



EUROPEAN COMMISSION

Brussels, 28.11.2012
C(2012) 8762 final

**Subject: State aid n° SA.33734 (2012/N) – Spain
Restructuring of NCG**

Sir,

1 PROCEDURE

- (1) On 28 January 2010, the Commission adopted a decision not to raise objections to a recapitalisation scheme¹, set up and managed by the newly established “Fondo de Reestructuración Ordenada Bancaria” (“the **FROB**”)² 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 recapitalisation scheme**”).
- (2) On 29 June 2010, Spain informed the Commission that the FROB had decided to participate in the merger of two saving banks – Caixa de Aforros de Vigo, Ourense e Pontevedra and Caja de Ahorros de Galicia – to create Novacaixagalicia, with total assets of EUR 76.2 billion³. The FROB agreed to subscribe EUR 1 162 million of convertible preference shares in Novacaixagalicia pursuant to the terms of the FROB recapitalisation scheme.
- (3) On 29 June 2010, the Commission informed the Spanish authorities that it considered that the requirements of the FROB recapitalisation scheme were met for Novacaixagalicia to receive a capital injection in the form of convertible preference

¹ Case N 28/2010, OJ C57 of 09.03.2010, p. 2.

² After the enactment of Royal Decree Law 24/2012, the FROB has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit institutions. For this purpose, it may provide public support to distressed institutions. The FROB funds are contributed by the State Budget. Additionally, the FROB may obtain other funding (via issuance of securities, loans, credits or other debt transactions) up to the limit annually established in the State Budget. The maximum for 2012 amounts to EUR 120 billion.

³ As of 31 December 2009.

Excmo. Sr. D. José Manuel García-Margallo y Marfil
Ministro de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

shares from the FROB, concluding that, based on the Bank of Spain's ("BoS") assessment, the merging entity was fundamentally sound and its integration plan was viable, so that there was no need for a restructuring plan.

- (4) On 23 September 2011, the Spanish authorities notified the Commission of their intention to provide NCG Banco ("NCG"), the economic successor of Novacaixagalicia⁴, with a capital injection of EUR 2 465 million through the FROB. On 30 September 2011, the Commission approved the new capital injection for six months pending the notification of a restructuring plan.⁵ Spain notified a first restructuring plan on 30 March 2012.
- (5) On 20 July 2012, the Memorandum of Understanding on Financial Sector Policy Conditionality between the Kingdom of Spain and the Heads of State and Government of the Euro Area ("**the MoU**") was signed. The MoU sets a strict timeline for the recapitalisation and restructuring of the different groups of banks established on the basis of stress test results.⁶ In particular, for credit institutions controlled by the FROB, such as NCG, additional public capital will only be provided by the FROB once individual restructuring plans have been approved by the Commission. Furthermore, the MoU indicates that those restructuring plans will incorporate the results of the stress test exercise conducted by the independent consultants. Finally, the restructuring plans were to be presented in time to allow the Commission to approve them by the end of November 2012.
- (6) On 2 August 2012, the Spanish authorities submitted an amended outline of the restructuring plan for NCG to the Commission, which was discussed in a number of meetings and conference calls. Additional information exchanges took place frequently.
- (7) On 21 November 2012, Spain communicated the final content of the restructuring plan ("**the Restructuring Plan**"), including the final figures pertaining to the size, composition and valuation of the assets and credit portfolio to be transferred to an Asset Management Company ("AMC") in the context of an impaired asset measure. With regards to issues pertaining to the asset valuation methodologies employed in the context of the impaired asset measure, the Commission has drawn on technical assistance provided by independent experts.
- (8) Spain exceptionally accepts that the present decision be adopted in the English language.

⁴ See below in section 2.1.

⁵ Case SA.33096, second rescue recapitalisation of Novacaixagalicia, OJ C 41 of 14 2.2012.

⁶ On the basis of the stress test results and the recapitalisations plans, banks are categorised accordingly: Group 0 - banks for which no capital shortfall is identified and no further action is required; Group 1 - banks already owned by the FROB; Group 2 - banks with capital shortfalls identified by the stress test and unable to meet those capital shortfalls privately without having recourse to State aid; Group 3 - banks with capital shortfalls identified by the stress test with credible recapitalisation plans and which are, in principle, able to meet those shortfalls privately without recourse to State aid. Group 3 banks will be split into: (i) Group 3a - banks planning a significant equity raise (>2% Risk Weighted Assets - "RWA") and (ii) Group 3b - banks planning a less significant equity raise (<2%RWA). NCG was categorised as Group 1 bank.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiaries

- (9) Novacaixagalicia is a Spanish saving bank, registered with the BoS, which was created as a result of the merger between two Spanish savings banks (Caixa de Aforros de Vigo, Ourense e Pontevedra and Caja de Ahorros de Galicia).
- (10) Within the framework of the Spanish Royal Decree Law of 18 February 2011 (“**RDL 2/2011**”), Novacaixagalicia transferred, on 14 September 2011, its banking business to a newly established banking entity, NCG, a commercial bank registered with the BoS. The Obra Benéfico Social (“**OBS**”), a charitable institution, remained with Novacaixagalicia after this transfer.
- (11) Two separate levels of beneficiaries can be identified for the purposes of the present decision, namely: a) Novacaixagalicia, which initially owned 100% of NCG; and b) NCG, which exercises the banking activities. Following the conversion of the convertible preference shares held by the FROB into equity capital and the injection of new capital by the FROB into NCG (measures D and E described below), Novacaixagalicia's current stake in NCG will be consecutively reduced to zero.
- (12) NCG operates mainly in the Spanish region of Galicia, where it has a 44.3% market share. Its market share at a national level is around 2.82%. Traditionally, its focus has been on retail banking in Galicia and the surrounding regions of Leon and Asturias. Between 2002 and 2008, NCG's predecessors went through a period of geographical expansion and broadening of business activities, in particular real estate development, corporate banking and equity participations. Table 1 provides NCG's main financial figures.

Table 1: NCG's main financial figures

	31/12/2010	31.12.2011	31.12.2017
Total assets (billion EUR)	73.319	72.129	[30 - 40]*
Loans to customers (billion EUR)	52.284	47.427	[20 - 30]
Retail deposits (billion EUR) ⁷	38.730	36.434	[20 - 30]
Total wholesale funds (billion EUR)	30.106	30.904	[10 - 20]
Employees Total Group	10511	9842	[3 000 - 4 000]
Number of branches	1553	1222	[400 - 500]
National Market share in deposits	2.73%	2.64%	[0 - 5]%
Regional Market share in deposits	[30 - 40]%	[20 - 30]%	[20 - 30]%
National Market share in loans	2.66%	2.55%	[0 - 5]%
Regional Market share in loans	[20 - 30]%	[20 - 30]%	[10 - 20]%

* Business secret

⁷ Including SME and other corporate deposits.

2.2 The events triggering the measures

- (13) Following the outbreak of the financial crisis in 2008, the Spanish authorities laid down, via the Royal Decree Law 9/2009, the legal foundations for the restructuring of the Spanish banking sector. The savings banks (*cajas de ahorro*),⁸ which form a significant part of this sector, had several structural limitations, such as the legal restrictions on the raising of regulatory capital and, in some cases, weak corporate governance systems which prevented those institutions from detecting problems at an early stage.
- (14) Pursuant to this legislation, Novacaixagalicia benefited from a first capital injection in December 2010 in the form of convertible preference shares in the amount of EUR 1 162 million from the FROB to support the merger of the two founding savings banks and partially fund their restructuring. This aid measure was based on the FROB recapitalisation scheme. Under the terms of this scheme, beneficiaries committed to repurchase the convertible preference shares as soon as they are in a position to do so. At the end of the fifth year, those preference shares would have to be bought back or converted into ordinary shares of the beneficiary. In addition, should the Bank of Spain (“**BoS**”) consider a buy-back to be unlikely in light of the situation of the beneficiary (or its group), the FROB could convert the preference shares into ordinary shares (or its equivalent item) of the beneficiary at any time.
- (15) On 18 February 2011, the Spanish authorities adopted more stringent regulatory capital requirements for the entire banking sector, which, inter alia, obliged all credit institutions operating in Spain to meet, by 30 September 2011 at the latest, higher minimum regulatory solvency levels, known as "*capital principal*"⁹. On 10 March 2011, as a result of the new legislation, the BoS informed Novacaixagalicia that under the new regime it required EUR 2 622 million of additional capital in order to meet a 10% capital principal solvency ratio over its risk weighted assets (“**RWA**”).¹⁰
- (16) On 14 April 2011, the BoS approved a recapitalisation plan submitted by Novacaixagalicia, which included various strategies and measures to reach the new solvency levels by 30 September 2011. The plan incorporated some capital-generating organic measures that would reduce Novacaixagalicia's capital deficit from EUR 2 622 million to EUR 2 465 million.
- (17) In July 2011, Novacaixagalicia passed the European Banking Authority (**EBA**) stress test exercise with a core tier 1 ratio of 5.3%.
- (18) The recapitalisation plan of April 2011 for Novacaixagalicia envisaged a combination of private and public capital injections. However, since the envisaged

⁸ Cajas de Ahorro 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 OBS.

⁹ See Royal Decree Law 2/2011 of 18 February 2011: "Real Decreto-ley 2/2011, de 18 febrero para el reforzamiento del sistema financiero". The new legal framework established that by 30 September 2011 any credit institution without private investors holding at least 20% of its equity or with wholesale funding exceeding 20% of its financing needs had to meet a solvency level (defined as "capital principal"), set at 10% of its RWA. The new rule applies at consolidated and solo level.

¹⁰ According 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 on a consolidated and solo basis.

private strategic investors have not been able to complete their intended investments before the 30 September 2011 deadline, the FROB decided to close NCG's capital deficit by subscribing EUR 2 465 million of new ordinary shares. This recapitalisation was approved by the Commission on 30 September 2011.¹¹

- (19) On 28 September 2012, the results¹² of the bottom-up stress test and asset quality review conducted by an independent consultant, Oliver Wyman, in the context of the MoU ("**the MoU Stress Test**") revealed that NCG had a capital shortfall of EUR 7 176 million under the adverse scenario and EUR 3 966 million in the base case for the three year time horizon (2012-2014) of that exercise.
- (20) NCG faces important operational challenges stemming mainly from the expansion undergone by each of its two founding savings banks between 2002 and 2008. This expansion has *inter alia* resulted in high exposure to the real estate sector¹³, which has driven up its non-performing loans¹⁴, and a large reliance on wholesale funding with a loan-to-deposit ratio of [100 – 200]% as of 30 June 2012, which is predominately caused by the commercial gap of the branches in the regions outside NCG's traditional operating area. During the expansion phase, NCG also exposed itself to high risk corporate banking operations and participated in non-banking activities such as electric power generation.

2.3 Overview of the aid measures

- (21) Since 2010 NCG has benefitted or will benefit from several aid measures. Overall, Spain has provided or will provide capital injections totalling EUR 9052 million, transferred assets amounting to EUR [10 000 – 20 000] million gross (estimated EUR [6 000 – 7 000] million transfer price) to an AMC, and provided guarantees worth EUR [around 7 500] million. Table 2 provides an overview of these aid measures.

Table 2: Overview of the aid measures

Measure	Description	Amount (EUR million)	Approved by the Commission	% RWA ¹⁵
A	Guarantees	[around 7 500]	2009 - 2012	Not applicable
B and D	FROB I preference shares & conversion into equity	1 162	29.6.10 (in relation to their issuance)	2%

¹¹ Case SA.33096, second rescue recapitalisation of Novacaixagalicia, OJ C 41 of 14 2.2012.

¹² Ref. Oliver Wyman report, Asset Quality Review and Bottom-up Stress test exercise, 28 September 2012, <http://www.bde.es/bde/en/secciones/prensa/infointeres/reestructuracion/>

¹³ The overall exposure of NCG to the real estate sector represents [10 - 20]% of its balance sheet on 30 June 2012.

¹⁴ The non-performing loan ratio stood at [20 - 30]% on 30 June 2012.

¹⁵ Risk Weighted Assets (or RWA) as of the relevant reference date when the aid measure was granted.

C	Recapitalisation Measure (September 2011)	2 465	30.9.2011	4.67%
E	Recapitalisation measure (November 2012)	5 425	28.11.2012	12.6 %
F	Transfer of impaired assets	1 300	28.11.2012	3 %

2.3.1 Measure A: Guarantees on liabilities

- (22) Between 2009 and 2012, Novacaixagalicia and NCG have received guarantees on bonds issued under the approved Spanish guarantee scheme worth EUR [around 7 500] million.¹⁶

2.3.2 Measure B: FROB I preference shares

- (23) On 29 June 2010, the FROB decided to support the merger of the founding savings banks creating Novacaixagalicia by subscribing for EUR 1 162 million in newly issued convertible preference shares under the FROB recapitalisation scheme.¹⁷ The aid represented nearly 2% of Novacaixagalicia's risk weighted assets ("RWA") as of December 2009.
- (24) Under the terms the FROB recapitalisation scheme, these convertible preference shares had to be repurchased as soon as the beneficiaries were in a position to do so. At the end of the fifth year, these convertible preference shares had to be bought back or converted into ordinary shares of the beneficiary. In addition, should the BoS consider the buy-back to be unlikely in view of the situation of the beneficiary (or its group), the FROB could convert the preference shares into ordinary shares (or its equivalent item) of the beneficiary at any time.

2.3.3 Measure C: Recapitalisation of September 2011

- (25) Following the Commission's temporary approval of the September 2011 recapitalisation measure,¹⁸ which obliged Spain to submit a restructuring plan within six months of the approval decision, the FROB subscribed for EUR 2 465 million of new ordinary shares in NCG.

¹⁶ On 23 December 2008 the Commission approved a scheme for the creation of a debt guarantee scheme (State aid case NN 54b/2008 OJ C 122/2009 of 29.05.2009). On 16 April 2009, the Commission approved changes to that scheme. On 23 April 2009, a corrigendum was published in order to correct some translation and stylistic mistakes. The Scheme was extended five times for six-month periods (approved by the European Commission on 25 June 2009 (State aid case N 336/2009 OJ C 174/2009 of 28.07.2009), 1 December 2009 (State aid case N 588/2009 OJ C 25/2010 of 02.02.2010), 28 June 2010 (State aid case N 263/2010 OJ C 190/2010 of 14.07.2010), 29 November 2010 (State aid case N 530/2010 OJ C 7/2010 of 12.01.2011) and 1 June 2011 (State aid case SA.32990 2011/N OJ C 206/2011 of 12.07.2011)). On 9 February 2012, the Commission approved the reintroduction of a new debt guarantee scheme (State aid case SA.34224 2012/N OJ C 82/2012 of 21.03.2012) which was then prolonged up to 31 December 2012 by decision on 29 June 2012 (SA.34904 2012/N OJ C 232/2012).

¹⁷ The Commission adopted on 28 January 2010 a decision not to raise objections (case N 28/2010, OJ C 57, 9.3.2010, p. 2) on FROB as a recapitalisation scheme for fundamentally sound institutions.

