EUROPEAN COMMISSION

Brussels, 24 October 2011
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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		**PUBLIC VERSION** **WORKING LANGUAGE** **This document is made available for information purposes only.**

<u>Subject:</u> **State aid SA.26909 (2011/C) (ex NN 62/2008) - Portugal**

Nationalisation and Restructuring of *Banco Português de Negócios*

Sir,

The Commission wishes to inform Portugal that, having examined the information supplied by your authorities on the measures in favour of *Banco Português de Negócios*, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

1. PROCEDURE

(1) On 2 November 2008, the Portuguese Government approved a draft law to nationalise the shares representing the share capital of *Banco Português de Negócios, S.A.* ("BPN"). That law was published on 11 November 2008 as Law No 62-A/2008 ("Nationalisation Law"). The nationalisation of BPN took effect on 12 November at zero price.

(2) On 5 November 2008, the Portuguese authorities informed the Commission of the approval of the draft law. On 11 and 13 November 2008 they informed the Commission of the publication of the Nationalisation Law.

S. Ex.ª o Ministro dos Negócios Estrangeiros
Paulo PORTAS

Largo do Rilvas
P – 1399-030 - Lisboa

(3) The Commission immediately requested further information concerning any state aid measures to be granted to BPN under the nationalisation procedure and the submission of a restructuring plan for BPN.

(4) Portugal did not submit any prior notification of any of the measures granted to BPN by the State. It only informed the Commission of those measures after a considerable delay and having been repeatedly requested to do so.

(5) In this context, the Commission sent requests for information regarding the specific state aid measures granted to BPN and it also asked for a restructuring plan on 14 November 2008. The Commission then sent reminders on 5 January 2009 and 23 and 29 April 2009.

(6) The Portuguese authorities replied to the information requests on 8 January 2009, 28 April 2009 and 23 June 2009 but without providing information about the specific state aid measures granted to BPN or the restructuring plan. In their letter of 23 June 2009 the Portuguese authorities indicated that they were considering the option of segregating BPN's assets and selling the bank.

(7) The Commission reiterated its requests for information on 17 July 2009, 4 and 14 September 2009, 30 November 2009, 5 February 2010 and 16 March 2010.

(8) The Portuguese authorities replied on 14 August 2009, indicating that commercial papers of up to EUR 2 billion were to be issued by BPN and subscribed by *Caixa Geral de Depósitos* ("CGD") with a state guarantee. They stated that this guarantee resulted directly from the Nationalisation Law and therefore could not constitute state aid. Additional information on CGD and state intervention was sent on 12 October 2009. Further information was submitted on 21 November 2009, 17 and 18 February 2010 and 31 March 2010.

(9) Following the meeting held with the Portuguese authorities on 16 June 2010, the Commission again asked the Portuguese authorities on 12 August 2010, *inter alia*, to send it the restructuring plan for BPN at once. Since the requested plan was not submitted, the Commission sent an official reminder by letter of 31 August 2010, pursuant to Article 5(2) of Council Regulation (EC) No 659/1999.

(10) On 14 September 2010, the Portuguese authorities sent a document entitled «*Memorando: a nacionalização, a reestruturação e a reprivatização projectada do banco português de negócios, SA*» (hereinafter "the Memorandum of 14 September 2010") which outlined BPN's restructuring plan and the main elements of the privatisation process.

(11) Having found that some information was still missing from the Memorandum of 14 September 2010, the Commission sent a letter on 29 September 2010 requesting additional information. By e-mail of 15 November 2010, the Portuguese authorities sought an extension of the deadline for reply, which the Commission accepted by letter of 18 November 2010. The Portuguese authorities provided additional clarifications by letter of 26 November 2010 and by e-mail of 25 January 2011.

(12) The Commission sought a number of points of clarification and additional information on 16 February 2011, to which the Portuguese authorities replied on 16 March 2011.

(13) In the context of the meetings leading up to the signature on 17 May 2011 of the Memorandum of Understanding ("MoU")[1] between Portugal on the one hand and the International Monetary Fund, the European Central Bank and the European Commission on the other hand, a meeting was held with the BPN management on 27 April 2011. The MoU included a paragraph on BPN, providing for the sale of BPN by the end of July 2011. In order to monitor compliance with that commitment, on 20 May 2011 the Commission sent requests for information on the restructuring of the bank and the planned sale process. Since the Portuguese authorities did not respond, a reminder was sent on 8 July 2011, together with an additional request for clarification concerning press reports about BPN having been granted further state resources by means of a state guarantee. An overview of the reprivatisation process was provided by the Portuguese authorities on 5 August 2011.

(14) A meeting was held with the Portuguese authorities on 10 August 2011. Additional information was given to the Commission during the meeting and also afterwards, on 28 August 2011. The Commission received further information on 14 September and 14 October 2011.

2. DESCRIPTION

2.1. The beneficiary and its difficulties

(15) BPN is a financial institution based in Portugal providing banking services. In 2008 it had a network of 213 branches and total assets of EUR 6.6 billion, around 2% of the total assets of the Portuguese banking sector.

(16) According to the documents that Portugal sent to the Commission on 5 November 2008, BPN had been facing a number of difficulties before its nationalisation. The documents also explained that the Bank of Portugal ("*Banco de Portugal*") had detected a series of impairments and irregularities during its inspection, which gave rise to investigations, the launch of several administrative offence proceedings and the filing of a report with the Office of the Public Prosecutor of the Republic. Several preliminary initiatives had been taken to enable the bank to overcome the difficulties it was facing and prevent default on payments, in particular by providing special liquidity aid in the form of loans, and other operations. According to the Portuguese authorities, despite those measures BPN was very close to defaulting on payments and was not complying with the minimum solvency requirements. In view of the scale of BPN’s losses, the *Banco de Portugal* concluded that recourse to further liquidity support operations was not feasible given the high level of risk to which the participating entities would be exposed.

(17) Indeed, on 18 July 2008 Moody's rating agency had downgraded BPN from Baa1 to Baa3 and by the end of 2008 BPN had a negative value of own funds of EUR 1 624 billion.

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1 Portugal, "Memorandum Of Understanding On Specific Economic Policy Conditionality", 17 May 2011, http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf

(18) In November 2008 Portugal nationalised BPN by force of law[2] at a zero price[3].

