNIM on

¹ The FROB was established in 2009, 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. The FROB has an initial funding capacity of EUR 9 billion, of which EUR 6.75 billion is contributed by the State Budget and the rest (EUR 2.25 billion) is contributed by the Deposit Guarantee Funds.

² See Royal Decree Law of 2/2011 of 18 February 2011.

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10 March 2011 that it required EUR 568 million of additional capital in order to meet the 10% solvency ratio³ (known as "*capital principal*") over its risk weighted assets.

- (5) On 27 May 2011, the Spanish authorities submitted a first draft recapitalisation plan for UNNIM based on the new solvency framework approved by the Spanish authorities in February 2011. The plan presented various alternatives for the intended recapitalisation of UNNIM.
- (6) On 24 June 2011, the Commission services provided their feedback on the first draft recapitalisation plan presented by the Spanish authorities.
- (7) On 28 July 2011, UNNIM's general extraordinary meeting decided to transfer banking activities (i.e. "*negocio financiero*") to UNNIM Banc.
- (8) On 23 September 2011 Spain notified the Commission that the preferential shares subscribed by the FROB in 2010 have been converted into ordinary shares, which according to the conditions of the Spanish recapitalisation scheme triggers a notification obligation. In addition, Spain notified the Commission that the FROB had decided to inject additional capital into UNNIM Banc so that it would respect the new minimum solvency ratio set by the new Spanish banking legislation in February 2011.
- (9) Spain exceptionally accepts that the decision be adopted in the English language.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

- (10) UNNIM is a Spanish saving bank ("*caja de ahorros*"). Cajas de ahorros are credit institutions that have no shareholders, but instead are governed by their members. Their legal form is a private charity that holds a banking license and is entitled to provide banking services as commercial or cooperative banks do. Profits are partially used to strengthen their capital and the remainder is used to fund the social activities that each caja de ahorros carries out through its *Obra Benéfico-Social* ("**OBS**")⁴.
- (11) UNNIM Banc operates mainly in the region of Catalonia. The bank is the result of successive integration processes which have involved several local banks. At the end of June 2011, the bank had 620 branches and 3 593 employees. According to the Spanish authorities, at a national level as of December 2010 its market share in deposits and credit was around 1.3% whilst in Catalonia had a market share of [9-10%*] and [8-9%] for credits and deposits respectively.

³According to article 1 of Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the Spanish financial system, the so-called "core capital ratio" is to be required at a consolidated basis.

⁴OBS are charity institutions funded by the "Cajas de Ahorro". Each Caja de Ahorros has an OBS, and each receives part of the Caja de Ahorros' profits that are not used to build up reserves.

* Business secret: contains confidential information, where possible, figures have been replaced by ranges in [brackets].

(12) UNNIM Banc's main figures are:

	30.06.2011	
Total assets	[28-29 000]	million €
Loans to customers	[17-18 000]	million €
Retail deposits	[11-12 000]	million €
Total wholesale funds	[10-11 000]	million €
Employees	3 593	
Number of branches	620	

- (13) On 14 July 2011, UNNIM Banc S.A. was set up in order to carry out the banking activity. The creation of a private bank was a precondition to receive public support under the Royal Decree Law 2/2011.
- (14) In the wake of the contribution of UNNIM's banking activity to UNNIM Banc, the latter is bound by all of the former's commitments and obligations pursuant to the recapitalisation in 2010.
- (15) In particular, UNNIM had committed to reimburse the convertible preference shares in line with the following "amortisation plan": 1) EUR 70 million in 2011; 2) EUR 70 million in 2012; 3) EUR 140 million in 2013; 4) EUR 100 million in 2014.

2.2 The aid measures already received

- (16) On 26 March 2010, the FROB informed the Commission that it had decided to subscribe for EUR 380 million of preference shares issued by UNNIM, the entity resulting from the merger between Caixa d'Estalvis Manlleu, Caixa d' Estalvis Sabadell and Caixa d'Estalvis Terrasa.
- (17) Based on data as of 31 December 2009 the amount of aid was 1.93% of the risk weighted assets of UNNIM.
- (18) On 30 March 2010 the Commission services sent a letter to the Spanish authorities taking note that the Bank of Spain in its assessment of the solvency and capital adequacy of the merging saving banks had concluded that those banks were fundamentally sound and their integration plan was viable.
- (19) Finally, during the period 2008-2009, UNNIM issued debts guaranteed by the Spanish Treasury for EUR [...] under the Spanish debt guarantee scheme for credit institution⁵.