¹⁸ Case Nr SA.33096, second rescue recapitalisation of Novacaixagalicia, OJ C 41 of 14 2.2012.

- (26) This capital injection represented 4.67% of NCG's RWA as of 31 December 2010 and brought its capital principal solvency ratio to 10%. As a result of this capital injection, the FROB obtained a 93.16 % stake in NCG (now diluted to 90.57% as a result of a number of sales to minority shareholders) and sits on its Board of Directors.

2.3.4 Measure D: Conversion of the FROB I convertible preference shares into equity

- (27) Due to the present circumstances on financial markets, the Spanish authorities have informed the Commission that the BoS considers it unlikely that NCG will redeem or repurchase the convertible preference shares within the period prescribed and that the FROB therefore intends to trigger the conversion option. In consequence, the FROB wishes to trigger the conversion option described in recital (24). Accordingly, the initial capital injection subscribed in 2010 by the FROB will be converted into equity.
- (28) The conversion will reinforce the capital position of NCG, as equity capital is junior to the convertible preference shares. In addition, NCG has asked for a new capital injection by the FROB (see measure E below).

2.3.5 Measure E: Recapitalisation of December 2012

- (29) Following the results of the MoU Stress Test and a series of measures proposed by the FROB, including a number of subordinated liabilities exercises and the transfer of some impaired assets and loans to an AMC forming part of the Restructuring Plan, an additional capital injection of EUR 5 425 million is still needed for NCG to meet the new Spanish regulatory solvency levels.
- (30) Accordingly the FROB, on the basis of the Restructuring Plan, will subscribe for EUR 5 425 million in ordinary shares issued by NCG. The FROB will contribute bonds issued by the European Stability Mechanism ("ESM") for an amount of EUR 5 425 million in consideration for the new shares in NCG.
- (31) Based on the initial best estimates provided by the Spanish authorities and pending the economic valuation of NCG, the FROB will control approximately [60 - 80]% of NCG as a result of measures D and E and the conversion of hybrid capital instruments into equity as described in the burden-sharing section.¹⁹

2.3.6 Measure F: The transfer of impaired assets to the Asset Management Company

a. Objective

- (32) NCG will benefit from an impaired asset measure whereby it transfers assets to the

Measures D and E will be executed in the following sequence: First, following a write-down of the existing capital to zero, the conversion of preference shares (measure D) will take place. Second, the new capital as described in measure E as well as the converted capital of the former holders of hybrid instruments will be injected (following possibly a mandatory SLE). This process will be finalised in December 2012.

AMC. The aim of this measure is to remove uncertainty about the future value of its most problematic asset portfolio and allow NCG to concentrate on the implementation of the Restructuring Plan.

b. AMC: Set up and characteristics

- (33) Under the terms of the MoU, assets related to real estate development of banks needing State aid will be transferred to the AMC, for which a blueprint and the legislative framework²⁰ was prepared by the Spanish authorities in consultation with the Commission, the European Central Bank (“**ECB**”), the ESM, and the International Monetary Fund (“**IMF**”).
- (34) The overall objective of the AMC will be the management and orderly divestment of the portfolio of assets and loans received, maximising their recovery over a maximum of 15 years. In pursuing this activity, the AMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.
- (35) The design of the AMC (including its legal and financial structure, operational model, and business and divestment plans) was conceived by the FROB in close collaboration with the BoS and the Ministry of Economic Affairs and Competitiveness (“**the MOF**”), as well as with the Commission, the ECB, the ESM and the IMF.
- (36) The volume of assets to be transferred to the AMC – taking into account only the portion corresponding to Group 1 banks following the classification pursuant to the MoU Stress Test – is estimated to be around EUR 45 billion. This amount will increase after the assets of the Group 2 banks are transferred. However, the maximum volume of impaired assets that Spanish banks can transfer to the AMC will in principle not exceed EUR 90 billion.
- (37) The own funds of the AMC, established as a limited liability company, will be approximately 8% of the volume of its total assets and its capital structure will consist of a non-majority holding of the FROB and a majority holding by private investors. This structure was chosen in order to prevent the consolidation of the overall debt of the AMC with the debt of the Spanish state.
- (38) As part of the AMC's governing bodies a so-called “Monitoring Committee” was established as part of the AMC's governing bodies, consisting of four parties (the MOF, the Ministry of Financial Affairs and Public Administration, the BoS and the CNMV²¹), with a mandate to oversee compliance with the general objectives for which the AMC was set up. The Committee’s functions include the analysis of the business plan and of possible deviations from it, the monitoring of divestment plans and of the repayment of guaranteed debt. The Monitoring Committee will ask the AMC for such periodic information as it considers appropriate for the carrying out of its task.

²⁰

Royal Decree-Law 24/2012 on credit institution restructuring and resolution specifies the details of the AMC.

²¹

The Spanish government agency responsible for regulating the securities market.

c. Scope of the transfer of impaired assets and loans

- (39) As envisaged in the MoU, all banks classified in Group 1, such as NCG, shall transfer the following categories of assets to the AMC, as from December 2012: a) foreclosed assets whose net carrying amount exceeds EUR 100 000; b) loans/credits to real estate developers whose net carrying amount exceeds EUR 250 000, calculated at borrower, rather than transaction, level; and c) controlling corporate holdings linked to the real estate sector.
- (40) The overall portfolio of impaired assets and loans to be transferred by NCG to the AMC amounts to EUR [10 - 20] billion (thereof [0 - 5] billion from Banco Gallego) in terms of gross book value. The value of the controlling corporate holdings linked to the real estate sector has been estimated based on the value of the underlying assets held by those holdings.
- (41) As a result of the asset transfer, the risk-weighted assets of NCG will be reduced by EUR [10 - 20] billion (thereof [0 - 5] billion for Banco Gallego).

d. Methodology for the calculation of the transfer value

- (42) The transfer value has been established on the basis of two components. First, the economic value of the assets was determined, both for the foreclosed assets and the loans related to the real estate development sector. Furthermore, for calculating the transfer value, the expected losses in the baseline scenario of the MoU Stress Test for NCG was used as a reference. The methodology of that valuation was endorsed by a dedicated group composed of the Spanish supervisory authority (the BoS), the Commission and the ECB, with the IMF acting as an observer.
- (43) Second, the estimate of the economic value was adjusted by applying a discount due to the characteristics inherent to the transfer of the assets to AMC. This is the result of aspects such as: a) the aggregate acquisition of the assets; b) the consideration of certain expenses previously borne by NCG, which must now be assumed by the AMC, such as asset management and administration costs, including financial costs; and c) the negative short-term outlook for divestment of the assets by the AMC. The methodology of this valuation has been endorsed by a dedicated group composed of the BoS, the Commission and the ECB, with the IMF acting as an observer.

e. Independent expert advice for the Commission

- (44) The Commission has relied on independent experts in order to assist it in the assessment of the proposed methodology and transfer price in connection with the real economic value of the transferred assets and the quantification of the market price of those assets, as laid down in its **Impaired Assets Communication**²², which serves as the reference framework for this measure.

²²

Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1-22

f. Purchase of those assets by the AMC

- (45) The AMC will pay NCG the established transfer value by State-guaranteed debt securities issued by the AMC (“**the AMC bonds**”). The AMC bonds have a one, two and three-year maturity, with an average weighted life of 1.95 years. The foreseen yield on the AMC bonds will be the lower of: a) the Spanish government bond yield for the same maturity or b) 12 month Euribor plus 200 basis points (bps).

g. The transfer value

- (46) Based on the methodology and discounts described in recitals (42) and (43), the transfer value of the assets of NCG amounts to EUR [5 - 10] billion, which is equal to [40 - 50]% of the gross book value of those assets as of 30 June 2012. These figures are an estimate based on the situation of those assets as of 30 June 2012. It is possible that the final figures could differ from these levels as the transfer will only take place in December 2012.
- (47) The Spanish authorities have provided a letter from the BoS certifying the detailed results and solvency effects of the asset transfer to the AMC by NCG.

h. Market price

- (48) According to Spain, the market value of the transferred portfolio is [30 - 40] % of the transferred nominal amount and thus amounts to EUR [0 - 5] billion

3 RESTRUCTURING OF NCG

- (49) The Restructuring Plan states that, in accordance with Royal Decree Law 24/2012 and in view of: a) its significant capital shortfall as revealed in the MoU Stress Test; b) the considerable amount of State aid already received since 2010; and c) the low probability that the NCG is able to fully repay the public funds granted through the various aid measures proposed in the Restructuring Plan, NCG will be placed under resolution under the meaning of that Royal Decree Law.
- (50) Accordingly, the Spanish authorities will carry out an in-depth restructuring of NCG’s activities as set out in the Restructuring Plan with a view to selling it as soon as market conditions permit and within a maximum of five years, failing which, NCG will be placed under orderly resolution in accordance with Royal Decree Law 24/2012 .
- (51) The commitments by the Spanish authorities have been presented in a separate document entitled: "*Term Sheet of NCG Banco S.A.* " (hereinafter referred to as "**the Term Sheet**", annexed to the present decision)²³.

²³

See Annex.

3.1 Restoration of viability through refocusing on the core activities of NCG followed by the sale of the bank

(52) Table 3 below presents the main financial projections contained in the Restructuring Plan for NCG ("the Summary Table")²⁴:

P&L	1H12		2012		2013		2014		2015		2016		2017		Evolution rate 2012-2017	
	Core	Total	Core	Total	Core	Total	Core	Total	Core	Total	Core	Total	Core	Total	Core	Total
Profit before tax	[200 - 300]	[-2000 - 1000]	[-800 - 700]	[-8,000 - 7,000]	[10 - 20]	[10 - 20]	[50 - 60]	[30 - 40]	[100 - 200]	[100 - 200]	[200 - 300]	[200 - 300]	[200 - 300]	[200 - 300]	NA	NA
Cost of Income Ratio	[40-50]%	[60 - 70]%	[40 - 50]%	[60 - 70]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[40 - 50]%	[50 - 60]%	[50 - 60]%	[5 - 10]%	[-30 - 20]%
FTE	[4,000 - 5,000]	[6,000 - 7,000]	[3,000 - 4,000]	[5,000 - 6,000]	[3,000 - 4,000]	[5,000 - 6,000]	[3,000 - 4,000]	[4,000 - 5,000]	[2,000 - 3,000]	[3,000 - 4,000]	[2,000 - 3,000]	[3,000 - 4,000]	[2,000 - 3,000]	[3,000 - 4,000]	[-30 - 20]%	[-50 - 40]%
Branches	[600 - 700]	[800 - 900]	[600 - 700]	[800 - 900]	[500 - 600]	[600 - 700]	[400 - 500]	[500 - 600]	[400 - 500]	[400 - 500]	[400 - 500]	[400 - 500]	[400 - 500]	[400 - 500]	[-40 - 30]%	[-50 - 40]%
ROE	[5 - 10]%	[-400 - 300]%	[-40 - 30]	[-100 - 200]	[0 - 5]	[0 - 5]	[0 - 5]	[0 - 5]	[5 - 10]	[0 - 5]	[10 - 20]	[5 - 10]	[10 - 20]	[5 - 10]	NA	NA
Balance sheet	1H12		2012			2015			2017			Evolution rate 2012-2017			CA	
Assets	Total	Core	Non-core	Total	Core	Non-core	Total	Core	Non-core	Total	Core	Non-core	Total	Core	Non-core	Total
Loans to clients (net)	[40,000 - 50,000]	[10,000 - 20,000]	[20,000 - 30,000]	[30,000 - 40,000]	[10,000 - 20,000]	[10,000 - 20,000]	[20,000 - 30,000]	[10,000 - 20,000]	[8,000 - 9,000]	[20,000 - 30,000]	[10,000 - 20,000]	[7,000 - 8,000]	[-30 - 20]%	[-5 - 0]%	[-60 - 50]%	[-10 - 5]%
NPLs	[9000 - 10 000]	[500 - 1,000]	[8,000 - 9,000]	[8,000 - 9,000]	[3,000 - 4,000]	[4,000 - 5,000]	[100 - 200]	[100 - 200]	[0 - 5]	[30 - 40]	[30 - 40]	[0 - 5]	[-100 - 90]%	[-100 - 90]%	[-100 - 90]%	-0.66828604
Total assets *	[60,000 - 70,000]	[20,000 - 30,000]	[30,000 - 40,000]	[60,000 - 70,000]	[20,000 - 30,000]	[30,000 - 40,000]	[40,000 - 50,000]	[20,000 - 30,000]	[20,000 - 30,000]	[30,000 - 40,000]	[20,000 - 30,000]	[10,000 - 20,000]	[-40 - 30]%	[-20 - 10]%	[-60 - 50]%	[-10 - 5]%
RWA	[40,000 - 50,000]	[10,000 - 20,000]	[30,000 - 40,000]	[20,000 - 30,000]	[10,000 - 20,000]	[10,000 - 20,000]	[20,000 - 30,000]	[10,000 - 20,000]	[10,000 - 20,000]	[10,000 - 20,000]	[10,000 - 20,000]	[8,000 - 9,000]	[-40 - 30]%	[-10 - 5]%	[-60 - 50]%	[-10 - 5]%
Liabilities	1H12		2012			2015			2017			Evolution rate 2012-2017			CA	
Central bank	[10,000 - 20,000]	[0 - 5]	[10,000 - 20,000]	[10,000 - 20,000]	[0 - 5]	[10,000 - 20,000]	[10,000 - 20,000]	[0 - 5]	[10,000 - 20,000]	[4,000 - 5,000]	[0 - 5]	[4,000 - 5,000]	[-70 - 60]%	NA	[-70 - 60]%	[-20 - 10]%
Liabilities to clients	[30,000 - 40,000]	[20,000 - 30,000]	[40,000 - 50,000]	[20,000 - 30,000]	[20,000 - 30,000]	[4,000 - 5,000]	[20,000 - 30,000]	[20,000 - 30,000]	[0 - 5]	[20,000 - 30,000]	[20,000 - 30,000]	[0 - 5]	[-30 - 20]%	[-20 - 10]%	[-100 - 90]%	[-10 - 5]%
Total Liabilities*	[60,000 - 70,000]	[20,000 - 30,000]	[30,000 - 40,000]	[60,000 - 70,000]	[20,000 - 30,000]	[30,000 - 40,000]	[40,000 - 50,000]	[20,000 - 30,000]	[20,000 - 30,000]	[30,000 - 40,000]	[20,000 - 30,000]	[10,000 - 20,000]	[-40 - 30]%	[-20 - 10]%	[-60 - 50]%	[-10 - 5]%
LTD	[1 - 1.5]	[0.5 - 1]	[5 - 5.5]	[1 - 1.5]	[0.5 - 1]	[3.5 - 4]	[1 - 1.5]	[0.5 - 1]		[1 - 1.5]	[0.5 - 1]		[5 - 10]%	[10 - 20]%	[-100 - 90]%	[0 - 5]%
EBA CT1*	[2,000 - 3,000]	[2,000 - 3,000]	[2,000 - 3,000]	[2,000 - 3,000]	[1,000 - 2,000]	[2,000 - 3,000]	[2,000 - 3,000]	[1,000 - 2,000]	[2,000 - 3,000]	[3,000 - 4,000]	[1,000 - 2,000]	[3,000 - 4,000]	[10 - 20]%	[-10 - 5]%	[10 - 20]%	[0 - 5]%
Basel III CET1*	[2,000 - 3,000]	[2,000 - 3,000]	[2,000 - 3,000]	[2,000 - 3,000]	[1,000 - 2,000]	[2,000 - 3,000]	[2,000 - 3,000]	[1,000 - 2,000]	[2,000 - 3,000]	[2,000 - 3,000]	[1,000 - 2,000]	[2,000 - 3,000]	[-30 - 20]%	[-10 - 5]%	[-30 - 20]%	[-5 - 0]%
EBA Core Tier 1 Ratio	[5 - 10]%	[10 - 20]%	[5 - 10]%	[5 - 10]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[5 - 10]%	[20 - 30]%	[10 - 20]%	[5 - 10]%	[30 - 40]%	[70 - 80]%	[-5 - 0]%	[100 - 150]%	[10 - 20]%
Basel III Common Equity Ratio	[5 - 10]%	[10 - 20]%	[5 - 10]%	[5 - 10]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[5 - 10]%	[10 - 20]%	[10 - 20]%	[5 - 10]%	[20 - 30]%	[10 - 20]%	[-5 - 0]%	[50 - 60]%	[0 - 5]%

²⁴

In this table "Non-core" stands for the Legacy Unit. "Branches" in the non-core include service locations, as defined in the Term Sheet, section 2.