(19) The state-owned *Caixa Geral de Depósitos* (CGD) was given the tasks of managing BPN, appointing the members of its corporate bodies, and establishing its management objectives within 60 days of BPN's nationalisation.

2.2. The initial financial support measures

(20) Prior to its nationalisation in November 2008, BNP had already benefited from a number of financial support measures. On 17 February 2010, the Portuguese authorities informed the Commission of: i) loans granted in October 2008 to BNP by CGD for EUR 235 million; and ii) emergency liquidity assistance (ELA) provided in October 2008 by the *Banco de Portugal* for EUR 186.6 million.

(21) In March 2009, BPN received state guarantees on commercial papers subscribed by CGD for a global amount of EUR 2 billion. The Commission was only informed of those state guarantees on 14 August 2009. By letter of 17 February 2010, the Portuguese authorities also indicated that CGD had been authorised to subscribe a further EUR 1 billion with a state guarantee on 27 October 2009. Subsequently, by e-mail of 14 June 2010, the Commission was further informed that the total state guarantees on commercial papers issued by BPN and subscribed by CGD was EUR 4 billion.

(22) According to the available information, the remuneration for the state guarantee on commercial papers was set at 0.2% per year for all issuances, but this remains to be confirmed.

2.3. The restructuring of BPN

The initial restructuring plan

(23) The Portuguese authorities sent an initial restructuring plan, dated 13 September 2010, to the Commission on 16 September 2010.

(24) In that plan, the Portuguese authorities explained their intention to split BPN into a "good bank" and a "bad bank" and to then try to sell the good bank.

The scope of the reprivatisation [perimeter]: creation of Special Purpose Vehicles - SPVs

(25) The State wanted to proceed with the sale of the "good bank", BPN S.A., which was to be exclusively a retail bank, through an open tender process. That process was to be conducted on the basis of a call for interest, the specifications for which were approved by the Portuguese authorities on 16 August 2010[4].

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2 Law No 62-A/2008 of 11 November 2008.

3 Deutsche Bank and Deloitte confirmed that no indemnity was due to the shareholders due to the negative value of the bank at the time of the nationalisation.

4 Council of Ministers Resolution No 57-B/2010 for the reprivatisation of BPN. The Decree Law setting out the legal framework for the privatisation of BPN was approved in November 2009.

(26) A number of BPN's assets and liabilities would remain outside the scope of the reprivatisation and would be transferred to three new SPVs. These SPVs would initially remain within the BPN perimeter and after the sale would be transferred to the State. Loans and credits would be transferred to *Parvalorem*, real estate and investment funds would be transferred to *Parups*, and BPN-owned companies would be transferred to *Parparticipadas*. According to the Portuguese authorities, the total amount of assets to be transferred to the SPVs was valued at approximately EUR 3 900 million. Credits would be transferred at nominal value; participation units in funds, securities and real estate would be transferred at purchase price; and BPN-owned companies would be transferred at their book value. In December 2010, the impairments were globally estimated at EUR 1 798 million: i) credits: EUR 1 474 million; ii) real estate: EUR 16 million; iii) participation units in funds: EUR 247 million; and iv) securities: EUR 61 million.

(27) According to Portugal, the SPVs financed the transfer by two means: loans with a state guarantee for EUR 3 100 million (partially replacing the original amount of guarantees on commercial paper for EUR 4 000 million) and commercial loans for the remaining value. An amount of EUR 400 million of commercial paper guaranteed by the State would remain in BPN.

(28) According to information received by the Portuguese authorities, in order to allow BPN to comply with legal and regulatory requirements, the State would have to recapitalise BPN by about EUR 521 million. An additional amount ranging between EUR 70 and 100 million might have been required to make up for the potential losses between the end of May 2010 and the expected time of the share transfer on completion of the tender process. Hence it might have been necessary for the State to inject a further EUR 600 million to allow the sale to take place.

The first two calls for reprivatisation

(29) The base price set in the tender published by Portugal was fixed at EUR 171.1 million based on the valuations of third party consultants Deloitte (EUR […][*] million) and Deutsche Bank (EUR […] million), with the exclusion of assets to be transferred to the SPVs.

(30) No interested parties came forward in the first two calls for privatisation on 30 September and 30 November 2010.

(31) The State then expressed its intention to restructure BPN, boosting its autonomy vis-à-vis CGD by appointing a new Management Board, independent of CGD. There were also plans to speed up BPN’s operational recovery by redefining its brand and corporate identity and reinforcing the recovery plan through cost cuts and enhanced commercial dynamics. However, despite several requests, no updated restructuring plan was sent to the Commission.

(32) However, in the MoU, the government undertook to launch a new privatisation process.

[*] Confidential information.

(33) In the MoU, the Portuguese authorities committed to "*launching a process to sell Banco Português de Negócios (BPN) on an accelerated schedule and without a minimum price. To this end, a new plan is submitted to the EC for approval under competition rules. The target is to find a buyer by end-July 2011 at the latest. To facilitate the sale, the three existing special purpose vehicles holding its non-performing and non-core assets have been separated from BPN, and more assets could be transferred into these vehicles as part of the negotiations with prospective buyers. BPN is also launching another program of more ambitious cost cutting measures with a view to increase its attractiveness to investors. Once a solution has been found, CGD's state guaranteed claims on BPN and all related special purpose vehicles will be taken over by the state according to a timetable to be defined at that time*".[5]

(34) In addition, in order to cover BPN's liquidity needs, a further state guarantee of EUR 1 billion was granted to BPN in July 2011 for commercial paper subscribed by CGD. It is not clear if that guarantee replaced one of the previous guarantees.

Sale to BIC

(35) A third privatisation attempt was launched at the beginning of May 2011 without a minimum price in order to find a buyer for BPN by 31 July 2011, as agreed in the MoU.

(36) According to information provided by the Portuguese authorities on 28 August 2011, a tender procedure was held during which contacts with potential interested buyers were established. An Investment Opportunity Overview ("IOO") was developed as well. According to the IOO, interested parties had to bid for up to 100% of BPN's shares but could ask for additional assets/liabilities to be removed from BPN's balance sheet. They could also ask for higher recapitalisation scenarios. A Memorandum governing the rules of the process was signed between BPN and the potential bidders allowing them to access a data room, set up on 15 June 2011 for five weeks.