⁵ The scheme was approved by the European Commission on 23 December 2008 in State aid case NN 54B/2008.

2.3 The events triggering the measures

- (20) On 19 February 2011 Spanish authorities approved a new solvency framework in order to reinforce the resilience of Spanish banking system and in particular that of the saving banks which showed some structural weaknesses.
- (21) The new regulatory framework requires banks to reach 10% of "capital principal" over their risk weighted assets by 30 September 2011. As a result of the new legislation, the UNNIM was required to increase its regulatory capital by EUR 568 million in order to meet the new threshold.
- (22) On 12 April 2011 the credit rating agency Fitch downgraded UNNIM's credit rating to BB+ from BBB- (non investment grade or junk bond). According to Fitch *"the rating actions reflect the need for the caja to increase its core capital from a low base in the short term in the light of stricter regulatory core capital standards of 10%"*.
- (23) Finally the bank failed the 2011 EU wide stress test exercise⁶ run by the European Banking Authority (EBA), showing a core tier 1 ratio of 4.5% in terms of risk weighted assets as of 31 December 2010⁷.

2.4 The additional aid measures: measures to strengthen the capital position

- (24) UNNIM and UNNIM Banc still present material weaknesses that threaten their solvency and future viability, due to their exposures to the real estate sector and the difficulty of raising funds in financial markets.
- (25) A first capital injection (EUR 380 million) was subscribed in 2010 by the FROB in order to reinforce the capital position of UNIMM.
- (26) To date, UNNIM has not been able to repay the funds of that first recapitalisation in line with the scheduled dates of reimbursement and accordingly has breached its commitments. For that reason, pursuant to article 9 of the Royal Decree Law 9/2009 of 26 June 2009, the FROB decided to convert the convertible preference shares issued by UNNIM into ordinary shares issued by UNNIM Banc. That conversion was notified to the Commission by Spain - in accordance with Decision S.A. N28/2010 - in order to allow the Commission to assess the situation of the benefitting bank⁸.
- (27) In addition, UNNIM Banc has not been able to meet the new regulatory capital requirements established by the Bank of Spain in February 2011. The bank therefore needs a second recapitalisation, in order to meet the target of 10% risk weighted assets.

⁶ It should be noted that the bank had also failed the 2010 EU wide stress test exercise run by the Committee of European Banking Supervisors showing a tier 1 capital of 4.5% which was below the threshold established for the exercise (6% of tier 1 capital).

⁷ The threshold established by the EBA for passing the stress test was set at 5% RWA of core Tier1. Under the EBA definition of core tier 1, the generic provisions and the convertibles bonds are not taken into account. Had they been taken into consideration, the core tier1 would raise to 6.2%.

⁸ Paragraph 24 of Decision N28/2010 states *"The conversion of the FROB securities into ordinary shares (or its equivalent item), will be notified by the FROB to the Commission, including information regarding the situation of the Beneficiary at the time of the conversion and the FROB'S intentions as regards the ordinary shares (or equivalent items) subscribed for in the Beneficiary"*.

- (28) To that end, the FROB will inject in UNNIM Banc additional capital (EUR 568 million) in the form of ordinary shares issued by UNNIM Banc in order to allow it to respect the new minimum solvency ratio.
- (29) That new capital injection represents 3.4% of the bank's risk-weighted assets as of December 2010. After that second intervention, the overall amount (EUR 948 million) of the measures granted by the FROB in 2010-2011 is 5.33% of the risk weighted assets.
- (30) The Spanish authorities have stated that the subscription price of those shares will be established in line with the evaluation methodology laid down in article 9 of the Royal Decree Law 9/2009 of 26 June 2009.
- (31) Based on the preliminary assessment made by the Spanish authorities, the FROB should control 100% of UNNIM Banc's capital.