- (53) According to the Restructuring Plan, the foremost measure to achieve the intended deep structural change is an analytical split of NCG's activities into two separate units: namely, a Core Unit and a Legacy Unit. The Core Unit and the Legacy Unit will remain within the same legal entity, but will be managed differently.
- (54) The Core Unit will form the basis of a sound and viable bank. It will focus on NCG's retail business, which is located in its core region of Galicia, Leon and Asturias (“**the core region**”). The detailed description of the assets and liabilities within the Core Unit is set out in the Term Sheet annexed to the present decision.²⁵
- (55) The Legacy Unit will include the businesses, assets and liabilities that will be discontinued and will be sold, closed or held to maturity as set out in the Term Sheet. The Legacy Unit contains the banking business which is not included in the Core Unit (e.g. the entire banking business outside the Core region, and, in particular real estate development and capital market activities). The assets and liabilities set out in the Term Sheet annexed to the present decision²⁶ shall be allocated to the Legacy Unit.
- (56) As illustrated in the Summary Table, NCG's balance sheet will be reduced by [30 - 40]% between 2012 and 2017, as illustrated in the Summary Table, mainly due to a decrease in the loans portfolio of [20 - 30]%, a reduction in Eurosystem funding of [60 - 70]% and a decline in deposits of [20 - 30]%. If added to previous restructuring efforts (2010-2012), this represents a total reduction of the balance sheet by [50 - 60]%.
- (57) As explained in recitals (32) to **Error! Reference source not found.**, NCG will transfer impaired assets and loans to the AMC with a gross value of EUR [10 - 20] billion, which implies a reduction in its RWAs of EUR [10 - 20] billion.
- (58) NCG will also fully write down its stake in Banco Gallego by 31 December 2012 and has committed not to increase its current exposure to this bank.²⁷ Banco Gallego will be sold by [...] at the latest.²⁸
- (59) NCG will further close and/or sell its business outside its Core region. The intended branch and staff adjustments will lead to a reduction between 2012 and 2017 of [40 - 50]% in branches and [40 - 50]% in staff, which, if added to previous restructuring efforts (2010-2012), represents a total [60 - 70]% closure of branches and [60 - 70]% reduction in staff since the restructuring of NCG started.
- (60) In addition to these measures, the total balance sheet of NCG will be reduced as a result of divesting the portfolio of industrial stakes.²⁹
- (61) Accordingly, the volume of RWA in NCG will fall by [30 - 40]% by the end of 2017 (as compared to 2012), which, if added to previous restructurings, represents a net

²⁵ See Annex: Term Sheet paragraph 5.1.1

²⁶ See Annex: Term Sheet paragraph 5.2.1

This is without prejudice of EUR 80 million share capital increase in Banco Gallego foreseen by 27 December 2012 by means of capitalising a loan it holds against the latter.

Should the sale not succeed by that date, Banco Gallego will stop any new business/loan production starting from [...] and be orderly wound down up.

²⁹ See Annex: Term Sheet paragraph 5.2.5

reduction of [60 - 70]% from 31 December 2010.

- (62) Following this deep restructuring, NCG projects to post profits before tax in 2017 of EUR [200 - 300] million (compared to a EUR 7 996 million loss in 2012), a cost-of-income ratio of [50 - 60]% (compared to [60 - 70]% in 2012) and capital ratios according to EBA (core tier 1) and Basel III (common equity tier 1) rules of [10 - 20]% and [10 - 20]% respectively (compared to [5 - 10]% on 31 December 2012).

3.1.1 Core Unit

- (63) As illustrated in the Summary Table, due to a decrease in the loan portfolio of [0 - 5]% and a decline in deposits of [10 - 20]%, the balance sheet of the Core Unit will be reduced by [10 - 20]% between 2012 and 2017. This decrease is achieved through significant deleveraging through marginal new mortgage lending and new lending predominately to small and medium enterprises (“SMEs”), corporates, and consumers.
- (64) As explained above, as part of this restructuring, NCG will refocus on its Core Region, which will lead to additional branch and staff adjustments in its branch network and central services. These measures involve the reduction of [30 - 40]% in branches and [20 - 30]% in staff in the Core Unit between 2012 and 2015.
- (65) Accordingly, the volume of RWAs in the Core Unit will be reduced by [5 - 10]% between 2012 and 2017.
- (66) That comprehensive rebalancing in the structure of NCG’s balance sheet will bring the Core Unit’s business loan-to-deposits ratio to [80 - 90]% in 2017.
- (67) This deep restructuring will enable the Core Unit to reach a profit before tax of EUR [200 - 300] million in 2017 (compared to a EUR [700 - 800] million loss in 2012), a cost of income ratio of [50 - 60]*% (compared to a [40 - 50]% in 2012) and capital ratios according to EBA (core tier 1) and Basel III (common equity tier 1) rules of [10 - 20]% and [10 - 20]% respectively.

3.1.2 Legacy Unit

- (68) As recorded in the Term Sheet, the Legacy Unit encompasses all banking activities outside NCG’s Core region, real estate development and capital market activities.
- (69) The size of the balance sheet of the Legacy Unit will be reduced by [50 - 60]% between 2012 and 2017, to stand at a maximum level of EUR [10 - 20] billion (EUR [5 - 10] billion RWA) in 2017.³⁰
- (70) The assets in the Legacy Unit will be managed with the objective of being divested, liquidated or wound down in an orderly manner, but minimizing the cost for taxpayers. As a general rule, assets assigned to the Legacy Unit will be sold as

³⁰ See Term Sheet paragraph 5.2.2

quickly as possible and whenever the sale does not lead to having to book a loss.³¹

- (71) The total book value of equity holdings/subsidiaries in the Legacy Unit will amount to EUR [0 - 5] billion. NCG will sell its listed and unlisted equity holdings/subsidiaries following the calendar recorded in the Term Sheet.
- (72) The Legacy Unit's structure will be reduced to no commercial branches by [...] and to [500 - 600] employees before the end of [...], and will not increase thereafter.³² The employees remaining in the Legacy Unit will be dedicated to the working out of the assets transferred to the AMC ([100 - 200] employees) and to the working out of the legacy assets remaining on the Legacy Unit ([400 - 500] employees). That remaining headcount of the Legacy Unit will be reduced as soon as the assets under management are amortised or have been disposed of.
- (73) As a general rule, there will be no new production in the Legacy Unit branches except in the cases set out in the Annex, based on strict limitations on new lending, new deposits, transactional products and the management of the existing assets.³³

3.2 Contribution to the restructuring costs of NCG

- (74) In accordance with the MoU and Royal Decree Law 24/2012, prior to benefiting from State aid, aided banks shall conduct burden sharing exercises on existing shareholders, and on holders of preference shares and subordinated (both perpetual and dated) debt instruments so as to, inter alia, maximise the loss-absorption capacity of the aided bank.

3.2.1 Burden sharing on existing shareholders of NCG

- (75) The conversion of the convertible preference shares issued to the FROB in 2010 and the new capital injection mean that the old owners of NCG shares will lose all economic claims and other rights over NCG.

3.2.2 Subordinated Liability Exercise in NCG

- (76) In view of the significant losses posted and forecasted by NCG for 2011 and 2012 and pursuant to the MoU, holders of preference shares and perpetual/dated subordinated debt instruments will contribute to the adequate recapitalisation of NCG in two different ways:
- First, the securities shall be bought back by the issuing banks at their net present value, calculated in accordance with the methodology set out in the Term Sheet, which implies deep discounts from the nominal value of the instruments. This action will generate immediate capital gains for NCG estimated at EUR [500 – 1 000] million that will significantly reduce its needs to raise new capital.

³¹ See Term Sheet paragraph 5.2.5

³² See Term Sheet paragraph 5.2.3 and 5.2.5

³³ See Term Sheet paragraph 5.2.4

- Second the proceeds of the buy-back will automatically take the form of ordinary shares (or other equity-equivalent instruments) of NCG with the sole exception of dated subordinated debt whose holders will be afforded the opportunity to convert into a more senior debt instruments, as described in the Term Sheet³⁴, in addition to the possibility to also convert into ordinary shares or other equity-equivalent instruments. The conversion into core capital will further reduce the needs of NCG to raise new capital by EUR [1 000 – 3 000] million, while, at the same time providing holders of those securities with the potential upside in value of that security that should materialise upon the implementation of the Restructuring Plan.

(77) Consequently, as a result of the burden sharing exercise, there will be no cash outflow from NCG to the holders of these securities with the sole exception of the holders of dated subordinated debt instrument who decide to convert their shares into new debt securities of the same maturity.

(78) The economic rights of the new shares in NCG will be allocated, following an independent economic valuation of NCG, in proportion to the value established by said valuation following the new recapitalisation.. Based on the initial best estimates provided by the Spanish authorities and pending the economic valuation of NCG, the FROB will hold approximately an [60 - 80]% stake in NCG as a result of measures D and E and the conversion of hybrid capital instruments into equity as described in the burden-sharing section.

3.3 Sale of the Bank

(79) Spain will dispose or procure the disposal of NCG or the Core Unit.

(80) The sale will be conducted through a competitive tender process, with the objective to minimize the cost to taxpayers.

(81) To carry out this disposal, Spain will start approaching potentially interested buyers for the Bank by the end of [...] at the latest. It will use its best efforts to sign a sale and purchase agreement with a prospective purchaser by no later than the end of [...].

(82) If Spain has not entered into such an agreement by the end of [...], it will appoint a divestiture trustee (“**the Divestiture Trustee**”) with the exclusive mandate to sell the Core Unit and any other legacy commercial activity of the Bank considered relevant by the potential buyer, [...].

(83) By the end of [...], the Divestiture Trustee will propose a selected buyer or communicate the impossibility of selling the Bank’s Core Unit, [...].

(84) Spain is entitled to reject the buyer proposed by the Divestiture Trustee. In this case or in the event that is not possible to sell the Bank, Spain will present a resolution

³⁴ See Term Sheet paragraph 5.2.3 and 5.2.5

plan for the Core Unit within the three months following the announcement by the Divestiture Trustee of the results of its mandate.

- (85) Should the buyer of the Bank consider it necessary to modify certain aspects and conditions of the Restructuring Plan, Spain commits to notify a new restructuring plan to the Commission detailing the necessary changes and justifying how the overall proportionality of the aid is in any event respected.

4 POSITION OF THE SPANISH AUTHORITIES

4.1 Position of the Spanish authorities on the Restructuring Plan

- (86) The Spanish authorities accept that the measures A through F 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 to remedy a serious disturbance in the Spanish economy.
- (87) 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.
- (88) *Appropriate and well-targeted.* The Spanish authorities submit that NCG is important within the Spanish financial system, especially in its Core region.³⁵
- (89) *Necessary and limited to the minimum amount.* The Spanish authorities submit that the measures proposed are required to bring NCG's solvency position in line with the new solvency requirements in Spain. In addition, the measure is limited in size to what is necessary to ensure that the NCG meets a solvency ratio of 9% Core Tier 1 of its risk weighted assets as required by the Spanish banking rules and of 6% Core Tier 1 under an adverse scenario, as determined in the MoU Stress Test.
- (90) *Proportionate.* The Spanish authorities submit that the terms and conditions of the proposed measures together with the terms and conditions imposed on NCG as set out in the Term Sheet contain an extensive range of safeguards against possible abuses and distortions of competition.

4.2 Commitments of the Spanish Authorities

- (91) The Spanish authorities have undertaken a number of commitments related to the implementation of the Restructuring Plan. The commitments by the Spanish authorities have been presented in the Term-Sheet.³⁶ The Spanish authorities commit to comply with the commitments listed in the Term-Sheet, if necessary, by ensuring that NCG complies with the said commitments.

³⁵

NCG market share in deposits in the region where it operates is currently approximately [20 - 30]%.
³⁶

See Term Sheet.

- (92) In the event that market conditions allow for a sale of NCG before the Restructuring Plan is completed and should the buyer of NCG consider it necessary to modify certain aspects and conditions of the Restructuring Plan, Spain commits to notify a new restructuring plan to the Commission detailing the necessary changes and justifying how the overall proportionality of the aid is in any event respected.
- (93) Furthermore, in order to ensure that the various commitments are duly implemented during the implementation of the restructuring plan, the Spanish authorities commit to the appointment of a monitoring trustee in charge of monitoring all the commitments undertaken by the Spanish authorities and NCG towards the Commission ("**the Monitoring Trustee**"). The Monitoring Trustee will be appointed by NCG, and must be endorsed by the Commission. The Monitoring Trustee must be independent of NCG and be remunerated by NCG. The Monitoring Trustee will report to the Commission.
- (94) In case the sale of the Bank has not been completed by the end of [...],³⁷ a Divestiture Trustee will be appointed, in line with the provision of the Term Sheet.

5 ASSESSMENT

5.1 Existence of State Aid

5.1.1 Overview - measures already temporarily approved / not approved

- (95) With regard to the measures temporarily approved by the Commission as rescue aid in earlier decisions or under a scheme (namely measures A to C), the Commission has already concluded that these measures constitute State aid in favour of Novacaixagalicia and NCG. As a consequence, it is not necessary to reassess whether these measures constitute State aid under the present decision.
- (96) The measures which need to be assessed for State aid under this decision are measures D, E and F.
- (97) According to Article 107(1) TFEU 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 observes that the Spanish authorities do not dispute that measures D through F constitute State aid.
- (98) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

5.1.2 State resources and imputability

- (99) The Commission recalls at the outset that the FROB, the intervening authority

³⁷ See recital (81).

providing the measures, is directly financed through State resources and its decisions are directly imputable to the State. The FROB essentially acts as the prolonged arm of the State. The Commission therefore considers that the recapitalisation measures (measures D and E) are financed by State resources.