(37) Four binding offers were submitted by 20 July 2011. Those offers were analysed by the Boards of CGD and BPN who submitted their opinion to the shareholder – the State – by 25 July 2011.

(38) Three of the four bidders that submitted binding offers were discarded. According to the Portuguese authorities, two bidders (*Montepio* and *Aníbal Ribeiro*) did not fulfil the requirements of the Memorandum signed with BPN[6] (*Montepio* because it did not bid for the acquisition of BPN's shares but only for selected assets and liabilities; and *Aníbal Ribeiro* because it had not provided sufficient proof of managerial and financial capacity to run a bank). The third bid, from NEI[7], complied with the Memorandum requirements but there was insufficient proof of its ability to run the bank and of its financial capacity to assume BPN's future capital needs.

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[5] Points 2.10 and 2.11 of the MoU.

[6] A Memorandum governing the rules of the process was signed between BPN and the parties who declared an interest in access to the data room.

[7] Núcleo Estratégico de Investidores (NEI) is a group of investors.

(39) The government decided on 31 July 2011 to continue exclusive negotiations with *Banco BIC Portugal* ("BIC"). BIC's main shareholders are a group of investors that own *Banco BIC S.A.* in Angola. BIC started its activity in Portugal in 2008. In December 2010 it had total assets of EUR 1 billion and on 31 March 2011 it had capital of EUR 32 million and 7 branches.

(40) That decision was taken bearing in mind the following objectives: to maximise the preservation of BPN's activities, minimise job losses, minimise the negative financial impact of the operation for the State and to limit the risks and guarantees associated with the direct sale of BPN's shares.

(41) According to the information that the Portuguese authorities have so far supplied to the Commission, negotiations are under way with BIC following its initial proposal of 20 July 2011[8]; the latest version of the agreement (not yet finalised) sent by the Portuguese authorities on 14 October 2011, provides for:

- recapitalisation by the State to reach a capital level of [between EUR 200 and 400] million after balance sheet adjustments, which would put BPN's core tier 1 ratio at [between 10% and 18%] (subject to definition of the exact scope of sale);

- removal of part of the credit loans to be selected by BIC in order to achieve a loan-to-deposit ratio of [between 110% and 150%];

- BIC's right to remove from the balance sheet additional assets and liabilities (e.g. loans to credit institutions, financial assets, real estate assets, some provisions, other assets and other liabilities);

- BIC's right to sell back within […] months loans that are non-performing for at least […] days (up to a maximum of […] % of the nominal value of the total loan portfolio selected by BIC) after compensation with existing deposits and for the amount exceeding the estimated level of provisioning;

- BIC's right to transfer upfront deposits with pricing […] bps above the relevant reference rate[9] or to receive from the State the difference in remuneration;

- the granting of a money line to BIC by […] for up to [between EUR 150 and 350] million, with a lending rate at […] months Euribor[10];

- the maintenance of a credit line of [between EUR 150 and 500] million for the ongoing commercial paper programme bearing a state guarantee until [>2013];

- the maintenance of approximately half of the BPN's employees (at least 750 out of some 1 600 employees) and of 160-170 branches[11]. The total cost of closing

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8 Draft contract for the purchase and sale of shares in the context of the reprivatisation of Banco Português de Negócios, S.A.

9 According to the information provided by Portugal, this may vary depending on duration and currency of the deposits (EURIBOR/LIBOR).

10 According to the Portuguese authorities' reply of 2 September 2011, BIC can use that money line for up to three years during a drawing period of four years.

11 It is unclear whether that provision is maintained in the latest version received.

the branches that BIC will not take over and for paying compensation to dismissed employees or to employees whose place of employment will be changed will be taken over by the State;

- the transfer to the State of the costs linked to litigation risks[12];

- an acquisition price of EUR 40 million paid by BIC;

- a price clause for the sharing with the State of 20% of net profits (after tax) for the earnings cumulatively exceeding EUR 60 million generated by BPN during the next five years, […];

- BIC's commitment not to pay out dividends or any other equivalent benefits to shareholders in relation to BPN for a period of five years.

(42) However, as exclusive negotiations are ongoing with BIC, these conditions may be altered.

3. THE POSITION OF THE PORTUGUESE AUTHORITIES

The state guarantee on commercial paper

(43) Regarding the initial issuances of commercial papers, on 12 October 2009 the Portuguese authorities claimed - without further substantiation - that the state guarantee on the commercial papers, which was granted in accordance with the Nationalisation Law, did not constitute state aid incompatible with the internal market. Details of the conditions of the guarantee were not, however, provided.

Emergency liquidity assistance

(44) On 31 March 2010 the Commission was informed that the ELA provided by the *Banco de Portugal* was implemented under Eurosystem financing, therefore, in the Portuguese authorities' opinion, no state aid was involved.

The restructuring of BPN

(45) According to the Portuguese authorities, the sale to BIC following an open and transparent tender procedure was the best available option for the State. An "orderly liquidation" scenario was considered but dismissed, since it would have been difficult to sell assets and liabilities in bundles matching deposits with credits. They claim that the announcement of the liquidation process would have required the immediate transfer of all the deposits to another bank to avoid a "deposit run" and a potential systemic risk for the banking sector. In addition, liquidation would have caused a negative impact on Portugal's reputation by allowing the bankruptcy of an institution that it had nationalised two and a half years before.

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[12] The litigation pending against the BPN at 31 December 2010 involved a total of EUR 303.4 million. However, based on internal and external legal opinions, BPN's expected losses amount to EUR 27 million and this amount is already fully covered.

(46) The Portuguese authorities have acknowledged that some of the conditions set by BIC will aggravate the financial impact of the sale for the government. Among them are the maintenance of the commercial paper line of [between EUR 150 and 500] million, the granting of a new financing line […] of up to [between EUR 150 and 350] million, the right to sell back non-performing loans during a period of […] months, and the absence of sharing of contingencies and liabilities, which the Portuguese authorities underline would also have happened in a liquidation scenario. The Portuguese authorities also indicate that the capital of [between EUR 200 and 400] million that BPN should have at the time of the sale is the minimum level required to comply with BIC's internal stress test scenarios, although that level would amount to a much higher recapitalisation ratio (core tier 1 ratio of [between 10% and 18%]) than the legal requirement in Portugal and would be substantially higher than the core tier 1 ratio that BIC had at the end of 2010 (7.8%) or in March 2011 (9.2%).