3 POSITION OF THE SPANISH AUTHORITIES

- (32) The Spanish authorities accept that the two measures constitute State aid and request the Commission to verify if the proposed measures are compatible with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ("**the TFEU**"), as they are necessary in order to remedy a serious disturbance in the Spanish economy.
- (33) In particular, the Spanish authorities submit that the measures are (i) appropriate and well-targeted; (ii) necessary and limited to the minimum amount necessary; and (iii) proportionate as designed to minimize negative spill-over effects on competitors.
- (34) *Appropriate and well-targeted.* The Spanish authorities submit that UNINM Banc is important within the Spanish financial system, especially in its geographical operating area of Catalonia which contributes significantly to Spanish GDP.
- (35) *Necessary and limited to the minimum amount.* The Spanish authorities submit that the measures proposed are required to rescue UNNIM Banc's solvency position at consolidated level in line with the new solvency level established in Spain. Such a rescue would avoid negative spill-over effects on other financial institutions that can reduce the confidence of depositors in the banking system as a whole. In addition, the measures are limited in size to what is necessary to ensure that the bank meets a solvency ratio of 10% of its risk weighted assets required by the Spanish banking rules.
- (36) Finally, the Spanish authorities observe that those measures are limited in time since they will form part of a liquidation/restructuring plan that will be developed by bank. The plan is to be approved by the Bank of Spain and will be notified to the Commission thereafter.
- (37) *Proportionate.* The Spanish authorities submit that the terms and conditions of the measures proposed, together with the terms and conditions imposed on UNNIM Banc, contain an extensive range of safeguards against possible abuses and distortions of competition.

- (38) The Spanish authorities have also provided the following specific commitments:
- (i) To notify to the Commission for approval any increase in the principal amount of the measures proposed;
 - (ii) To suspend any payments from UNNIM to the OBS for new projects;
 - (iii) To refrain from distributing any dividend and from making any payments on hybrid instruments, unless those payments stem from a legal obligation, and not to exercise a call option on the same instruments without prior approval of the Commission; in addition before undertaking any other capital management deals (e.g. buy-back) on hybrid instruments and/or any other equity-like instruments, UNNIM Banc must consult with the Commission in advance.
 - (iv) To seek prior approval of the Commission before amending any commitments or constraints mentioned in this decision;
 - (v) To notify a restructuring/liquidity plan within six months in line with the principles laid down in Commission's Communication on the return to viability and the assessment of the restructuring measures in the financial sector ("**the Restructuring Communication**")⁹ and the Commission 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" ("**the Banking Communication**")¹⁰.

4 ASSESSMENT

4.1 Existence of State Aid

- (39) The Commission first has to assess whether the measures constitute State aid within the meaning of Article 107(1) TFEU. According to that provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States. The Commission in that context observes that the Spanish authorities do not dispute that the measures constitute State aid.
- (40) The Commission observes that the intervening authority, the FROB, is directly financed through State resources.
- (41) In addition, the measures confer a selective advantage on the beneficiary of the aid, UNNIM Banc, and thereby on UNNIM. In particular, the measures provide capital and allow UNNIM Banc to restore its regulatory solvency ratio and to avoid technical insolvency.
- (42) As regards UNNIM, the measures also allow it to restore its regulatory solvency ratio. In particular, it is important to highlight that the conversion of convertible preference shares into ordinary shares - even though it does not affect the nominal amount of the aid granted

⁹ OJ C195, 19.8.2009, p. 9.

¹⁰ OJ C 270, 25.10.2008, p. 8.

in 2010 - has changed the nature of the instrument (debt instrument versus equity instrument) and the remuneration for the State (fixed versus variable remuneration). For that reason, the Commission has reassessed the first recapitalisation in the light of the new features (i.e. pricing, nature of the instrument, etc.) which characterize the measure.

- (43) However, at this stage, it is not clear whether UNNIM will maintain any stake in UNNIM Banc, or whether it will retain any assets and liabilities. In the event that UNNIM does retain assets and liabilities, the measure would allow it to honour its obligations to the OBS with both the assets and liabilities not contributed by it to UNNIM Banc as well as with the dividend flow obtained from its equity stake in UNNIM Banc.
- (44) As regards the advantages conferred by the measures, the Commission notes that they would not have been provided by a market economy investor expecting a reasonable return on his investment. The Spanish authorities have acknowledged that, since private solutions (for instance, integration with other saving banks) have failed, there was no other solution available to UNNIM Banc. Furthermore, the desire to avoid a further deterioration in the financial position of the bank, which would represent a threat to the stability of the financial system in Spain, determined the State intervention.
- (45) The Commission finds that the measures distort competition as they allow UNNIM Banc (and UNNIM, to the extent that it will continue to run banking activities through UNNIM Banc) to obtain the capital necessary to avoid technical insolvency and its exit from the market.
- (46) The Commission finds that the measures are also likely to affect trade between Member States because UNNIM Banc and UNNIM, compete on the Spanish retail savings markets, the Spanish mortgage lending markets and the Spanish commercial lending markets. In all those markets, some of UNNIM and UNNIM Banc's competitors are subsidiaries and branches of foreign banks.