- (100) As regards the transfer of assets to the AMC (measure F), while the capital structure of the AMC will consist of a majority holding by private investors, the Commission nevertheless considers the impaired asset measure to involve State resources. First, the AMC was set up for a public policy objective, namely to help troubled Spanish banks by transferring their most risky assets off their balance sheet and thus by helping them implement their restructuring plans. That genesis in public policy considerations is also underlined by the fact that the AMC was set-up between the Spanish authorities and its international partners as a result of the MoU and the special legal setting implemented by the Spanish authorities for the AMC. Second, the FROB will be the single largest investor in the AMC and the bonds issued by the AMC will be guaranteed by the State. Without that State guarantee, the measure could not be financed. Indeed, the amount of own funds invested by private investors is very small when compared to the amount of State guaranteed bonds. Third, the Spanish public authorities will keep high degree of oversight over the AMC's decisions and overall management issues. Therefore, the AMC's shareholding structure does not contradict the fact that measure F is imputable to the State and constitutes State resources.

5.1.3 *Advantage*

- (101) As regards measure D – the conversion of convertible preference shares into ordinary shares – the Commission recalls that it considered the original recapitalisation measure (measure B) as State aid. Although this conversion does not affect the nominal amount of the aid initially granted, it does change the nature of the measure and thereby confers an advantage on NCG. The new capital is more junior and therefore of a higher quality than the initial injection in terms of loss absorption. Moreover, unlike the convertible preference share that had a fixed coupon, the remuneration for the new equity is decided by NCG and has therefore become more uncertain. Consequently, measure D can be considered as Core Tier 1 capital, unlike measure B. That change in nature clearly provides an advantage to NCG, considering the current financial market environment where market participants are especially focussed on the capital quality and amount of Core Tier 1 capital held by banks. The Commission also agrees with the assessment of the Spanish authorities that the conversion of preference shares cannot be seen in isolation when assessing the issue of aid. Instead, it must be seen in the context of the additional capital injection (measure E). This lends further support to the analysis that the conversion confers an advantage on the Bank as well.
- (102) As regards measure E – the additional recapitalisation measure – it allows NCG to cover further losses and remain above the minimum solvency ratio under the adverse

case. In view of the large amount of aid and the comparatively limited expected profitability of NCG, it is doubtful whether this additional capital injection will be remunerated in line with market terms and, in the current circumstances, that it would have been available on the market.

- (103) Finally, as regards measure F – the transfer of assets to the AMC – NCG receives a clear advantage in that its most risky portfolio is transferred off its balance sheet, thus avoiding the consequences (i.e. additional provisions, management of the assets, etc.) of potential future losses on those assets. The transfer of impaired assets will be EUR [10 - 20] billion.
- (104) Moreover, point 15 of the Impaired Assets Communication provides that public asset relief measures are considered State aid if the impaired assets are purchased at a value above the market price. Since the transfer price will be greater than the current market value of NCG's portfolio, it therefore confers an advantage on NCG.
- (105) It should also be noted that the AMC cannot be considered as a market investor. The fact that private investors take part in the equity of the AMC does not alter that conclusion. Current market circumstances are such that purchases of such a large amount of assets under market conditions can only happen if the purchaser receives vendor financing, i.e. that the purchase price is financed by the selling entity. In the present instance, the bank will not, however, be providing vendor financing. Furthermore, private investors are purchasing such assets only at very low prices (i.e. fire-sale conditions), given the uncertainty surrounding their value. Those low prices are due to liquidity constraints affecting the European financial system, particularly prevalent in Spain at the moment.
- (106) In fact, the transfer price of the assets, while conservative and below the real economic value, is still above the market price that a private investor would have been willing to pay for those assets. It can therefore be excluded that a market economy investor would have purchased the proposed assets out of private funds on a comparable scale and on similar terms
- (107) For these reasons, the Commission agrees with Spain that measure F would not have been provided by a market economy investor expecting a reasonable return on his investment, particularly in the light of the overall volume of the intervention and given the current market circumstances.

5.1.4 Selectivity

- (108) Since measures D, E and F are exclusively addressed to NCG (or Novacaixagalica, respectively), they should be considered selective in nature.

5.1.5 Distortion of competition and effect on trade between Member State

- (109) The Commission finds that the measures potentially distort competition as they allow NCG to obtain the capital necessary to avoid technical insolvency (in the adverse case), and thereby prevent its exit from the market.

- (110) The Commission also considers that the measures are likely to affect trade between Member States because NCG continues to compete on the Spanish retail market, the mortgage lending markets and the commercial lending markets. In all those markets, some of NCG's competitors are subsidiaries and branches of foreign banks.
- (111) Thus, the measures strengthen the competitive position of NCG vis-à-vis its competitors in Spain and in other Member States.

5.1.6 Beneficiaries of the aid

- (112) As described in recital (12), NCG is the economic successor of Novacaixagalicia, which transferred its entire banking business to NCG and retained only its ownership over OBS and a stake in NCG. It is evident that NCG benefits from all the measures, as its banking business could not have continued without aid from Spain. As for Novacaixagalicia, it is clear that it derived a benefit from the aid it was initially granted (measures A and B, in particular). Following measures D and E, which will lead it to lose its stake in NCG, Novacaixagalicia no longer benefits from aid measures granted to NCG.
- (113) As regards the position of the founding saving banks as beneficiaries of State aid, this has evolved significantly since the first measures were granted in 2010. While the saving banks initially maintained full ownership and structural links with the banking activities of the Group, successive legal and corporate changes increasingly broke those links.
- (114) The founding saving banks have completely exited banking activities. Their activities are currently limited to charitable activities. In terms of burden sharing, they have released any ownership right in NCG, and will not recover any in the future. All the assets and resources they have maintained stem from and are directed to the exercise of these charitable activities. Since they have lost control over NCG and completely exited banking activities, the distortion of competition for the measures benefitting them has been minimised.

5.1.7 Conclusion

On the basis of the forgoing, the Commission considers that measures D, E and F fulfil the conditions laid down in Article 107(1) TFEU and that these measures therefore constitute State aid within the meaning of that provision. The Commission also recalls that it had already found measures A, B and C to constitute State aid within the meaning of Article 107(1) TFEU in previous decisions.

5.2 Amount of aid

5.2.1 Guarantees of liabilities (measure A)

- (115) NCG and Novacaixagalicia received total guarantees on liabilities worth EUR EUR [around 7 500] million.

5.2.2 *Recapitalisations and conversion (measures B, C, D and E)*

(116) NCG and Novacaixagalicia have received or will receive recapitalisations of approximately EUR 9 052 million. The Commission considers the aid element in the recapitalisation to be up to 100% of the nominal amount and, hence, concludes that the recapitalisation measures and the conversion entail aid of an amount up to EUR 9 052 million.

5.2.3 *Impaired asset measure (measure F)*

(117) As regards the aid amount included in the impaired asset measure, namely the transfer of assets to the AMC, it should be noted that footnote 2 to paragraph 20(a) of the Impaired Assets Communication defines the aid amount in an asset relief measure as the difference between the transfer price of the assets and the market price. As regards NCG, the transfer price is EUR [5 - 10] billion, while the market price is estimated at EUR [0 - 5] billion.

(118) Consequently, the aid granted to NCG as a result of the impaired asset measure amounts to EUR 1.3 billion.

5.2.4 *Conclusion*

(119) On the basis of the foregoing, it should be concluded that NCG and Novacaixagalicia have received State aid in form of capital injections and impaired asset measures amounting up to EUR 10 352 million (22.27% of RWA)³⁸, in addition to the guarantee worth EUR [around 7 500] million.

5.3 **Legality of the aid**

(120) The Commission notes that Spain notified measures D, E and F to the Commission for its approval prior to putting these into effect and thus complied with its obligations under Article 108(3) TFEU.

6 **COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET**

(121) As regards the compatibility of the aid provided to NCG, the Commission must determine, first, 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, must assess whether the proposed measures are in line with the internal market.

³⁸

Risk Weighted Assets (or RWA) as of the relevant reference date when the aid measure was granted.

6.1 Legal basis for the compatibility of the aid

- (122) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance³⁹. The Commission confirmed that view by adopting the Prolongation Communication⁴⁰.
- (123) In respect of the Spanish economy that assessment was confirmed in the Commission's various approvals of the measures undertaken by the Spanish authorities to combat the financial crisis⁴¹. Therefore, the legal basis for the assessment of the measures is Article 107(3)(b) TFEU.

6.2 Compatibility assessment

- (124) NCG and Novacaixagalicia have benefited and will continue to benefit from several State aid measures whose compatibility has not previously been assessed by the Commission, namely measures D, E and F. NCG and Novacaixagalicia have also benefitted from aid granted under a scheme (measures A and B) and measures found compatible by the Commission as rescue aid (measure C).
- (125) It will need to be determined below whether these measures as well as measures D, E and F are compatible as restructuring aid, in particular based on the Restructuring Plan submitted by the Spanish authorities since these measures have been provided in the context of the restructuring of the Bank. The Commission will therefore examine the Restructuring Plan under its Restructuring Communication which sets out the rules applicable to the granting of restructuring aid to financial institutions in the current crisis.
- (126) However, prior to this examination, it will have to be examined whether measures D and E are compatible with the Commission's Recapitalisation Communication and whether measure F is compatible with the Impaired Assets Communication.
- (127) As regards the position of the founding saving banks vis-à-vis measures A through F, since these banks have lost their stake in NCG, as explained in the section on the beneficiaries of aid above, and are therefore no longer active in the financial market, it is not necessary to further assess the compatibility of the State aid measures as regards them. However, if and to the extent they are still considered to be benefit from residual restructuring aid as a result of the aid measures, the below

³⁹ This has been confirmed in the Banking Communication (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), the Recapitalisation Communication (Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2), the Impaired Asset Communication (Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.3.2009 p. 1) and the Restructuring Communication (Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9).

⁴⁰ Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis OJ C 356, 6.12.2011, p. 7.

⁴¹ See e.g. Reintroduction of the Spanish Guarantee Scheme SA 34224 (2012/N), OJ C82/2012 of 21.03.2012

compatibility assessment equally applies to them

6.3 Compatibility of measures D and E with the Banking and Recapitalisation Communications: Appropriateness, necessity, proportionality

(128) As recalled in point 15 of the Banking Communication, in order for 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 conditions:^{42:}

- a. *Appropriateness*: The aid must be well-targeted in order to effectively achieve the objective of remedying a serious disturbance in the economy..
- b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve this 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.

a. Appropriateness of the Measures

(129) As regards measure D – the conversion of the preference shares – this measure will reinforce the capital position of NCG, as equity capital is junior to the convertible preference shares. Since the conversion contributes to strengthening NCG's capital base, the Commission considers it as appropriate to the intended objective.

(130) As regards measure E – the recapitalisation measure – the stress test revealed a capital deficit of EUR 7.216 billion, which will be reduced by the transfer of assets to the AMC and the burden sharing exercise to EUR 5.425 billion. Owing to the lack of confidence on the markets in NCG and the general uncertainty regarding the economic situation of Spain overall, it is virtually impossible for NCG to raise the necessary capital from private investors. The Commission is therefore of the view that the additional capital injection is appropriate as it fills the remaining capital deficit of NCG.

b. Necessity – limitation of the aid to the minimum

(131) According to the Banking Communication, the aid measures must, in their amount and form, be necessary to achieve the intended objective. That requirement implies that the aid measure must be of the minimum amount necessary to reach the objective. With the additional aid provided through measures D and E, NCG will continue to meet regulatory capital ratios and, thus, the aid amount is limited to the

⁴² 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.

minimum necessary.

- (132) In addition, adequate remuneration of any State intervention contributes to ensuring that the aid is limited to the minimum necessary. As regards the required remuneration of the aid for recapitalisation in the form of ordinary shares, point 8 of the Prolongation Communication lays down that the new shares should be subscribed at a discount to the market price prevailing at the time of the announcement. However, such a discount is not necessary in the present case as the former owners of NCG will be fully wiped out.
- (133) Nevertheless, the Commission notes that an adequate remuneration of the entire capital injected is unlikely to be forthcoming, given the current troubled state of NCG and the large amounts of aid it has received overall. According to point 34 of the Restructuring Communication, adequate remuneration of any State intervention is one of the most appropriate limitations of distortions of competition. Given that this remuneration is not ensured in this case, further restructuring is required.

c. Proportionality – measures limiting negative spill-over effects

- (134) The Commission considers that, in principle, the proportionality of measures D and E should be assessed in the light of the depth of the restructuring plan, taking into account measures to ensure burden sharing and limiting distortions of competition. It therefore refers to its assessment of the measures under the Restructuring Communication below.
- (135) It is, however, worth highlighting that given the significant degree of burden-sharing and NCG's commitment to exist in the market as a stand-alone entity over the course of the Restructuring period, as well as the mechanism to claw-back any excess capital after [...],⁴³ the measure D and E are proportionate.

Conclusion

- (136) The Commission thus concludes that the measures D and E are appropriate, necessary and, in the light of the deep restructuring foreseen, proportional to the intended objective of remedying a serious disturbance in the Spanish economy.

6.4 Compatibility of measure F with the Impaired Assets Communication

- (137) Before examining the compatibility of all the measures with the Restructuring Communication, it is necessary to assess the compatibility of measure F – the transfer of impaired assets to the AMC under Article 87(3)(b) TFEU on the basis of the Impaired Assets Communication. The Impaired Assets Communication defines impaired asset relief as any measure which “*free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses*” and sets out criteria for the compatibility of such measures with the internal market. Those

⁴³ See Term Sheet paragraph 7.5.

criteria comprise (i) the eligibility of the assets; (ii) the transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; (v) the appropriateness of the remuneration and burden sharing.

Eligibility of assets

- (138) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates in that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility. Whilst the Impaired Assets Communication explicitly refers to “toxic assets”, it also makes clear that an overtly narrow relief measure would not be advisable. Rather, it notes that a proportionate approach needs to be developed to allow a Member State whose banking sector is affected by factors of such magnitude as to jeopardise financial stability, such as the burst of a bubble in their own real estate market, to extend eligibility to well-defined categories of assets corresponding to the systemic threat.⁴⁴
- (139) As regards the present case, measure F is targeted at foreclosed assets related to real estate and real estate and development loans, being the most risky asset class emanating from the recent burst of the Spanish real estate bubble. The Commission notes that these assets are in line with asset categories set out in Annex II to the Impaired Assets Communication and, therefore, are in line with the eligibility criteria of that Communication.