(47) According to the Portuguese authorities, the average difference between the expected loss for the government in the liquidation (EUR […] million) and sale to BIC (EUR […] million) scenarios is EUR [...] million. Liquidation would also have resulted in 350 to 550 additional job losses. Moreover, despite a possible increase in CGD’s exposure to the SPVs if the decision is taken to finance the acquisition of additional BPN assets by the SPVs, the Portuguese government does not expect a significant liquidity impact on CGD in the BIC sale scenario. According to the Portuguese authorities, in the liquidation scenario CGD would have had to wait longer to recover the funding it had granted, due to the nature of liquidation processes in Portugal, and CGD would have to provide the necessary liquidity to depositors. The Portuguese authorities also observed that it is uncertain that the state guarantee could be provided to CGD in those circumstances.

(48) The Portuguese authorities also observed that proceeds from the recapitalisation and balance sheet restructuring required by BIC will allow repayment of […] exposure to BPN, except for the credit line of [between EUR 150 and 500] million that will be maintained and the new money market line of a maximum of [between EUR 150 and 350] million.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

(49) Article 107(1) TFEU stipulates that, save as otherwise provided in the Treaty, 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.

(50) BPN has benefited from several financial support measures from the Portuguese State. None of those measures was notified to the Commission before their implementation, and the Commission was often only informed some considerable time after their implementation.

Financing granted before the nationalisation

(51) The nature of the liquidity support granted before BPN's nationalisation is still unclear given the little information available at present.

(52) The Commission cannot therefore rule out the possibility that the measures granted to BPN before its nationalisation constitute state aid.

Nationalisation

(53) As to the nationalisation, it was done by force of law at zero price. In general, the Commission considers that nationalisation which is not accompanied by some other state measure does not *per se* favour the financial institution as it amounts to a mere change of ownership[13]. The Commission therefore considers that the nationalisation does not, in itself, constitute state aid.

State guarantees

(54) BPN benefited from several state guarantee measures, as detailed in points 21 and 34 above. In September 2011, the amount of outstanding state guarantees on commercial paper issued by BPN was EUR 1 400 million: EUR 400 million resulting from the residual amount of commercial paper and EUR 1 000 million from the new issuance in June 2011.

(55) These measures are financed by state resources as they consist of state guarantees granted by Portugal. The state guarantees allowed BPN to obtain financial support in a situation where there were no alternatives. Furthermore, the fee of 20 bps is well below the level resulting from the application of the European Central Bank's recommendation of 20 October 2008. Unlike other banks, which are not given the benefit of the state guarantees, BPN obtained an economic advantage since the fee charged for the state guarantees was clearly below the market level.

(56) On the basis of the above, the Commission concludes that the state guarantees confer an economic advantage on BPN through the use of state resources. Given BPN's activities and position in national and international markets, that advantage is liable to affect competition and trade between Member States within the meaning of Article 107(1) TFEU. The measures therefore constitute state aid.

Transfer of assets to the SPVs

(57) The Commission considers that the transfer of assets to the SPVs at their book value of EUR 3.9 billion (with non-recorded impairments estimated at EUR 1.8 billion) may involve additional aid to the beneficiary bank which must be assessed under the Commission's Impaired Asset Communication[14] ("IAC"). The IAC provides guidance on

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[13] See the Commission Decision of 2 April 2008 in Case C 14/2008 *Northern Rock* (OJ C 135, 3.6.2008, p. 21) and the Commission Decision in Case N 61/2009, Change of ownership of Anglo-Irish Bank, (OJ C 177, 30.7.2009, p. 2).

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

the treatment, under Article 107(3)(b) TFEU, of asset relief measures by Member States, including, in particular, bad bank solutions as referred to in Annex II to the IAC.

(58) The Commission considers that the transfer of assets at book value rather than market value confers an economic advantage on BPN compared to its competitors, which is financed through the use of state resources. The advantage is liable to affect competition and trade between Member States within the meaning of Article 107(1) TFEU as BPN continues operating as a bank in the internal market. The measure therefore constitutes state aid.

Recapitalisation of BPN linked to the sale to BIC

(59) The recapitalisation to be granted to BPN with a view to the sale is estimated at [between EUR 450 and 700] million. However, the final amount will depend on the developments in the balance sheet and thus also on the amount of assets to be transferred to the SPVs, as one of the conditions of the transaction is that BPN be left with capital of [between EUR 200 and 400] million at the time of the sale.

(60) The Commission considers that the capital injection, which would leave the bank capitalised at a ratio of [between 10% and 18%] of core tier 1 capital (compared to the regulatory requirements of 9% of core tier 1 at the end of 2011), confers an economic advantage on BPN through the use of state resources that is likely to affect competition in the internal market and trade between Member States. The measure therefore constitutes state aid.

Further potential state aid measures linked to the sale to BIC

(61) The Commission questions whether a market economy operator would decide to sell BPN under the planned conditions. The sale scenario entails several sources of potential loss for the State, which cannot be clearly quantified at present as the final conditions of the agreement have not yet been communicated to the Commission.

(62) First, as negotiations with BIC are still ongoing, the Commission cannot rule out at present that other aid will be granted through the transfer of additional assets to the SPVs. BIC has the freedom to determine the criteria for selecting the loans that have to be carved out to comply with the transformation ratio of [between 110% and 150%], including the category of the loans to be carved out. Those criteria have not yet been communicated to the Commission. Also, depending on whether CGD or the State directly finance the SPVs in respect of the additional assets transferred from BPN, the exposure for CGD or the State will increase.

(63) Moreover, BIC's right to sell back non-performing loans and transfer upfront deposits could result in a shift of BIC's investment risk to the Portuguese State.

(64) Also, the lending rate for the credit line of [between EUR 150 and 300] million […] has to be checked against market rates. It should also be noted that the latest draft of the framework agreement with BIC received by the Commission on 14 October 2011, provides for maintaining BPN's commercial paper programme of [between EUR 150 and 500] million and bearing a personal state guarantee until […>2013].

(65) The Commission therefore concludes that further state aid measures, for an amount still to be defined, are likely to be granted to the BPN activities that are sold to BIC.