Conclusion

- (47) On the basis of the forgoing, the Commission considers that the measures fulfil all the conditions laid down in Article 107(1) TFEU and that those measures qualify as State aid to UNNIM and UNNIM Banc.

4.2 Compatibility of the aid

- (48) As regards compatibility with the internal market of the aid provided to the UNNIM Banc and UNNIM, the Commission must first determine whether the aid can be assessed under Article 107(3)(b) TFEU, i.e. whether the aid remedies a serious disturbance in the economy of Spain. Subsequently, the Commission, using that legal basis, has to assess whether the measures proposed are compatible with the internal market.

4.2.1 *Legal basis for the compatibility assessment*

- (49) Article 107(3)(b) TFEU provides that aid falling within the scope of Article 107(1) TFEU may be regarded as compatible with the internal market where it "*remedies a serious disturbance in the economy of a Member State*".
- (50) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under Article 107(3)(b) TFEU. The Commission has acknowledged in its approval of the Spanish scheme¹¹ that there is a threat of serious disturbance in the Spanish economy and that State support of banks is suitable to remedy that disturbance. Despite a slow economic recovery that has taken hold since the beginning of 2010, the Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting in December 2010 a Communication that prolongs until 31 December 2011 the application of State aid rules to support measures in favour of banks in the context of the financial crisis¹².
- (51) The Commission observes that market conditions have remained difficult globally since the last quarter of 2008. The Commission notes that Spain in particular has been severely hit by the financial, economic and sovereign crisis. The economic downturn combined with the fall in property prices and the exposure of some Spanish credit institutions to land and property development loans have led to significant impairment of their asset portfolios.
- (52) The Spanish authorities acknowledge that UNNIM had a considerable deterioration of its capital position in the past months and UNNIM Banc was not able to increase regulatory capital in the light of the new Spanish legislation.
- (53) Without the proposed capital injection UNNIM Banc and UNNIM, to the extent that it has the control of the banking entity, would be non compliant with the regulatory rules with severe adverse impacts on other banks and the wider financial system in Spain. The assessment of the Spanish authorities is that the bank's weakness has the potential to inflict severe losses on other financial institutions, destabilising the Spanish financial markets and triggering a generalised confidence crisis at the present delicate juncture.
- (54) For those reasons and in light of the current fragile situation on the financial markets the Commission accepts that in the current circumstances the recapitalisation in favour of the UNNIM and UNNIM Banc is necessary to avoid a serious disturbance in the economy of Spain.

4.2.2 *Compatibility assessment*

- (55) In line with point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with general criteria for compatibility under Article 107(3) TFEU, which imply compliance with the following conditions¹³:

¹¹See Commission Decision N 28/2010, OJ C 57, 09.03.2010 p.2 and Commission Decision N 317/2010, OJ C 242, 09.09.2010, p. 2.

¹²Communication from the Commission from 1 January 2011, of State aid rules to support measures in favour of bank's in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

¹³ See paragraph 41 of Commission decision in Case NN 51/2008, *Guarantee scheme for banks in Denmark*, OJ C 273, 28.10.2008, p. 2.

- a. *Appropriateness*: The aid has to be well targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.
- b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the objective. Thus it must be of the minimum amount necessary to reach the objective, and take the most appropriate form to remedy the disturbance.
- c. *Proportionality*: The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(56) The Recapitalisation Communication elaborates further on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability. In particular the Recapitalisation Communication states that recapitalisations may be an appropriate response to the problems of financial institutions facing insolvency.¹⁴

4.2.2.1 Compatibility with the Banking and Recapitalisation Communications

a. Appropriateness of the Measures

- (57) The first recapitalisation measure made in 2010 aimed by means of convertible preference shares at reinforcing the capital position of UNNIM.
- (58) The second recapitalisation measure aims at reaching the minimum capital requirement of 10% for UNNIM Banc taking into account possible further losses stemming from its loan portfolio in the near future. The recapitalisation will be in the form of ordinary shares in UNNIM Banc.
- (59) The Commission considers that those measures are appropriate because they effectively meet their objective to ensure that the UNNIM Banc and UNNIM are in compliance with regulatory capital requirements and that the measures effectively achieve the objective of preventing the failure of the UNNIM Banc. They thus remedy a serious disturbance in the economy.