Transparency and disclosure

- (140) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. In other words, the Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.
- (141) As regards measure F, the Commission notes that independent experts have been engaged to value the assets and that the valuation methodology has been endorsed by the BoS and also by a group including international institutions.
- (142) However, while it is accurate that the definitive number of impaired assets falling under measure F are not currently available due to accounting and other changes that may occur between the date of this decision and the final date of the asset transfers, which may have a minor impact on the values, the asset classes to be transferred have been clearly identified and the transfer will only be performed on the basis of

⁴⁴

Cf. Case N 725/2009, Irish asset relief - NAMA, OJ C 94 of 14 4.2010.

this approved methodology. The Commission therefore considers that the Member State has provided full disclosure on the entirety of impaired assets on the balance sheet of NCG.

- (143) The requirements for transparency and disclosure of the Impaired Assets Communication are thus met.

Management of the assets

- (144) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of a clear functional and organisational separation between the beneficiary bank and its assets, notably as to their management, staff and clientele. The Communication provides, in that respect, that this should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.
- (145) As regards measure F, the Commission notes that the assets will be managed by the AMC, which is fully independent from NCG. The Commission therefore concludes that the separate asset management is thus in line with the requirements of Impaired Assets Communication.

Valuation

- (146) Section 5.5 of the Impaired Assets Communication notes in that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of valuation is to establish the real economic value of the assets. This value constitutes the benchmark level in so far as a transfer of impaired assets at this value indicates the compatibility of aid – it ensures the relief effect by exceeding current market value but keeping the aid amount to the minimum necessary.
- (147) As regards measure F, Spain appointed Oliver Wyman to assess the portfolio and has applied a number of haircuts in order to arrive at the transfer value. In addition, Spain has provided a letter from BoS certifying the detailed results of the asset transfer to the AMC.
- (148) The Commission has scrutinized the valuation and in particular the underlying general methodology in order to ensure a consistent approach at Union level. For that purpose, the Commission has contracted external experts in order to scrutinize the valuation prepared by Oliver Wyman.
- (149) The valuation is therefore in line with the Impaired Asset Communication.

Burden sharing and remuneration

- (150) As regards burden sharing, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with

impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing. Thus, the assets should be transferred at or below the real economic value of those assets.

- (151) Furthermore, the Impaired Assets Communication explains that burden-sharing is achieved through an adequate remuneration of the aid. Any pricing of asset relief must include remuneration for the State that takes account of the risks of future losses exceeding those that are projected in the determination of the real economic value. Annex V section II of the IAC provides that the pricing of the impaired asset measure must include remuneration for the State that adequately takes account of the risks of future losses exceeding those that are projected in the determination of the real economic value. Such remuneration may also be provided by setting the transfer price of assets well below the real economic value to a sufficient extent so as to provide for adequate compensation for the risk in the form of a commensurate upside.
- (152) As regards measure F, the Commission notes that the assets have been fully written down to their transfer value. The transfer price is on a relative basis [10 - 20] % lower than their real economic value, the latter being certified by the independent experts retained by the Commission. Therefore, the compensation for the risk of the State is embedded in the low transfer price, which corresponds to a remuneration of EUR [0 - 5] billion, and the payment through bonds.
- (153) In addition, NCG will receive bonds of a maturity of one, two or three-years rather than cash in exchange for its assets. The yield on those bonds is set at the lowest between the rate of the corresponding maturity government bond and 12-month Euribor plus 200 bps. It is very likely that the bonds will be rolled over several times at the request of the AMC, as eventual redemption will depend on the sales of the assets transferred over a 15 period. It implies that NCG accepts to forgo revenue which it might otherwise generate in case it would have cash available, which could be invested in higher yielding risk free bonds or a higher yield lend-on.
- (154) The Commission therefore considers that the requirements regarding burden sharing in the Impaired Assets Communication have been met.

Conclusion on compatibility

- (155) In light of the above, the Commission considers measure F – the asset relief measure – to fulfil the conditions on eligibility of assets, ex ante transparency and disclosure, asset management arrangements, valuation, burden sharing and remuneration as laid down in the Impaired Assets Communication.

6.5 Compatibility of all aid measures (A-F) with the Restructuring Communication

- (156) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current financial crisis. According to the Restructuring Communication, in order to be compatible with the internal market

under 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 to the orderly winding-up thereof; (ii) ensure that the aid is limited to the minimum necessary and include sufficient own contribution by the beneficiary (burden-sharing); and (iii) contain sufficient measures limiting the distortion of competition.

6.5.1 *Restoration of viability*

- (157) As the Commission sets forth in its Restructuring Communication,⁴⁵ the Member State needs to provide a comprehensive restructuring plan which shows how the long-term viability of the entity will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.
- (158) The Spanish authorities have submitted a plan for NCG, with a five year time span, going up to 2017 and showing a return to viability at the end of the restructuring period.
- (159) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy to the entity's weaknesses. In that regard, the Restructuring Plan adequately addresses the causes of failures of NCG. First, the segregation and transfer of the assets and loans related to the real estate development sector to the AMC (measure F) is an adequate response to the high concentration of NCG's balance sheet on that sector and level of non-performing assets⁴⁶ and its past expansion outside its core retail banking business and historical core regions. That transfer will allow NCG to focus on its core activities, in particular the new production of loans to its clients in the Core region, such as residential mortgages and SME loans.
- (160) Second, since the complete of management in September 2011, a significant overhaul of strategy has been undertaken in order to strengthen the corporate governance management of NCG, most notably on risk management practices and controls. Thus, NCG had a cost/income ratio of [60 - 70]% in 2011, one of the highest among its publicly quoted Spanish peers. NCG plans to reduce this ratio via the significant reduction in the branch network and personnel. The Restructuring Plan projects a new cost/income ratio of [50 - 60]% in 2017.
- (161) Third, the Restructuring Plan foresees in a fundamental change to its business profile as it intends to concentrate on its core competences and to wind down non-core activities and more risky activities. The plan therefore includes a split between its

⁴⁵ Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 1.

⁴⁶ [10 - 20]% of its balance sheet in 2011 and [20 - 30]% of foreclosed assets. Source: Oliver Wyman analysis.

core and non-core business and geographical activities, which will allow NCG to focus on retail and local banking activities.

- (162) NCG will use the Legacy Unit as a run-off vehicle to maximise the value of non-core assets through ordered disposals and winding down. Thus, the Legacy Unit will be used to divest the large majority of its equity stakes and fixed income portfolios as well as non-core loans. Apart from minor exceptions provided for in the Term Sheet,⁴⁷ NCG will also cease almost all capital market activities and specialised financing, and exit the risky corporate banking. All international branches, except for one branch in [...] and representatives branches in [...], will also be included in the Legacy Unit.
- (163) In terms of the viability of the Core Unit, the Commission notes that the Restructuring Plan uses underlying conservative assumptions in terms of market shares evolution in the core areas, net margins on pricing new productions of loans, and cost of funding. In particular, it plans to focus its activities on the SME segment, where growth rates are higher and in which it intends to apply a more careful selection of borrowers, in particular, by increasing the percentage of higher-rated borrowers. In addition, it plans to increase cross selling activities to its customer base. Overall, the re-pricing of new production (which has already been put in effect as of mid-June 2012) and the cross-selling strategy will improve the profitability of the Core Unit. Hence, NCG will gradually become smaller and the Core Unit a more balanced unit with a balance sheet side of EUR [20 - 30] billion by 2017 (and a non-core part of EUR [10 - 20] billion). These measures will ensure a clean-up of the core business in terms of lending book allowing NCG to focus on its strong client base amongst retail and SMEs. At the end of the restructuring period, the Core Unit will be able to cover all its costs and provide an appropriate return on equity of [10 - 20]%, taking into account an adequate cost of risk in view of its new risk profile
- (164) Fourth, according to point 13 of the Restructuring Communication, the restructuring plan should address the requirements emerging from a stress test exercise and ensure that the entity is sufficiently and adequately capitalised. NCG undertook the MoU Stress Test exercise which included a comprehensive asset quality review as well as an identification of the capital needs over a three-year time period (2012-2014). That exercise was well designed for assessing the current challenges of the Spanish banking system, with conservative assumptions and a robust execution under the close monitoring of the international partners.
- (165) As a result of taking accounting losses following increased loan loss provisions in December 2012 and deducting the estimated increase in own funds of EUR [2 000 – 3 000] billion from the burden sharing exercise, NCG plans to be recapitalised to a level that will allow it to reach a Basel III common equity tier 1 ratio of [10 - 20] % at the end of December 2017, which is the end of the restructuring period.
- (166) Finally, the restructuring plan provides information on the future funding profile of NCG. The Restructuring Plan factors in conservative assumptions in terms of deposits evolution and wholesale and central bank reliance. At the end of the

⁴⁷ See Annex: Term Sheet paragraph 5.1.1

restructuring period the Core unit will have a loan-to-deposit ratio of [80 - 90]% and reliance on the central bank funding will have reduced to [0 - 5].

- (167) The Commission therefore considers that the implementation of the Restructuring Plan which involves a significant reduction of the balance sheet, and hence funding needs, as well as its loan-to-deposit ratio target of [100 - 120]% and exit from central bank reliance, will ensure a conservative funding profile of NCG.

6.5.2 *Own contribution and burden sharing*

- (168) 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. To that end, it provides that (i) both the restructuring costs and the amount of aid should be limited and (ii) a significant own contribution is necessary.
- (169) The Restructuring Plan does not contain any elements that suggest that the aid exceeds the means required to cover the costs resulting from the restoration of viability of NCG. As described in recital (19), the capital shortfall which needs to be covered by the recapitalisation (measure E) has been determined on the basis of a thorough stress test. In addition to the transfer of assets to the AMC (measure F), a number of elements reduce the magnitude of necessary public funds that are required to ensure that NCG will remain above the regulatory minimum capital requirements, even in an adverse scenario:
- (170) First, the Commission notes positively that the commitments regarding the burden-sharing of hybrid instruments go beyond the prerequisites of the Restructuring Communication. As described in recitals (76) to (78), all hybrids except dated subordinated debt will be converted into equity. The conversion will be done at the fair value of the different financial instruments determined on basis of their net present value. Irrespective of the characteristics of each hybrid instrument, this will lead to a haircut as compared to the nominal value of the instrument, and thereby lead to a decrease in the capital shortfall. Moreover, cash outflows from NCG to the holders of these securities will be avoided, with the sole exception of the holders of dated subordinated debt instrument who will be offered the option to convert – subject to [0 - 5]% monthly haircut - into new debt securities with the same maturity - as the original instrument. As the Commission would normally consider an exchange of hybrids at market price plus a premium into cash to fulfil the requirements of the Restructuring Communication in that respect, it welcomes this commitment by Spain which results in a greater burden-sharing by hybrid capital holders, and consequently, a decrease in the amount of public funds that are necessary to restore NCG's viability
- (171) Second, point 24 of the Restructuring Communication provides that an adequate remuneration of State capital is also a means of achieving burden-sharing. As established in recital (78), the State will acquire a significant ownership of NCG and its previous owners will be fully wiped out. The State shall also receive a large part of future profits and/or the revenue from the envisaged sale of NCG. The

Commission therefore considers the level of remuneration associated with the State's stake in NCG of approximately [60 - 80]% as appropriate.

- (172) Third, so as to ensure that NCG is not overcapitalised if the adverse scenario used for the purposes of the MoU Stress Test does not materialise, Spain has committed that NCG shall distribute any capital above the regulatory minimum level plus a buffer of [...] bps to its stakeholders by paying out the surplus in the form of dividends after [...].
- (173) Finally, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by NCG, the Commission notes that NCG has carried out and will continue to implement cost-cutting measures, resulting in a reduction of annual operational costs by EUR [70 - 80] million by the end of the restructuring period, a decrease of [20 - 30]% when compared to 2012 levels. The restructuring costs are also partly borne by the future proceeds from the divestments of subsidiaries and equity stakes in non-core entities, as set out in the Term Sheet.
- (174) Therefore, burden-sharing on equity, hybrid and subordinated debt-holders, cost reductions, divestments and adequate remuneration for the aid represent sufficient own contribution by NCG to the costs of its restructuring. The mandatory conversion into equity of hybrid capital (or the imposition of losses, for those holders of dated subordinated debt that choose this option) and the wiping out of the original owners ensures appropriate burden-sharing. For these reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

6.5.3 *Limiting distortion of competition*

- (175) Finally, section 4 of the Restructuring Communication requires that the restructuring plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates post-restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the NCG's own contribution and burden-sharing over the restructuring period.
- (176) The Commission recalls that NCG and Novacaixagalicia have received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 10 352 million in addition to the liquidity guarantees worth EUR [around 7 500] million.
- (177) The aid amount of EUR 10 352 million is equivalent to 22.27 % of NCG's RWA.⁴⁸ As the relative amount of aid to the beneficiary is very large, and adequate remuneration of the aid is uncertain, significant measures are necessary to limit potential distortions of competition.

⁴⁸ Risk Weighted Assets (or RWA) as of the relevant reference date when the aid measure was granted.

- (178) The three main measures that will limit distortions of competition are (i) the downsizing of NCG in terms of total assets, RWA, geographical footprint, business segments and staff; (ii) the split into a viable Core Unit and a Legacy Unit; and (iii) the sale of NCG (or the orderly winding up should the sale not materialise).
- (179) First, NCG will become a much smaller bank. As indicated in the Summary Table, its total balance sheet will shrink from EUR 65 billion on 30 June 2012 to EUR [30 - 40] billion by December 2017, whilst its total RWAs will be reduced from EUR [40 - 50] billion on 30 June 2012 to [10 - 20] EUR billion by December 2017.
- (180) In parallel, NCG will also shrink in terms of branches and headcount. It will also divest a number of subsidiaries, including notably Banco Gallego and EVO, and will sell its portfolio of equity holdings by steps of [20 - 50]% annually, until the end of [...] at the latest. Should a sale not have succeeded by then, NCG will fully write down its stake in those entities and each of them will be offered for EUR [...]. An overview of the largest divestments is given in the following table:

Table 4 – Divestment of important participations

Company	Stake (%)	Book value (€m)
Itínere Infraestructuras, S.A.	23.75	[...]
Sacyr Vallehermoso, S.A.	8.65	[...]
Compañía Logística de Hidrocarburos CLH, S.A.	5.00	[...]
Caja de Seguros Reunidos, Compañía de Seguros y Reaseguros S.A.	10.31	[...]
Enerfin, S.A.	30.00	[...]
		[800 - 900]

- (181) Altogether, the Commission considers the reduction of the total balance sheet of NCG by more than [30 - 40]% to be appropriate, as compared to the distortions of competition stemming from the large amount of aid received.
- (182) Second, the Commission recalls that in principle, subject to the limited exemptions in the Term Sheet annexed to this decision, only the Core Unit is authorised to engage in new business. This Core Unit – the part of NCG that will remain active on the market – will be even smaller than the total bank. The Core Unit's total balance sheet was EUR [20 - 30] billion on 30 June 2012 and shrink to EUR [20 - 30] billion by December 2017; its total RWAs will evolve from EUR [10 - 20] billion on 30 June 2012 to EUR [10 - 20] billion by December 2017.
- (183) In addition, the Core Unit will focus exclusively on retail, SME, corporate and public sector banking in the core region,⁴⁹ and will exit the market in all other segments (real estate development and capital market activities in particular) and in the other regions as well as in other EU Member States. At the same time, it will also reduce

⁴⁹

With exception of 3 branches in Madrid, Barcelona and Biscay, as provided for in paragraph 5.1.1 of the Term Sheet.

its presence in the Core Region – notably also by divesting Banco Gallego – where arguably the distortions of competition post-restructuring caused by the aid are most significant. The Commission considers that the projected decrease of NCG's market share by [10 - 20]% in its Core Region addresses this distortion in an appropriate manner.