Possible aid to the buyer

(66) According to point 49 of the Banking Communication, in order to ensure that no aid is granted to the buyer of a financial institution sold by the State, it is important that certain sales conditions are respected and in particular that: the sale process is open and non-discriminatory, the sale takes place on market terms, and the State maximises the sale price for the assets and liabilities involved.

(67) While the Commission acknowledges that the sale process started as an open tender procedure, on the basis of the information available, it cannot rule out the possibility that the final agreements signed at the end of the exclusive negotiations with BIC following the tender procedure, will lead to the buyer being granted an undue advantage. In particular, the Commission cannot conclude at this stage whether or not the final results of the process, including the elements currently being negotiated with BIC, would alter the outcome of the tendering procedure.

(68) The Commission also observes that while the tender documents specified that interested parties had to bid for BPN's shares, in economic terms BIC's offer covers only selected assets and liabilities and therefore seems to amount to a significantly different entity from that originally put on sale.

(69) Moreover, given the rights and advantages conferred on BIC in the provisional sale agreement and the fact that the final agreement has not yet been made available, the Commission cannot at present rule out that the price paid by BIC to purchase BPN is below market price.

4.2. Compatibility of aid

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

(70) Article 107(3)(b) TFEU empowers the Commission to declare aid compatible with the internal market if it is intended "to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State".

(71) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures to support banks may contribute to remedying that disturbance. That analysis has been confirmed in 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 (hereinafter "Banking Communication")[15], in the Commission Communication on the Recapitalisation of financial institutions in the current financial crisis: limitation of the aid

[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, 25.10.2008, p. 8.

to the minimum necessary and safeguards against undue distortions of competition (hereinafter "Recapitalisation Communication")[16]), in the IAC and in the 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 (hereinafter the "Restructuring Communication)[17].

(72) Portugal, in particular, has been severely affected by the financial and economic crisis. These effects have been confirmed by the Commission's approval of many of the measures taken by the Portuguese authorities to combat the financial crisis and of the decisions approving the guarantee and recapitalisation schemes.[18]

(73) As regards the guarantee scheme, which was originally approved by the Commission on 29 October 2008, it has been extended until the end of 2011 with an increased budget of EUR 35 billion. The recapitalisation scheme, which was originally approved by the Commission on 20 May 2009, has been extended until 31 December 2011 with an increased budget of EUR 12 billion.

(74) The challenging economic and financial situation led to an official request from Portugal for international assistance on 7 April 2011, leading to the signing of the MoU on 17 May 2011.

(75) At present, the Commission tentatively concludes that the disorderly failure of BPN would entail serious consequences for the Portuguese financial sector and real economy. The measures can therefore be assessed under Article 107(3)(b) TFEU.

4.2.2. Compatibility under Article 107(3)(b) TFEU

4.2.2.1.The restructuring plan

(76) The Restructuring Communication sets out the state aid rules applicable to the restructuring of financial institutions in the current crisis. According to the 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 must:

(i) lead to a restoration of the viability of the bank or orderly liquidation;

(ii) include sufficient own contribution by the former shareholders and capital holders of the bank (burden-sharing);

(iii) contain sufficient measures limiting distortions of competition.

(77) Although the restructuring plan submitted by the Portuguese authorities on 10 September 2010 explores alternative options, it was based on the assumption of BPN remaining as a

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

17 Communication from the Commission 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, 19.9.2009, p. 9.

18 Commission decisions in cases SA 33177 and SA33178 of 30 June 2011, not yet published.

stand-alone entity. Subsequently the Portuguese authorities embarked on a new sale attempt and have entered into exclusive negotiations with BIC. Those negotiations have modified a number of assumptions used in the preparation of the original restructuring plan, which is therefore now obsolete.

(78) The Commission will conduct the compatibility assessment in this opening decision on the basis of the original restructuring plan and the information subsequently made available by the Portuguese authorities. However, any final decision will have to be based on the situation of BPN at the time of adoption of that final decision.

(79) In particular, once all details of the sale process are available, an updated restructuring plan will have to be provided, indicating any further aid measures resulting from the negotiation process. The plan will have to demonstrate the long-term viability of the post-transaction BPN, the orderly liquidation plan for the SPVs and refer to any further distortion of competition caused by the sale.

(i) Restoration of long-term viability

(80) Under points 9 and 10 of the Restructuring Communication, the Member State is required to provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options.

(81) The banking business will be sold to BIC after certain adjustments, and selected assets will be transferred to the SPVs with the aim of being liquidated over time. The Commission therefore has to assess whether BPN's banking business, which will become part of the buyer's business, will be viable, and whether the SPVs will be liquidated in an orderly manner over an appropriate time span.

(82) As to the viability of BPN's business, point 17 of the Restructuring Communication confirms that a sale of (or part of) the financial institution to a third party can help to restore its long-term viability. However, the Commission notes that it has not yet received a viability plan for the BPN entity that will be combined with the prospective buyer.

(83) The Commission therefore currently cannot conclude that BPN - as an integrated entity with the purchaser - is a viable institution and invites Portugal to provide evidence thereof. The Commission recalls that, according to point 13 of the Restructuring Communication, return to viability without further state aid needs to be demonstrated under a base-case scenario as well as under stress scenarios. For those purposes, the restructuring plan needs to take account, *inter alia*, of the current state and future prospects of the financial markets, reflecting base-case and worst-case assumptions.

Viability through the sale of a bank

(84) According to the Restructuring Communication, when analysing viability through sale of a bank, a negative sale price (or financial support to compensate for such a negative price) may exceptionally be accepted if the seller would have to bear higher costs in the event of liquidation.

(85) In this case, it is uncontested that the sale is taking place at a negative price as the costs of the sale, including the recapitalisation estimated currently at around EUR 535 million, largely exceed the sale price of EUR 40 million. Therefore, the Commission has to assess whether the State would have to bear higher costs in the event of liquidation.

(86) Portugal claims that liquidation would have been more expensive, both in 'quantitative' and 'financial stability' terms. Table 1 shows the initial comparison between the sale and liquidation scenarios presented by Portugal.[19]

[19] Presentation "BPN-Overview of reprivatisation process" dated 5 August 2011.