b. Necessity – limitation of the aid to the minimum

- (60) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. That requirement implies that the capital injection must be of the minimum amount necessary to reach the objective. In that context, the Commission observes that the amount of the measures will ensure that the UNNIM Banc and UNNIM will again fulfil regulatory capital requirements and will be able to fund current activities.
- (61) As regards the remuneration UNNIM Banc has to pay, the FROB will receive no fixed remuneration on its capital injection given that the rescue aid is granted through ordinary shares. The FROB will only be remunerated if UNNIM Banc is in a position to pay out a

¹⁴ Recapitalisation Communication, point (6).

dividend or if the equity stake subscribed for by the FROB through the proposed measure is sold to a third party or bought back by UNNIM Banc at a profit.

- (62) Based on the current information the Commission is not in the position to ascertain whether there is a prospect for an adequate remuneration of the proposed recapitalisation. Points 15 and 44 of the Recapitalisation Communication explain that lower remuneration in duly justified cases can be accepted in the short-term for distressed banks on the condition that the lower remuneration will be reflected in the restructuring plan. The Commission considers that it is justified that no remuneration is paid for the recapitalisation measure provided that the absence of remuneration will be compensated by in-depth restructuring in the restructuring plan.

c. Proportionality – measures limiting negative spill-over effects

- (63) Spain has committed that UNNIM will suspend payments to the OBS for new projects. It has also committed that UNNIM Banc will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments (for instance, "*cuotas participativas*") without consulting with the Commission in advance.
- (64) Therefore, taking into consideration the difficulties that the UNNIM Banc is facing combined with the need to maintain financial stability in Spain, the Commission considers those measures to be sufficient to minimise the distortions of competition caused by the aid during the rescue period. That evaluation is, however, without prejudice to additional measures to address distortion of competition that may be needed to ensure that the restructuring plan of UNNIM Banc can be approved.

Conclusion

- (65) The Commission, thus, concludes that (i) the recapitalisation is appropriate to restore the solvency position of UNNIM Banc and UNNIM and necessary, as it is limited to the minimum; (ii) the fact that the investment in UNNIM Banc is highly unlikely to provide any remuneration or positive return is justified under the circumstances; (iii) UNNIM Banc must submit a restructuring plan in six months, which should reflect its level of distress, the size of the State recapitalisation and the absence of return for the State; and (iv) there are sufficient measures in place limiting the negative spill-over effects for other competitors to enable the Commission to temporarily approve the measures as rescue aid. The Commission can, therefore, temporarily approve the measures for six months.

4.2.2.2 Restructuring or liquidation plan

- (66) As regards the need for an assessment of the institution's balance sheet and activities, the use of recapitalisation for a distressed bank can only be accepted on the condition of the

bank's winding up or a far-reaching restructuring¹⁵. The Commission furthermore observes that the Spanish authorities have committed to submit a restructuring plan or liquidation plan for UNNIM Banc within six months.

- (67) The Commission, therefore, takes note of the commitment of the Spanish authorities to submit a restructuring or liquidation plan for UNNIM Banc taking into account all aid measures UNNIM Banc and UNNIM have received. The restructuring plan shall fulfil the requirements of the Restructuring Communication as regards return to viability, burden-sharing and measures limiting the distortion of competition. The restructuring plan should be submitted to the Commission within six months from the date of this decision.

CONCLUSION

- The Commission concludes that the two measures notified (the conversion of convertible preference shares from the first capital injection of EUR 380 million into ordinary shares and EUR 568 million in the form of capital injections) in favour of UNNIM Banc and UNNIM constitute State aid pursuant to Article 107(1) TFEU.
- The Commission finds that the emergency measures in favour of UNNIM Banc and UNNIM are temporarily compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU. The measures are accordingly approved for six months or, if Spain submits a restructuring plan within six months from the date of this decision, until the Commission has adopted a final decision on the restructuring plan.
- The Commission recalls that the Spanish authorities have committed to submit an in-depth restructuring or liquidation plan.
- The Commission notes that Spain exceptionally accepts that the adoption of the Decision be in the English language.

¹⁵ See point 44 of the Recapitalisation Communication.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President