- (184) As for the distortions of competition that will continue to result from the residual business allocated to the Legacy Unit before it is fully resolved or sold, the Commission is of the view that those will be minor.⁵⁰ The Legacy Unit will not enter into new activities, aside from the minor exceptions provided for in the Term Sheet, and will stop the collection of deposits, while its lending activities will be limited to the normal management and work-out of its loan book. At the end of 2017, unless it is jointly sold with the Core Unit, NCG will disappear from the market, and therefore no longer distort competition
- (185) Third, Spain has committed to sell the Core-Unit or the entire bank by the end of the restructuring period, which will be undertaken in an open, transparent and non-discriminatory procedure by a Divestiture Trustee. If it is not able to sell NCG, it will be wound down according to a resolution plan that Spain would have to submit by the end of 2017.
- (186) The sale of NCG, as the beneficiary of the aid, to another market player in the framework of an open sales process constitutes a form of mitigation of potential distortions of competition.⁵¹ This process, which gives potentially harmed competitors the possibility to assume this business, resembles to some extent the "counterfactual" situation that would have occurred in the absence of State aid, as a company in difficulty (or indeed in bankruptcy) will normally often seek a potential buyer in the market or, failing to do so, would be liquidated. As a result, the sales/resolution process in the present case contributes significantly to limiting the distortions of competition resulting from the aid.
- (187) In addition to those far-reaching structural measures, Spain also committed to several behavioural constraints. On the one hand, Spain will ensure that the remuneration of NCG's employees is in line with the limitations set forth in Spanish legislation. On the other hand, the Commission welcomes a ban on advertising State support and a ban on aggressive commercial practices, thus preventing NCG from using the aid for anti-competitive market conduct. It also welcomes an acquisition ban, which ensures that the State aid will not be used to take over competitors, but instead that it will serve its intended purpose, namely to restore NCG's viability.
- (188) Taking into account this mix of measures and commitments and in view of the above assessment that the own contribution and burden-sharing are appropriate and go beyond what the Commission would normally require, the Commission considers that there are sufficient safeguards to limit potential distortions of competition

⁵⁰ Cf. Case C 11/2010 and No SA.32504, *Anglo Irish Bank and Irish Nationwide Building Society*, OJ L 139, 26.5.2012, p. 18, recital 174 et seq.

⁵¹ Cf. Case C 10/2008, *IKB* Commission decision of 21 October 2008, OJ L 278, 23.10.2009, p. 32, recital 113; Case NN 42/2008, NN 46/2008 and NN/53/A/2008, *Fortis Banque & Fortis Banque Luxembourg*, Commission decision of 3 December 2008, point 95; Case N 344/2009 and N 380/2009 *Kaupthing Luxembourg* Decision of 9 July 2009, point 79; and Case NN 19/2009 *Dunfermline* of 25 January 2010, points 126 and 130.

despite the high amount of aid NCG will receive.

6.6 Monitoring

- (189) Pursuant to section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the restructuring plan is being implemented properly
- (190) The Restructuring Plan will need to be properly implemented throughout its duration. To ensure this proper implementation, the Spanish authorities will ensure that NCG, wholly-owned by the FROB, complies with the commitments listed in the Term Sheet.
- (191) Moreover, the correct implementation of the Restructuring Plan and the full and correct implementation of all commitments contained in the Term Sheet will be continuously monitored by an independent, sufficiently qualified Monitoring Trustee. The Monitoring Trustee will have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustee may ask NCG for explanations and clarifications. Spain and NCG are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring.

6.7 Conclusions on the existence of aid and compatibility

- (192) The Commission concludes that the notified measures (measures D through F), namely the capital injection in the form of ordinary shares, the conversion of convertible preference shares into ordinary equity and the transfer of impaired assets to the AMC, constitute State aid in favour of NCG pursuant to Article 107(1) TFEU.
- (193) The Commission finds that the restructuring aid, namely measures A through F referred to above, in favour of NCG and Novacaixagalicia is compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU, subject to compliance with the commitments of the Term Sheet (Annex).

7 CONCLUSION

- The Commission has accordingly decided:
 - to consider the aid to be compatible with the Treaty on the Functioning of the European Union.
- The Commission notes that Spain exceptionally accepts that the adoption of the Decision be in the English language

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

TERM SHEET NCG BANCO, S.A.
2012 EU RESTRUCTURING PLAN

1 BACKGROUND

This term sheet sets out the terms for the recapitalisation and restructuring of NCG, which the Kingdom of Spain and NCG have committed to implement (the “**Term Sheet**”). The Kingdom of Spain reserves the right to notify modifications to these commitments, in particular in case where NCG finalizes its privatisation. In response to a notification the Commission may either, (i) grant an extension of the time period of the Commitments or (ii) waive, modify or substitute one or more of the aspects of any Commitment hereunder.

2 DEFINITIONS

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

Term	Meaning
AMC	means the Asset Management Company, a company created to hold real estate assets (such as, houses, land and developments) transferred from restructured Spanish banks. The official name given to the entity is <i>Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria</i> (Sareb)
Banco Gallego	means Banco Gallego, S.A., a Spanish retail bank focused on the Galician market, partially owned by NCG
BoS	means the Bank of Spain
Commitments	means the undertakings related to the restructuring of NCG set out in this Term Sheet
Core region	means the geography where NCG developed its initial core banking activities and in which NCG will be primarily focused following this Restructuring Plan, which includes Galicia, Asturias and the province of León
Core Unit	means the unit including NCG’s banking business of the offices located in its Core region and the rest of the assets and liabilities set forth in 5.1.1 herein
DCM	has the meaning set out in clause 6.4. herein
Decision	means the decision of 28 November of the European Commission on the restructuring of NCG in the context of which these Commitments are undertaken
Divestiture Trustee	means a trustee that will dispose of NCG [...] if the sale of NCG has not been completed by the dates specified in clause Error! Reference source not found. The terms and

Term	Meaning
	conditions for the appointment of the Divestiture Trustee are specified in clause 10 herein
EVO	means the commercial brand for NCG outside the Core region, structured as a business unit headquartered in Madrid, with a current network of 120 branches in the 70 main Spanish cities
FROB	means the Spanish Fund for Orderly Bank Restructuring
FTE	means Full-Time Equivalent, a unit that indicates the workload of an employee (e.g., : 1.0 FTE means that the person is equivalent to a full-time employee)
LDR	means loan to deposit ratio
Legacy Unit	means the unit with the assets and liabilities set forth in clause 5.2.1 herein
Mobile branches	means branches located in a bus or similar motor vehicle which can be moved to different places and do not open every day or all the working hours of a day
Monitoring Trustee or Trustee	has the meaning set out in clause 9 and Appendix I herein
NCG	means NCG Banco, S.A.
NPV	has the meaning set out in clause 6.2 herein
Part Time branches	means branches which open only certain days in the week or certain hours a day, so that the total number of hours they open a week are not more than those corresponding to two working days of a full-time branch
RDL 24/2012	refers to the Spanish Royal Decree-Law 24/2012, dated 24 August, on the restructuring and resolution of financial institutions
Real Estate Business	has the meaning set out in clause 4.1 herein
Remedial Action	means the actions to be proposed by NCG under clause 5.1.2(ii) herein
Restructuring Period	is the time period specified in clause 3.3.herein
Restructuring Plan	means the plan submitted by NCG to the European Commission, via the Kingdom of Spain, on 21 November, as amended and supplemented from time to time by written communications
Retail activities	means the banking activities with transactions executed directly with consumers, rather than corporations or other banks. Services offered include savings and transactional accounts, mortgages, personal loans, debit cards and credit cards, etc.
RWAs	means risk weighted assets that shall be calculated on a consolidated basis in accordance with relevant Spanish regulations and as approved by Bank of Spain as of 30 June 2012. For the avoidance of doubt, the risk weighted assets of Banco Gallego shall not be included in this definition
Service Locations	means branches which only carry out those transactions (either asset or liability side) necessary to manage their existing assets, not engaging in new operations nor generating new clients
SME	means a Small & Medium Enterprise, i.e., a company with less than 250 employees, a business volume below EUR 50 million and balance size below EUR 43 million

3 GENERAL

- 3.1 Spain is to ensure that the Restructuring Plan for NCG submitted on 21 November 2012 is correctly and fully implemented.
- 3.2 Spain is to ensure that the Commitments are fully observed during the implementation of the Restructuring Plan.
- 3.3 The restructuring period will end on 31 December 2017 (the “**Restructuring Period**”). The Commitments apply during the Restructuring Period, unless otherwise provided.

4 ADJUSTMENTS TO THE CURRENT PERIMETER OF THE BANK

The Restructuring Plan includes the execution of the following adjustments to the current perimeter of NCG:

- 4.1 The transfer and/or contribution to the AMC of NCG real estate exposure falling within the following parameters:
 - (i) all the loans to developers exceeding [a net book value of EUR 250,000];
 - (ii) the foreclosed real estate assets exceeding [a net book value of EUR 100,000]; and
 - (iii) the equity interests in real estate companies (jointly, the “**Real Estate Business**”).]

As of 30 June 2012, the net value of the Real Estate Business amounts to EUR [5 - 10] billion.

[The above mentioned figures on the impact of the assets transferred to the AMC are an estimate based on the situation of those assets as of 30 June 2012. Although this estimate can be considered as rather accurate, the final impact could differ from this as it could be affected by the events happening during the interim period from 30 June 2012 to the date when the assets transfer will become effective, such as changes in accounting classification and assets inflows and outflows.]

4.2 The overall size of NCG will not surpass EUR [30 - 40] billion by 31 December 2017 in terms of balance sheet size and EUR [10 - 20] billion in terms of RWAs. At that time, the number of branches will not surpass [400 - 500], the number of Service Locations will not exceed [30 - 40] and the number of FTEs will not surpass [3 000 – 4 000].

5 **RESTRUCTURING OF NCG: SPLIT INTO A CORE UNIT AND A LEGACY UNIT**

NCG will split its balance sheet into two parts: namely the Core Unit and the Legacy Unit. The split of NCG will be executed as follows:

5.1 The Core Unit

5.1.1 *Assets and liabilities allocated to the Core Unit*

(A) Unless otherwise provided in the Term Sheet, the Core Unit shall include the banking business of the offices of NCG located in its Core region, plus the additional assets and liabilities set out below. This banking business includes, inter alia, the following (cut-off date 30 June 2012):

- (i) EUR [5 - 10] billion real estate mortgages in the Core region;
- (ii) EUR [0 - 5] billion SME loans, which will be the main future activity of the Core Unit, besides serving individuals; and
- (iii) EUR [0 - 5] billion corporate sector loans and EUR [0 -5] billion public sector loans related to the ordinary banking business of the Core Unit, that include, among others, basic loans, basic specialised lending (such as lending related to infrastructure and energy and monetary secured lending related to movable assets), credits, working capital, payment services and non-speculative hedging products sold to companies or public entities in the Core region, justified due to the regional inception of NCG.

- (B) The subsidiaries listed in Annex II related to the sale of insurance products to retail customers and for regular banking operations.
- (C) The following sites owned or held under lease by NCG (including their business, where appropriate) are considered as part of the Core Unit in the context of this Restructuring Plan (cut-off date 30 June 2012):
 - (iv) the [400 - 500] branches in the Core region;
 - (v) by [...], NCG shall have determined, on the basis of a comprehensive plan, a detailed concept for the long term rationalization for its institutional headquarters. Such plan shall include an inventory of sites, costs, sizes, marketability, staff assigned to each site and relocation possibilities. The plan will be designed to respect at every point in time the staff levels determined in the Term Sheet. All board members and all non-operational services supporting directly the board (i.e. controlling, finance, HR, corporate development, revision, etc) are located in at most two locations which will constitute the only official headquarters of NCG. Should NCG decide to retain its headquarters in two locations, the plan shall demonstrate that this decision does not imply additional cost as compared to the alternative of only one location for its headquarters. The basic goals of the plan shall be: (a) to guarantee efficiency in the banks' operations, in particular by avoiding cost duplications; and (b) to minimise the real estate costs for NCG. To these purposes, the allocation of banking activities to specific locations will be decided on the basis of explicit efficiency considerations. In this context, every main operational banking activity (i.e. back office, call center, credit risk department, etc) will be allocated in only one location. All excess capacity will be available for sale or lease cancelation. The plan will be executed by the end of [...] at the latest;
 - (vi) the operative branch located in [...] and the business generated therein;
 - (vii) the following representative offices (oficinas de representación) located outside the Core region: [...]; and

- (viii) one branch in [...], one branch in [...] and one branch in [...] to service customers with a special connection with NCG.
- (D) The assets of the Core Unit are financed by the deposits corresponding to the Core region and equity.
- (E) Due to the surplus of deposits over loans in the Core region, the Core Unit shall initially include a fixed-income securities portfolio of EUR [5 - 10] billion and an interbank loan balance of EUR [0 -5] billion.

5.1.2 *Size*

- (i) By end-December 2014, the size of the gross loan book of the Core Unit will not be higher than EUR [10 - 20] billion.

By end-December 2016, the size of the gross loan book of the Core Unit will not be higher than EUR [10 - 20] billion.

If the gross loan book reduction targets are not met, the Core Unit will not engage in new production in terms of loans to clients as long as the targets defined above are not reached.

- (ii) By end-December 2014, the balance sheet size of the Core Unit will not be higher than EUR [20 - 30] billion, the RWAs will not be higher than EUR [10 - 20] billion and the LDR will not be higher than [100 - 120]%.

By end-December 2016, the balance sheet size of the Core Unit will not be higher than EUR [20 – 30] billion, the RWAs will not be higher than EUR [10 – 20] billion and the LDR will not be higher than [100 - 120]%.

If the above balance sheet, RWAs and LDR reduction targets are not met, NCG shall present Remedial Actions within a month from the request by the Monitoring Trustee to do so. The Monitoring Trustee will analyse the Remedial Actions proposed and will report to the Commission on their adequacy to meet the targets in the Restructuring Plan.

5.1.3 *Branches and FTEs*

The Core Unit will reduce its current structure as follows:

- (i) From [600 - 700] to [400 - 500] full-time branches before the end of 2014. For these purposes, [5 - 10] representative offices (*oficinas de representación*), [20 - 30] Part Time branches and [0 - 5] Mobile branches shall not be deemed to be full-time branches
- (ii) From [4 000 – 5 000] to [2 000 - 3000] FTEs before the end of 2015.