Table 1 Comparison of the sale to BIC and liquidation scenarios (in EUR million)

		Sale to BIC	Liquidation
	OUTFLOWS		
1	Payment of the funding to credit institutions (€1.4 bn to CGD)		[…]
2	Payment of deposits from clients		[…]
3	Financing of SPVs – incremental	[…]	[…]
4	Capital increase	[…]	
5	Other liabilities assumed by the State	[…]	[…]
6	Unemployment benefits, termination and other costs	[…]	[…]
7	Assets bought by the State	[…]	
8	Others		
	Total Outflows	[…]	[…]
	INFLOWS	**Sale to BIC**	
9	Sale of client loans		[…]
10	Reimbursement of loans to SPVs	[…]	[…]
11	Reimbursement cash and loans to credit institutions	[…]	[…]
12	Revenues sale other assets	[…]	[…]
13	Price BPN sale	[…]	
14	Deposits sale premium - 2% of the deposit balance		[…]
15	Loss of fiscal revenues	[…]	[…]
	Total Inflows	[…]	[…]
	ESTIMATED LOSS	[…]	[…]

(87) The Commission has serious doubts about several aspects of the quantitative comparison between the two scenarios.

(88) Firstly, the Commission doubts that the outflows and inflows relating to the customers' loans that BIC will probably retain (around EUR […] million) are correctly calculated. In the 'sale to BIC' scenario, it is assumed that the loans are transferred at book value, considering that all necessary provisions have already been factored in. However, no cost has been accounted for in relation to BIC's requested right to sell back within […] months loans that are non-performing for at least […] days (up to […]% of the nominal value of the total loan portfolio selected by BIC).

(89) In the liquidation scenario it is assumed that the same customers' loans would be sold at fire sale prices, with a haircut to book value of 30-50%. This assumption accounts for the outflow in the range of EUR […] million to EUR [...] million in row 9 of Table 1. The Portuguese authorities argue that in the liquidation scenario it would be not possible to work out the loans and realise their book value, as it would not be possible to fund them given Portugal's serious financial situation. The Commission doubts that the Portuguese State, even in the current difficult circumstances, would be unable to fund EUR [...] billion of additional assets in order to avoid an immediate loss of 30-50% of that amount. It is also not clear how the EUR [...] million loans transferred to the SPVs are accounted for in the two scenarios.

(90) The Commission's doubts are compounded by the hypothesis surrounding the further EUR [...] million in assets that BIC has requested to transfer from BPN to the SPVs as part of the sale contract. Those loans cannot be of better quality than the EUR [...] billion in customer loans that BIC chose to retain. Portugal claims those loans are fully provisioned and will realise their book value over time. Therefore, no haircut is applied in either scenario.

(91) If the hypothesis applied to the EUR [...] million loans transferred to the SPVs were also applied to the remaining loans (so that all loans are transferred at their book value and realise their book value over time), that change in assumptions alone would alter the balance and make liquidation the cheaper option.

(92) Secondly, in the liquidation scenario, it is assumed that subordinated debt-holders (EUR 245 million) would be reimbursed in full, resulting in an outflow in row 5 of Table 1. The Commission has doubts about retaining that assumption. Indeed, there is no reason why in a liquidation scenario subordinated debt-holders would not participate in the losses of the liquidated concern as soon as equity is wiped out, and before any senior creditor suffers any loss. Portugal submits that many of the bondholders are small individual clients [...]. It is not for the Commission to comment on whether investors were [...] or not. Any such occurrence, however regrettable, would not change the ranking of the subordinated debt-holders in the liquidation scenario.

(93) Thirdly, the assumption that all deposits [...] will be fully repaid (and not only the credits *vis à vis* CGD, which are covered by a state guarantee) may not be strictly necessary within an ordinary liquidation scenario and would need to be further substantiated.

(94) Fourthly, the envisaged pricing of the credit line of between [EUR 150 and 350] million requested by BIC [...] , with a remuneration at Euribor flat, may involve additional costs, since the Commission doubts that it could be considered the market price.

(95) The Commission also questions whether all the costs set out in row 6 of Table 1 are relevant in either scenario - for example, the figures given for unemployment and tax benefits.

(96) Lastly, the precise values implied in those calculations need to be confirmed as the final conditions for the sale are not yet fully defined. The Commission cannot exclude at present that additional costs, which are not currently contemplated in the sale to BIC scenario, are properly accounted for.

(97) The Commission invites Portugal and any interested party to comment on the above and any other aspects of the comparison between the costs that would be sustained if the bank were liquidated and those envisaged in the sale scenario.

(ii) Own contribution/burden-sharing

(98) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to a minimum and to address distortions of competition and moral hazard.

(99) The Restructuring Communication indicates that, in order to keep the aid limited to a minimum, banks should first use their own resources to finance their 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.

(100) As regards BPN's contribution to financing the restructuring costs, the Commission observes that the shareholders of the credit institution lost ownership and that the banking business is to be sold via what started as a tender process, which should, in principle, minimize the costs for the State if the process is sufficiently competitive.

(101) As concerns the remuneration of the various aid measures, the Commission considers that the pricing of the state measures should, in principle, be market-oriented.

(102) In the case at issue, the remuneration for each of the aid measures is not in line with the relevant Commission Communications, as specified below in points 116 to 127.

<u>*Aid limited to the minimum*</u>

(103) As regards the limitation of the aid to the minimum, the Restructuring Communication indicates in point 23 that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.

(104) The Commission has insufficient information to confirm that the aid granted is limited to the minimum necessary. The Commission also questions whether aid was limited to the minimum since in an orderly liquidation of the bank scenario (see points 84-97 above) the State could have injected less aid.

(105) The Commission understands that, in addition to the measures granted to BPN before its sale, the prospective buyer is requiring, among other measures, a recapitalisation by the State to reach a capital level of between EUR [200 and 400] million. A capital injection of around EUR 600 million was already announced at the end of 2010 as the amount

necessary to cover losses and ensure a core tier 1 ratio of 9%. However, BIC's offer does not cover all of BPN's assets and liabilities. Taking into account the balance sheet adjustments proposed by BIC and the June 2011 BPN financial statements, BPN estimates that a recapitalisation of [between EUR 450 and 700] million would be necessary to achieve an equity value of [between EUR 200 and 400] million, leading to a core tier 1 ratio of [between 10% and 18%].