After the year 2015 the number of branches and FTEs will not increase.

5.1.4 *Activities of the Core Unit*

The Core Unit shall be a retail bank, primarily focused on its Core region. Consequently, the Core Unit shall not engage in any new business during the Restructuring Period in the following areas:

- (i) Loans outside the offices of the Core Unit.
- (ii) Real estate development.
- (iii) Investment and corporate banking activities, including, among others, specialised lending related to residential real estate, commercial real estate and commodities, M&A advisory, equity underwriting, equity and debt trading, speculative derivatives, volatility book or positions in currencies (other than client and NCG's balance hedges).

5.2 The Legacy Unit

5.2.1 *Assets and liabilities allocated to the Legacy Unit*

- (A) The following assets are allocated to the Legacy Unit (cut-off date 30 June 2012):
 - (i) EUR [5 - 10] billion real estate mortgages outside the Core region;

- (ii) EUR [0 - 5] billion SME loans outside the Core region;
 - (iii) EUR [0 - 5] billion consumer loans outside the Core region;
 - (iv) EUR [5 - 10] billion corporate loans outside the Core region;
 - (v) EUR [0 - 5] billion loans to developers below a net book value of EUR 250,000 and EUR [0 - 5] billion foreclosed real estate assets below a net book value of EUR 100,000;]
 - (vi) The 49.85% stake owned by NCG in Banco Gallego will be accounted for as a financial investment that will be fully written down as of [...]. Hence, neither the balance sheet nor the profit and loss account of this entity will be included in the perimeter of NCG as of that date. The current exposure of NCG towards Banco Gallego amounts to EUR [...] million, consisting of a loan of EUR [...] million. NCG will not increase its exposure to Banco Gallego
 - (vii) The subsidiaries and the equity holdings listed in Annex III;
- (B) The following sites are considered as part of the Legacy Unit in the context of the Restructuring Plan (cut-off date 30 June 2012):
- (i) the institutional headquarters and the [200 – 300] branches outside the Core region; and
 - (ii) operating branches located abroad, except for the operating branch of [...].

5.2.2 *Size*

By end-December 2014, the balance sheet size of the Legacy Unit will not be higher than EUR [20 - 30] billion.

By end-December 2016, the balance sheet size of the Legacy Unit will not be higher than EUR [20 - 30] billion.

5.2.3 *Branches and FTEs*

The Legacy Unit will reduce its current structure from [200 - 300] to [0 - 5] branches before the end of [...]. However, should there remain assets not yet wound-down at the end of [...], the Legacy Unit may keep open the number of Service Locations needed to manage such assets, which number shall not be higher than [30 - 40]. After [...] the number of branches and service locations will not increase.

The Legacy Unit shall also reduce its structure from [2 000 – 3 000] to [500 - 600] FTEs before the end of [...]. After the year [...] the number of employees will not increase.

5.2.4 *Principles which apply to the branches of the Legacy Unit*

(A) Principles which apply to the branches of the Legacy Unit, other than EVO branches:

- (i) Limitation on new lending:
 - a) Contractually committed but not yet paid-out amounts to be limited to the strict minimum.
 - b) No additional financing to existing customers which is not contractually committed except when it is strictly necessary to preserve the value of the loan collateral, or otherwise related to minimising capital losses and/or enhancing the expected recovery value of a loan.
 - c) No additional financing to new customers which is not contractually committed except that if the balance of the loan exceeds the value of the property, the Legacy Unit may facilitate the loan’s redemption through selling off the property by way of providing additional finance to a vendor enabling the repayment of the outstanding balance, provided that the Legacy Unit complies with “management of existing assets” paragraph below.
- (ii) Management of existing assets: The branches will manage existing assets in a way that maximises NPV of the assets. Specifically, if a client cannot respect the terms of his loan, the Legacy Unit will only restructure the lending terms (deferral or partial waiver of repayments, conversion of (part of) the claim in capital, etc.) if such a restructuring would lead to enhancing the present value

of the loan. As regards mortgage loans this principle also applies. In particular, the Legacy Unit will be allowed to restructure its mortgage assets via the following variations to the terms of existing mortgages: (a) a change of deal (e.g., by offering a new fixed rate); (b) transferring existing mortgages to new properties; (c) transferring equity (e.g., adding a borrower to the mortgage or removing one); or (d) as otherwise obliged by any law, regulations or the Code on Best Banking Practices to which NCG is adhered.

- (iii) Limitation on new deposits: The Legacy Unit will not collect deposits from new customers. No limitation will apply until 3 months before the closing of each branch. Deposits of these branches to be closed in 2013 will be capped to the level of EUR [...] billion.
- (iv) Limitation on transactional products: The Legacy Unit may provide transactional products (i.e., current accounts, transactions, cards, payments, etc.) to any existing customer (i.e. current accounts, transactions, cards, payments, etc.). For new depositors, basic transactional products (current and deposit accounts, cards, payments) can be provided until 3 months before the closing of each branch.

(B) Principles which apply to the EVO branches:

(i) Limitation on new lending:

a) For Branches with a Loan to Deposit ratio higher than [100 - 120]%:

- No additional financing to existing customers which is not contractually committed except when it is strictly necessary to preserve the value of the loan collateral, or otherwise related to minimising capital losses and/or enhancing the expected recovery value of a loan.

- No additional financing to new customers which is not contractually committed except that if the balance of the loan exceeds the value of the property, EVO may facilitate the loan's redemption through selling off the property by way of providing additional finance to a vendor enabling the repayment of the outstanding balance, provided that EVO complies with "management of existing assets" paragraph below.

b) Branches with a LDR lower than [100 - 120]% are not subject to the above limitations.

(ii) Management of existing assets: The branches will manage existing assets in a way that maximises NPV of the assets. Specifically, if a client cannot respect the terms of his loan, the merged entity will only restructure the lending terms (deferral or partial waiver of repayments, conversion of (part of) the claim in capital, etc.) if such a restructuring would lead to enhancing the present value of the loan. As regards mortgage loans this principle also applies. In particular, EVO will be allowed to restructure its mortgage assets via the following variations to the terms of existing mortgages: (a) a change of deal (e.g., by offering a new fixed rate); (b) transferring existing mortgages to new properties; (c) transferring equity (e.g., adding a borrower to the mortgage or removing one); or (d) as otherwise obliged by any law, regulations or the Code on Best Banking Practices to which NCG is adhered.

(iii) Limitation on new deposits: EVO may collect deposits from existing and new customers.

(iv) Limitation on transactional products: EVO may provide transactional products to new and existing customers (i.e., current accounts, transactions, cards, payments, etc.).

5.2.5 *Active winding down of the assets in the Legacy Unit*

The assets in the Legacy Unit will be managed with the objective of being divested, liquidated or wound down, in an orderly manner but minimizing the cost for taxpayers. Any remaining assets at the end of the restructuring period should be wound down in an orderly manner once the assets mature. No new activities will be undertaken, unless explicitly mentioned in the Term Sheet. To that end, the following actions may be undertaken:

- (i) Branches allocated to the Legacy Unit will be closed sequentially so that it has [100 - 200] branches by 31 December 2013, [90 - 100] by 31 December 2014 and [0 - 5] by 31 December 2015. However, should there remain assets not yet wound-down, the Legacy Unit may keep open the number of Service Locations needed to manage such assets, which number shall not be higher than [30 - 40].
- (ii) Staff assigned to the Legacy Unit will be made redundant sequentially so that it has [1 000 – 2 000] FTEs by 31 December 2013, [1 000 – 2 000] by 31 December 2014, [500 - 600] by 31 December 2015, [400 - 500] by 31 December 2016 and [300 - 400] by 31 December 2017.

The remaining staff at the end of the Restructuring Period is allocated to the following tasks: (i) [0 – 5] FTEs for the management of the assets transferred to the AMC; and (ii) [300 – 400] FTEs for the management of the remaining loan portfolio.

- (iii) As a general rule, assets assigned to the Legacy Unit will be sold as quickly as possible. NCG commits to sell such assets whenever the sale does not lead to having to book a loss, except if the sale price is unreasonable in view of a non-controversial valuation.
- (iv) EVO: The banking business currently carried out through the brand EVO –which as of 30 June 2012 operated with [100 - 200] branches– will be put on sale. If by [...] at the latest this business has not been sold it will be orderly wound up (including closure of branches and dismissal of the staff) by [...].
- (v) Banco Gallego: Banco Gallego will be sold by [...] at the latest. Should the sale not succeed by that date, Banco Gallego will stop any new business/loan production

starting from [...] and be orderly wound down up (including closure of branches and dismissal of the staff) by [...]. From [...] clauses 5.2.4 and 5.2.5 apply to Banco Gallego, where applicable.

- (vi) Sale of subsidiaries and equity holdings: NCG commits to divest the following equity holdings by [...]:

Company	Stake (%)	Book value (€m)
Itínere Infraestructuras, S.A.	23.75	[...]
Sacyr Vallehermoso, S.A.	8.65	[...]
Compañía Logística de Hidrocarburos CLH, S.A.	5.00	[...]
Caja de Seguros Reunidos, Compañía de Seguros y Reaseguros S.A.	10.31	[...]
Enerfin, S.A.	30.00	[...]
		[500 – 1000]

The total book value of the subsidiaries/equity holdings amounts to EUR [0 - 5] billion.

NCG will at least divest in accumulative terms [20 - 50]% of the book value of its subsidiaries / equity holdings in [...], [50 - 70]% in [...] and [70 - 90]% in [...] and [90 - 100]% in [...]. Such percentages refer to the relevant book values as of 30 June 2012.

Moreover, NCG will at least divest in accumulative terms [20 - 50]% of the number of its subsidiaries / equity holdings in [...], [50 - 70]% in [...], [70 - 90]% in [...] and [90 - 100]% in [...]. Such percentages refer to the total number of subsidiaries and equity holdings as of 30 June 2012.

Until the above-referred subsidiaries/equity holdings are sold, NCG will make its best efforts to decrease its financial exposure (loans, guarantees, etc) to these companies. In addition, it will not increase its exposure to such companies in any case, except when it is (a) strictly necessary to preserve the value of the relevant equity interest; or (b) otherwise relate to minimising capital losses and/or enhancing the expected recovery value of such exposures or interest.

If the subsidiaries/equity holdings mentioned above are not sold by the deadlines laid down, NGC will fully write down its stakes, and terminate any financial and operational involvement in the companies, except when such termination is legally or contractually prohibited. Each equity holding/subsidiary will be offered to the market for the sum of [...] Euro.

5.3 Service level agreements

If EVO is sold, should the buyer so request the Core Unit shall enter into a service level agreement with EVO whereby the Core Unit shall grant operational support to EVO, who shall pay the relevant fees for such services. The estimated number of FTEs assigned to such task shall be [50 - 60], not included in the numbers of FTEs set out above, provided that their costs are fully covered by the fees earned by the Core Unit.

If EVO is not sold by [...] or if the buyer does not request a service level agreement upon acquisition of EVO, the above-referred [50 - 60] FTEs will be made redundant in a period of six months.

6 BURDEN SHARING MEASURES

6.1 For holders of preference shares and perpetual subordinated debt, burden sharing will be implemented through conversion of these securities into equity or equity equivalent instruments. As regards the holders of dated subordinated debt they will be given the choice between conversion into equity or into a senior debt instrument. A list of all outstanding issues of preference shares, perpetual subordinated debt and dated subordinated debt is set out in Annex IV.

6.2 Calculation of the fair value of the different financial instruments subject to burden sharing will be based on the net present value (“NPV”) of the instruments according to the methodology set out below.

6.3 Consequently, as a result of the burden sharing there will be no cash outflow from NCG to the holders of these securities with the sole exception of the holders of dated

subordinated debt instruments who decide to convert into new debt securities with a maturity matching that of the subordinated debt being exchanged.

(A) Methodology for the conversion into capital

6.4 For each financial instrument the NPV will be calculated by way of discounting the cash flows of the instrument (“DCM”) according to the terms and conditions upon which the instrument was issued, including coupon suspension, deferrals, etc.

6.5 The discount factors to be applied to the DCM will be: a) [10 - 20]% for preference shares and other instruments of the same rank, b) [10 - 20]% for perpetual subordinated instruments and c) [10 - 20]% for dated subordinated instruments.

6.6 Should coupon payments be discretionary or linked to the profitability of the issuing bank, it will be assumed, for the purpose of the NPV calculation, that no coupon payment will take place for the years that NCG is not profit-making, according to the Restructuring Plan submitted by the Spanish authorities.

6.7 The NPV will be augmented by a take-up premium of [10 - 20]% and a further [10 - 20]% premium for those securities for which conversion into equity or equity-like instruments of the issuing institution is envisaged.

6.8 The conversion rate will be maximum [90 - 100]% of the face value.

(B) Specific provision for dated subordinated debt

6.9 The holders of this type of security will be offered the choice between:

(i) Conversion into a new senior debt instrument with a maturity matching that of the subordinated debt being exchanged. The conversion rate will be equal to the nominal value of the subordinated debt instrument, minus a haircut that will be equal to [0 - 5]% multiplied by the number of months to maturity. The starting date for the calculation of the number of months will be 1 December 2012. The new senior debt instrument will have a zero-coupon until maturity; and

(ii) Conversion into core capital of NCG. The conversion rate to be applied will be the higher of: (a) the amount resulting from the methodology for the conversion into core capital as described in **Error! Reference source not found.** above; and (b) the amount resulting from the calculation in point (i) above.

(C) Equity stake for the holders of securities subject to burden sharing

6.10 The holders of securities subject to burden sharing will receive an equity stake in NCG in the form of new ordinary shares which shall be proportional to value of NCG resulting from the Restructuring Plan, as determined by a due diligence and three economic valuations carried out in accordance with RDL 24/2012 and the methodology put forward by the FROB in liaison with the Commission.

7 BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

7.1 Ban on acquisitions: NCG commits to refrain from making acquisitions. This applies to both the purchase of companies with their own legal structure, and shares in companies, as well as asset bundles that represent a commercial transaction or a branch of activity. This does not apply to acquisitions that must be made in order to maintain financial and/or association related stability, or in the interests of effective competition, provided they have been approved beforehand by the Commission. This does not apply either to acquisitions that belong, in terms of the management of existing obligations of customers in financial difficulty, to a bank's normal ongoing business. The obligation is to apply until the restructuring phase ends.

NCG may acquire stakes in undertakings provided that the purchase price paid by NCG for any acquisition is less than [0 - 5]% of the balance sheet size of NCG at the date of the Commission decision and that the cumulative purchase prices paid by NCG for all such acquisitions over the whole restructuring period is less than [0 – 5]% of the balance sheet size of NCG at the date of the Commission decision.

7.2 Ban on commercial aggressive practices: The beneficiary bank shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Plan. To

this end, NCG will ensure that the nominal interest rate offered to clients on its products must be less attractive than the average of the most competitive rates offered on analogous products by the five main non-aided competitors within the geographical area where the beneficiary bank operates as defined in the Restructuring Plan, in conformity with the restrictions approved by the Board of the FROB on 22 December 2010. The monitoring trustee will verify the compliance with these restrictions.