(106) According to Portugal, that level of capital is the result of BIC's own financial projections and sensitivity analysis, under which pessimistic scenarios were tested. The proposed equity of between EUR [200 and 400] million was the minimum level to provide BIC with the assurances needed to submit a binding offer for 100% of BPN shares.

(107) The Commission welcomes the fact that the latest draft of the sale agreement with BIC received by the Commission on 14 October 2011 includes a commitment by BIC not to distribute dividends or other equivalent benefits to shareholders in relation to BPN for a period of 5 financial years (see point 41 above). The purpose of that commitment is to ensure that the capital injected in BPN will not immediately leave the bank in the form of resources distributed to shareholders.

(108) In addition, regarding non-performing loans, the conditions for determining the transfer price are not clear at this stage.

(109) It should also be noted that, as indicated in point 41 above, the current version of the framework agreement on the reprivatisation of BPN (received by the Commission on 14 October 2011) provides for the maintenance of a credit line of [between EUR 150 and 500] million for the ongoing commercial paper programme bearing a personal state guarantee until [<2013]. This duration, if confirmed, would not be in line with the Banking Communication and the Commission's decision-making practice.

(110) As the Commission does not possess the final details of the transaction or BPN's viability plan after the purchase by BIC, the Commission cannot conclude that the amount of aid granted to BPN is the minimum necessary to ensure the viability of BPN and invites Portugal and interested parties to comment.

Own contribution – Moral hazard

(111) The bank and its shareholders should contribute to the restructuring as much as possible with their own resources. That contribution ensures that rescued banks bear adequate responsibility for the consequences of their past behaviour and creates appropriate incentives for their future behaviour.

(112) In the present case, the Commission welcomes the fact that the shareholders have lost all their stake in the bank without any compensation. It also welcomes the fact that BPN's board has been changed and replaced by the executives appointed by CGD as part of the nationalisation process.

(113) However, the Commission does not currently have sufficient information to conclude that subordinated bondholders have contributed sufficiently to the cost of restructuring. According to the information submitted by the Portuguese authorities, subordinated bondholders holding an amount of EUR 245 million will be maintained in the bank that is

being re-privatised and may continue to receive coupons. Portugal submits that many of the bondholders are small individual clients who might have purchased the subordinated debt under the impression that their capital was guaranteed.

(114) However, the Commission is of the initial view that subordinated debt holders did not significantly contribute to the cost of restructuring. The Commission therefore invites the Portuguese authorities and any interested party to provide further information.

(115) As concerns the remuneration of the various aid measures, the Commission notes that the remuneration for each of the aid measures is not in line with the relevant Commission Communications, as specified below in points 116 to 127.

State guarantees

(116) In relation to the pricing of the guarantee both on the commercial papers and on the loans, the Commission observed that the fee of 20 bps was below the level resulting from the application of the ECB's recommendation of 20 October 2008. The Commission therefore doubts that the remuneration of the guarantee provided by Portugal on the commercial papers and the loans is compatible with the internal market.

Impaired assets measure

(117) The Commission notes that the transfer of assets to the SPVs constitutes an asset relief measure. Asset relief measures by Member States, irrespective of their form, need to be assessed under the IAC.

(118) In the IAC, the Commission has provided guidance on the treatment of asset relief measures by Member States under Article 107(3)(b) TFEU. Impaired assets correspond to categories of assets on which banks are likely to incur losses. The Commission notes that the IAC covers any kind of support measures targeting impaired assets and subsequently providing effective asset relief to the recipient institution. The IAC defines asset relief as any measure whereby a bank is dispensed from the need for severe downward value adjustments of certain asset classes.

(119) Whilst the Commission acknowledges from a theoretical point of view that the transfer of assets to the three SPVs is intended to protect the BPN “good bank” against the risk of future devaluation of assets included in the portfolio, the Commission does not have complete and updated information to check whether all the conditions set out in the IAC are met.

(120) Firstly, the Commission does not yet know the total amount of assets that will be transferred to the SPVs, since more assets than originally planned may be transferred to the SPVs as a result of the final negotiations with BIC.

(121) As regards the eligibility of the assets, the IAC indicates in section 5.4 that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to the eligibility of the aid in order to ensure compatibility. At this stage the Commission does not have enough information on the final assets that will be transferred to the SPVs

in order to establish whether the eligibility criteria set out in section 5.4 of the IAC are met.

(122) Secondly, the Commission does not have sufficient information to determine the current real economic value of the whole portfolio. Therefore, at this stage the Commission has doubts regarding the compatibility of the measure.

(123) As regards ex-post burden-sharing, section 5.2 of the IAC provides that the bank should be requested to contribute to the loss or risk coverage by means of claw-back clauses or a first loss piece of at least 10% and a clause of residual loss-sharing of any additional losses of at least 10 %.

(124) In this context, the Commission points out that there is no indication that a claw-back clause is planned. The Commission consequently has doubts that the measures amount to proper burden-sharing in line with the IAC and reserves final judgement on compatibility until the real economic value has been properly established.

(125) As regards remuneration, point 21 of the IAC provides that correct remuneration is another element of the burden-sharing requirement. As noted in Annex IV, any pricing of asset relief must include remuneration for the State that adequately takes account of the risks of future losses exceeding those projected in the determination of the real economic value.

(126) Since no remuneration for the State seems to be envisaged, the Commission consequently has doubts about the compatibility of the measures with the IAC in terms of pricing.

<u>Capital injection</u>

(127) As for the capital injection into BPN (see point 59 above), the amount of which has not yet been finally established, it is clear that the recapitalisation does not include any remuneration that is in line with the Recapitalisation Communication. Indeed, the capital is injected with the aim of allowing the sale of the bank at a negative price.

Conclusion

(128) While the Commission welcomes the fact that shareholders have been completely eliminated and management has been replaced, it is not yet clear whether subordinated bondholders contributed sufficiently to the restructuring of BPN. In addition, the Commission has insufficient information to conclude whether the aid will be limited to the minimum necessary to ensure viability, in particular with reference to the amount of the capital injection.

(129) In addition, further aid, of an as yet unspecified amount, may need to be injected in the context of the sale.

(130) The Commission therefore invites Portugal and interested parties to comment on the above points.

(iii) Measures limiting the distortion of competition

(131) Under the Restructuring Communication, the restructuring plan is required to propose measures limiting distortions of competition and ensuring a competitive banking sector. In this context, the plan should also address moral hazard issues and ensure that state aid is not used to fund anti-competitive behaviour.

(132) Point 30 of the Restructuring Communication stipulates that the Commission's assessment must take into account the amount of aid and the conditions and circumstances under which it was granted and the effects on the market of the financial institution's position after restructuring. On the basis of that analysis, the Commission should verify that the potential distortion of competition arising from the aid is not disproportionate.

(133) On the basis of a preliminary analysis the total amount of aid is likely to be substantial.

(134) As regards the market, BPN was the seventh-largest financial institution in Portugal by balance sheet size at the end of 2008. Since its nationalisation, the bank has been reduced in size, in particular as a result of a deposit outflow, and since mid-2011 ranks 12th with a market share for both deposits and loans of around 1%.

(135) According to the information available to the Commission (see Table 2 below), deposits nearly halved in the period 2008-2010, while loans fell, mainly as a result of the transfer of bad loans to the SPVs for an amount of EUR 3.9 billion. The number of branches and the number of customers remained stable. However, as a result of the sale, the Commission notes that BPN will be part of BIC group and therefore its positioning on the market will be further modified.

Table 2: Key data of BPN

Item	*(unit)*	2007	2008	2009	2010	2010 pro forma
Loans and advances to customers	€ millions	3,725	4,403	4,574	3,497	3,135
Total assets	€ millions	5,861	6,554	6,843	4,762	4,400
Customer resources	€ millions	4,082	4,469	2,964	2,285	2,285
Funding by CGD	€ millions	0	1,455	4,195	1,146	504
Shareholders' equity	€ millions	-1,090	-1,859	-2,067	-2,182	345
Net interest income	€ millions	135	95	61	40	95
Net income	€ millions	-220	-560	-220	-102	-48
Transformation ratio	%	91.3%	98.5%	154.3%	153.0%	137.2%
NPL Ratio	%	1.2%	5.6%	15.3%	5.3%	2.1%
Branches(1)	#	208	213	215	216	216
Customers	#	231,919	263,741	302,610	306,609	306,609
Employees(2)	#	1,875	1,876	1,726	1,626	1,626

(1) Does not include 14 corporate offices and the External Financial Branch in the island of Madeira.
(2) The number of employees as of 30th April 2011 was 1,612.

Source: Investment Opportunity Overview, 20 May 2011. Data from BPN.

(136) The Commission has doubts whether the proposed measures are sufficient, bearing in mind the significant amount of aid and the fact that BPN has benefited from recapitalisation, guarantees and impaired asset measures which are not remunerated in accordance with the requirements of the Communications.

(137) In particular, the Commission notes that the bank will operate in the market with a core tier 1 capital of around [between 10% and 18%], which is far above the current minimum level of 9% by the end of 2011.

(138) In addition, BIC requested to transfer back to the State loans whose volume and type are still to be determined. BIC also reserves the right to transfer deposits with a pricing of [...] bps above the reference rate and the right to sell back within [...] months loans that are non-performing for at least [...] days (up to [...]% of the total nominal value of the loan portfolio).

(139) Given the tense situation in the market and the new tight conditions that Portugal has imposed on the banking sector since the signing of the MoU, the Commission invites any third party to indicate whether those elements would significantly affect the extent to which, after restructuring, BPN will be able to compete on the market with other players that did not receive state aid.

(140) Finally, the Commission also notes that any help in whatever form from the State in promoting BPN after its sale would result in a disruption of competition with other players.

Conclusion

(141) At present the Commission does have any information as to whether the measures taken can be considered sufficient to reduce distortions of competition to the maximum possible extent. The Commission therefore invites Portugal and third parties to comment on those issues.

<u>Conclusion of the restructuring plan</u>

(142) The recapitalisation and asset relief measures are granted for the purposes of restructuring BPN. Since its nationalisation, BPN has been under an obligation to present a restructuring plan, which was initially submitted on 14 September 2010 and which became obsolete following the recent events leading to the sale of BPN to BIC.

(143) Following Portugal’s submission of the Memorandum of 14 September 2010, it should be noted that any restructuring plan must be in line with the Restructuring Communication and must address, inter alia, the following issues:

- presentation and analysis of BPN’s business strategy and model - after the sale to BIC – taking into account its long-term viability in a reasonable timeframe so that it can continue to meet the credit needs of the economy, thereby underpinning economic recovery;
- an updated comparison of the liquidation and sale scenarios;
- minimisation of state aid, including ensuring the bank’s contribution to any restructuring costs that arise;
- minimisation of competition distortions as a consequence of the state measures; and
- a detailed timetable for the implementation of the different measures and a final deadline for implementation of the restructuring plan in its entirety.

(144) Finally, the Commission requires Portugal to provide, in addition to all documents already received, the information and data needed for the assessment of the compatibility of all the aid granted to BPN.

1.1. Conclusion

(145) In the light of the above, the Commission has decided to initiate the procedure laid down in Article 108(2) TFEU in order to examine the conditions of the restructuring plan and the sale process, and ascertain their compatibility with the internal market.

(146) The Commission currently has doubts as to whether: a) BPN, as an entity integrated with the purchaser, is viable and the sale was the least expensive option compared to a liquidation scenario; b) the aid granted to BPN is limited to the minimum; c) the measures limiting distortions of competition are sufficient; and d) the sale process entailed aid to the buyer. At present, the Commission therefore doubts whether the restructuring plan fulfils all the conditions laid down in the Restructuring Communication.

(147) Furthermore, the Commission will verify the conditions of the state aid already granted and the recapitalisation measure, the burden-sharing and the necessary measures to limit distortions of competition.

5. DECISION

In the light of the above, the Commission has decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the measures in favour of BPN and the reprivatisation of BPN, in order to verify whether the conditions of the Restructuring Communication regarding viability, burden-sharing and measures limiting the distortion of competition are met and whether there is aid to the buyer.

The Commission requires the Portuguese authorities to provide, in addition to all documents already received, information and data needed for the assessment of the compatibility of the aid.

In particular, the Commission wises to receive comments from the Portuguese authorities and third parties on the points on which it has raised doubts. The Portuguese authorities are requested to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Portugal that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the beneficiary.

The Commission advises Portugal that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32-2-296 12 42

For the Commission

Joaquín ALMUNIA

Vice-President