7.3 Advertising: NCG must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.

7.4 Remuneration of bodies, employees and essential agents: The Spanish Government undertakes to ensure that NCG meets the applicable legislation in all salary and compensation matters, especially regulation related to remuneration limits applicable at the time to credit institutions (currently primarily regulated by Spanish law through Royal Decrees Law 2-2012 of February 3rd and 3-2012 of February 11th; RD 771/2011 of June 3rd; Orden ECC/1762/2012 of August 3rd and Bank of Spain Circular 4/2011 of November 30th), as well as those restrictions that may arise from being an entity and/or group controlled by the Government. Likewise, it commits to ensure that NCG complies scrupulously with the conditions specifically imposed by the European Commission in this subject, within the Community framework for State aid.

The Government also undertakes to ensure the most efficient use of public resources, regarding compensation and salaries issues, as inspiring principle of RDL 24/2012 of August 31st, on restructuring and resolution of banks. Therefore, it will oversee that the restructuring process is very demanding, seeking that severance pays approach to the legal minimum, but with some flexibility to avoid delaying the process; it will also assess, if appropriate, to propose general and personnel expenses reductions in the Group if: the actual net margin at the end of each year is [20 - 30]% below the projected target; or the actual pre-provision profit at the end of each year is [20 - 30]% below the projected target; and always when losses are reported in the income statements at the end of each year or the entity do not comply with minimum solvency

regulatory requirements on the same date. The former will apply to the NCG consolidated financial statements.

7.5 Capital repayment: Capital repayment Mechanism: Until [...], NCG will not pay out dividends. Hereafter, based on the audited year end accounts NCG will pay in form of dividend disbursement the following amounts to its shareholders:

(i) For the fiscal year [...]: [50 – 60]% of the excess capital above the applicable minimum capital requirement under European and Spanish law (including pillar 1 and 2) plus a capital buffer of [...] bps.

(ii) For the fiscal years [...]: [90 – 100]% of the excess capital above the applicable minimum capital requirement under European and Spanish law (including pillar 1 and 2) plus a capital buffer of [...] bps.

(iii) Without prejudice to the competences of Bank of Spain as banking supervisor of NCG, the dividend disbursement shall be, totally or partially, suspended if, on the basis of a reasoned request by NCG endorsed by the Monitoring Trustee, it is considered that it would endanger the solvency position of the bank in the following years.

7.6 Ban on coupon payments: Until the burden sharing measures provided for in section 6 of this Term Sheet have been implemented, NCG will not make any payments to holders of preference shares and subordinated debt, in so far as those payments are not owed on the basis of a contract or the law.

7.7 Other rules of conduct: NCG is to continue expansion of its risk monitoring operations and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.

8 SALE OF NCG

8.1 Spain shall dispose or procure the disposal either of NCG or the Core Unit as described below.

- 8.2** To carry out the said disposal, Spain shall start approaching potentially interested buyers for NCG by [...]. It shall use its best efforts to sign a sale and purchase agreement with a prospective purchaser by no later than [...].
- 8.3** If Spain has not entered into such an agreement by [...], Spain shall appoint a Divestiture Trustee with the exclusive mandate to sell the Core Unit and any other NCG's non-core commercial activity considered relevant by the potential buyer, [...].
- 8.4** By [...], the Divestiture Trustee shall propose the selected buyer or communicate the impossibility of selling the Core Unit, [...].
- 8.5** Spain is entitled to reject the buyer proposed by the Divestiture Trustee. In this case, or in the event that is not possible to sell the Core Unit [...], Spain shall present a resolution plan for the Core Unit within the three months following the announcement by the Divestiture Trustee of the results of its mandate.
- 8.6** Conditions on potential buyers: The buyers of NCG, the equity holdings and/or subsidiaries mentioned above must be entities that are legally and economically independent of the Kingdom of Spain and NCG. For clarity purposes, a buyer may only be deemed not to be independent from the Kingdom of Spain when such buyer is controlled by Spain or otherwise consolidated in the Spanish national accounts.

9 MONITORING TRUSTEE

- 9.1** Spain is to ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored by an independent, sufficiently qualified Monitoring Trustee (who is obliged to maintain confidentiality).
- 9.2** The appointment, duties, obligations and discharge of the Monitoring Trustee must follow the procedures set out in Annex I hereof.
- 9.3** Spain and NCG are to ensure that, during the implementation of the Decision, the Commission or the Monitoring Trustee have unrestricted access to all information

needed to monitor the implementation of the Decision. The Commission or the Monitoring Trustee may ask NCG for explanations and clarifications. Spain and NCG are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of the Decision.

- 9.4** NCG will report annually to the Commission on the evolution of the Legacy Unit after the dismissal of the monitoring trustee at the end of the restructuring period, until the remaining assets account for less than [20 - 30]% of total assets at the cut-off date.

10 DIVESTITURE TRUSTEE

- 10.1** The following provisions apply to the appointment of a Divestiture Trustee:

the Kingdom of Spain must propose to the European Commission for approval, no later than one month before the deadlines specified in **Error! Reference source not found.** a list of one or more persons whom it proposes to appoint as Divestiture Trustee;

the Divestiture Trustee must be appointed within one week of the European Commission's approval in accordance with the mandate approved by the European Commission;

the FROB must grant comprehensive powers of attorney to the Divestiture Trustee:

- (a) to effect the disposal of [NCG] (including the necessary powers to ensure the proper execution of all the documents required for effecting the disposal); and
- (b) to take all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the disposal, including the appointment of advisors to assist with the disposal; notwithstanding the arrangement established in the clause 8.5.

NCG must provide the Divestiture Trustee with all such co-operation, assistance and information as the Divestiture Trustee may reasonably require to perform its tasks; and

the Divestiture Trustee shall be remunerated by NCG and in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee's mandate.

Appendix I to the Term Sheet – The Monitoring Trustee

(A) Appointment of the monitoring trustee

- (i) Spain undertakes to ensure that NCG appoints a Monitoring Trustee as set out in paragraph C.(x) of this Annex. The mandate applies to the entire duration of the Restructuring Plan; i.e. until 31 December, 2017. At the end of the mandate, the Trustee must submit a final report.
- (ii) The Trustee must be independent of NCG. The Trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest. The Trustee is to be remunerated by NCG in a way that must not impede the independent and effective fulfilment of its mandate.
- (iii) Spain undertakes to ensure that NCG submits the names of two or more persons to the Commission for approval as monitoring Trustee no later than four weeks after notification of the Decision.
- (iv) These proposals must contain sufficient information about those persons to enable the Commission to verify whether the proposed Trustee fulfils the requirements set out in paragraph A(ii), and must in particular include the following:
 - (a) the full terms of the proposed mandate with all the provisions which are necessary to enable the Trustee to fulfil its duties; and
 - (b) the draft of a work plan describing how the Trustee intends to carry out its assigned duties.
- (v) The Commission has the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Trustee to fulfil its obligations. If only one name is approved, NCG will appoint the person or institution concerned as Trustee or cause that person or institution to be appointed, in accordance with the mandate approved by the Commission. If more than one name is approved, NCG is free to decide which of the approved persons should be appointed as Trustee. The Trustee will be appointed

within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

- (vi) If all the proposed Trustees are rejected, Spain undertakes to ensure that NCG submits the names of at least two further persons or institutions within two weeks of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs A(i) and A(iv).
- (vii) If all further proposed Trustees are also rejected by the Commission, the Commission will nominate a Trustee which NCG will appoint or cause to be appointed, in accordance with a Trustee mandate approved by the Commission.

(B) General duties and obligations

- (viii) The Trustee is to assist the Commission to ensure NCG's compliance with the Commitments and to assume the duties of a monitoring Trustee specified in the Commitments document. The Trustee is to carry out the duties under this mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the Commission. The Commission may, on its own initiative or at the request of the Trustee or NCG, issue orders or instructions to the Trustee in order to ensure compliance with the Commitments. NCG is not entitled to issue instructions to the Trustee.

(C) Duties and obligations of the Trustee

- (ix) The duty of the Trustee is to guarantee full and correct compliance with the obligations set out in the Commitments, and full and correct implementation of NCG's Restructuring Plan. The Commission may, on its own initiative or at the request of the Trustee, issue any orders or instructions to the Trustee or NCG in order to ensure compliance with the Commitments attached to the Decision.

- (x) The Trustee:
- (a) is to propose to the Commission in its first report a detailed work plan describing how it intends to monitor compliance with the Commitments attached to the Decision;
 - (b) is to monitor the full and correct implementation of NCG's Restructuring Plan, in particular:
 - (I) the reduction of the balance sheet total and the RWA;
 - (II) the restriction of business activities;
 - (III) the discontinuation of predefined business areas;
 - (IV) the sales process for shares in the predefined business areas;
 - (c) is to monitor compliance with all other Commitments;
 - (d) is to assume the other functions assigned to the Trustee in the Commitments attached to the Decision;
 - (e) is to propose measures to NCG that it considers necessary to ensure that NCG fulfils the Commitments attached to the Decision; and
 - (f) is to take into account any regulatory changes on solvency and liquidity when verifying the evolution of the actual financials with respect to the projections made in the Restructuring Plan.
 - (g) is to submit a draft written report to the Commission, Spain and NCG within thirty days after the end of each six-month period. The Commission, Spain and NCG can submit comments on the draft within five working days. Within five working days of receipt of the comments, the Trustee is to prepare a final report, incorporating the comments as far as possible and at its discretion, and submit it to the Commission and to the pertinent Spanish Authorities. Only afterwards the Trustee is also to send a copy of the final report to Spain and NCG. If the draft report or the final report contains any information that may not be disclosed to NCG, only a non-confidential version of the draft report or the final report is to be

sent to NCG. Under no circumstances is the Trustee to submit any version of the report to Spain and/or NCG before submitting it to the Commission.

The report is to focus on the duties set out in the mandate by the Trustee and compliance with the obligations by NCG, thus enabling the Commission to assess whether NCG is being managed in accordance with the obligations. If necessary, the Commission may specify the scope of the report in more detail. In addition to these reports, the Trustee is to report promptly in writing to the Commission if it has reasons to suppose that NCG is failing to comply with these obligations, sending a non-confidential version to NCG at the same time.

(D) Duties and obligations of NCG

- (xi) NCG is to provide and to require its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks under this mandate. The Trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of NCG or of the business to be sold that are necessary to fulfil its duties under the mandate. NCG is to make available to the Trustee one or more offices at its business premises and all employees of NCG are to be available for meetings with the Trustee in order to provide it with all the information it needs to perform its duties.
- (xii) Subject to NCG's approval (this approval may not to be unreasonably withheld or delayed) and at its expense, the Trustee may appoint advisors (in particular for corporate finance or legal advice), if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any costs and other expenses incurred by the Trustee are reasonable. Should NCG refuse to approve the advisors proposed by the Trustee, the Commission may approve their appointment instead, after hearing NCG's reasons. Only the Trustee is entitled to issue instructions to the advisors.

(E) Replacement, discharge and reappointment of the Trustee

- (xiii) If the Trustee terminates its functions under the Commitments or if there are any other significant grounds, such as a conflict of interest on the part of the Trustee:
 - (a) the Commission can, after hearing the Trustee, require NCG to replace it, or
 - (b) NCG, with the approval of the Commission, can replace the Trustee.
- (xiv) If the Trustee is removed in accordance with paragraph E(xiii), it may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee is to be appointed in accordance with the procedure referred to in paragraphs A(i) to A(vi).
- (xv) Besides removal in accordance with paragraph E(xiii), the Trustee is to cease its activities only after the Commission has discharged it from its duties. This discharge is to take place when all the obligations with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it is subsequently found that the relevant remedies have not been fully and properly implemented.

* * *

**Appendix II to the Term Sheet – List of subsidiaries allocated to the Core Unit
(cut off date 30-Jun)**

COMPANY	% Part
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Appendix III to the Term Sheet – List of equity holdings allocated to the Legacy Unit (IV)

Cut off date 30-Jun, €millions

COMPANY	% Part	Book value
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Appendix IV to the Term Sheet – List of outstanding issues subject to burden sharing

ISIN	Issuer	Issue date	Type	Maturity date	Client	Nominal value
ES0112805009	Caixa Galicia Preferentes, S.A.	Dec-03	Pref	Perpetuity	[...]	140,000
ES0112805025	Caixa Galicia Preferentes, S.A.	May-09	Pref	Perpetuity	[...]	300,000
ES0112805041	Caixa Galicia Preferentes, S.A.	Oct-09	Pref	Perpetuity	[...]	135,000
ES0169075001	Caixanova Emisiones, S.A.	May-05	Pref	Perpetuity	[...]	198,000
ES0169075027	Caixanova Emisiones, S.A.	May-07	Pref	Perpetuity	[...]	75,000
ES0169075043	Caixanova Emisiones, S.A.	Apr-08	Pref	Perpetuity	[...]	100,000
ES0169075050	Caixanova Emisiones, S.A.	Jun-09	Pref	Perpetuity	[...]	130,000
ES0214843015	NCG Banco, S.A.	Sep-88	Subord	Perpetuity	[...]	54,091
ES0214843023	NCG Banco, S.A.	Sep-88	Subord	Perpetuity	[...]	4,508
ES0214843098	NCG Banco, S.A.	Nov-03	Subord	Nov-13	[...]	90,000
ES0214843106	NCG Banco, S.A.	Apr-04	Subord	Apr-14	[...]	70,000
ES0214843114	NCG Banco, S.A.	Jan-05	Subord	Jan-15	[...]	90,000
ES0214843122	NCG Banco, S.A.	Jul-05	Subord	Jul-15	[...]	210,000
ES0214843130	NCG Banco, S.A.	Sep-06	Subord	Sep-16	[...]	53,250
ES0214843148	NCG Banco, S.A.	Jun-07	Subord	Perpetuity	[...]	94,550
ES0214958011	NCG Banco, S.A.	Jan-03	Subord	Jan-18	[...]	119,999
ES0214958029	NCG Banco, S.A.	Aug-03	Subord	Aug-18	[...]	120,000
ES0214958037	NCG Banco, S.A.	Jan-04	Subord	Jan-19	[...]	120,000
ES0214958045	NCG Banco, S.A.	Dec-05	Subord	Dec-20	[...]	18,700
ES0214958052	NCG Banco, S.A.	Mar-06	Subord	Perpetuity	[...]	57,650
ES0214958128	NCG Banco, S.A.	Jun-09	Subord	Jun-19	[...]	50,000
ES0214958136	NCG Banco, S.A.	Dec-09	Subord	Dec-19	[...]	50,000
XS0237727440	Caixa Galicia Preferentes, S.A.	Dec-05	Pref	Perpetuity	[...]	56,300
XS0294650535	Caixa Galicia Preferentes, S.A.	Apr-07	Pref	Perpetuity	[...]	40,150

Nominal value in €thousands