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

Subject: State aid n° SA.34536 (2012/N) – Spain
Restructuring and recapitalisation of Banco CEISS

Sir,

1 PROCEDURE

(1) On 28 January 2010, the Commission adopted a decision not to raise objections to a recapitalisation scheme[1], 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 26 March 2010, Spain officially informed the Commission that the FROB had decided to participate in the merger of two saving banks – Caja de Ahorros de Salamanca y Soria ("**Caja Duero**") and Caja España de Inversiones, Caja de Ahorros y Monte de Piedad ("**Caja España**") – to create, on 4 October 2010, Caja España de Inversiones, Salamanca y Soria, Caja de Ahorros y Monte de Piedad ("**Caja CEISS**"), with total assets of EUR 45.7 billion[3]. The FROB

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

[2] After the enactment of Law 9/2012, which repealed and replaced the Royal Decree Law 24/2012, the FROB has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit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 2010.

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agreed to subscribe EUR 525 million of convertible preference shares in Caja CEISS pursuant to the terms of the FROB Recapitalisation Scheme ("**the FROB Preference Shares**").

(3) On 30 March 2010, the Commission informed the Spanish authorities that it considered that the requirements of the FROB Recapitalisation Scheme were met for Banco CEISS to receive a capital injection in the form of FROB Preference Shares, concluding that, based on the Bank of Spain's (“**BoS**”) assessment, the merging entity was fundamentally sound and its integration plan was viable. The integration plan foresaw approximately 15% reduction of branches and employees.

(4) On 5 September 2011, Caja CEISS approved the transfer, within the framework of Spanish Royal Decree Law of 18 February 2011[4], of all its banking activities to a newly established commercial bank, Banco CEISS S.A. ("**Banco CEISS**"), registered with the BoS. That transfer was completed on 12 December 2011, the date at which Banco CEISS started to operate. Caja CEISS maintained the Obra Benéfico Social (“**OBS**”), a charitable institution, within its activities after the transfer of its banking business to Banco CEISS

(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[5]. In particular, for credit institutions in categorised as Group 2, such as Banco CEISS, 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 December 2012.

(6) On 15 October 2012, the Spanish authorities submitted an amended outline of the restructuring plan for Banco CEISS to the Commission, which was discussed in a number of meetings and conference calls. Additional information exchanges took place frequently.

(7) On 12 December 2012, Spain officially 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

4 Royal Decree Law 2/2011, of 18 February 2011 on the reinforcement of the financial system.

5 On the basis of the stress test results and the recapitalisations plans, the Spanish banks are categorised as follows:
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).

measure, the Commission has drawn on technical assistance provided by independent experts.

(8) Spain exceptionally accepts that the present decision ("**the Decision**") be adopted in the English language.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiaries

(9) Caja CEISS is a Spanish savings bank, registered with the BoS, which was created from the merger on 4 October 2010 of Caja Duero and Caja España, which were subsequently dissolved as a result of that merger. Caja Duero was a Spanish savings bank, registered with the BoS, whose main activity was retail banking in the region of Castilla y León. On June 2010, prior to the merger, it possessed total assets of EUR 21 440 million and a market share in its core region of 8.2% in loans and 10.9% in deposits. Caja España was a Spanish savings bank, registered with the BoS, whose main activity was retail banking in the region of Castilla y León. On June 2010, prior to the merger, it possessed total assets of EUR 25 198 million and a market share in its core region of 12.2% in loans and 15.6% in deposits.

(10) Banco CEISS is a Spanish commercial bank, registered with the BoS, and created within the framework of the Royal Decree Law 2/2011, where Caja CEISS approved the transfer, on 5 September 2011, of its banking business to a newly established banking entity, Banco CEISS. Banco CEISS operates mainly in the Spanish region of Castilla y León and the province of Cáceres ("**the Core Regions**"), where it has a [10 - 20]*% market share in terms of loans and of [20 – 30]% in terms of deposits. Its market share at a national level is around [0 – 5]% in terms of loans and [0 – 5]% in terms of deposits[6]. Traditionally, its focus has been on retail banking in the provinces of León, Palencia, Zamora, Valladolid, Salamanca, Ávila, Soria (Region of Castilla y León) and Cáceres (Region of Extremadura).

(11) Two separate levels of beneficiaries can be identified for the purposes of the present Decision, namely:

a) Caja CEISS, which up until the date of the Decision held 100% of Banco CEISS. However, following the 2012 foreseen losses and two of the measures notified to the Commission – the conversion of the FROB Preference Shares into ordinary shares of Banco CEISS and the injection of new capital in Banco CEISS in the form of ordinary shares – Caja CEISS' current equity stake in Banco CEISS is expected to be reduced to […]; and

b) Banco CEISS, which exercises the banking activities previously conducted by Caja CEISS and, before that, Caja España and Caja Duero.

(12) Between 2002 and 2008, Caja España and Caja Duero went through a period of geographical expansion outside their Core Regions and broadening of business activities, in particular real estate development, corporate banking and equity participations. Table 1 provides Banco CEISS' main financial figures at the time of the merger between Caja España and Caja Duero, as of the date of the latest full year of audited accounts and, finally, at the end of the restructuring period

* Business secret

[6] Market shares as of June 2012.

as described in more detail in following sections.

Table 1: Banco CEISS' main financial figures

	31.12.2010	31.12.2011	31.12.2017
Total assets (billion EUR)	45.66	42.28	[30 - 40]
Loans to customers (billion EUR)	26.93	25.48	[10 - 20]
Retail deposits (billion EUR)[7]	21.21	21.31	[10 - 20]
Total wholesale funds (billion EUR)[8]	19.44	15.82	[5 - 10]
Employees Total Group	5 050	4 757	[1 000 - 5 000]
Number of branches	856	817	[500 - 1 000]
National Market share in deposits	[0 – 5]%	[0 – 5]%	[0 – 5]%
Regional Market share[9] in deposits	[20 - 30]%	[20 - 30]%	[20 - 30]%
National Market share in loans	[0 – 5]%	[0 – 5]%	[0 – 5]%
Regional Market share[10] in loans	[10 - 20]%	[10 - 20]%	[10 - 20]%

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[11], the legal foundations for the restructuring of the Spanish banking sector. The savings banks (*cajas de ahorros*)[12], 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 that legislation, Caja CEISS benefited from a first capital injection in 2010 by way of the FROB Preference Shares to support the merger of the two founding savings banks and partially fund their restructuring.

(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*"[13].

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7 Including SME and other corporate deposits.

8 Including Central Bank funding, liabilities from financial institutions, covered bonds, other covered wholesale funding and bonds and other marketable debt securities.

9 Market share in the Core Regions.

10 Market share in the Core Regions.

11 Royal Decree Law 9/2009, of 26 June 2009 on banking sector restructuring.

12 Cajas de Ahorros are credit institutions that have no shareholders, but instead are governed by their members. Their legal form is a private charity that holds a banking license and is entitled to provide banking services as commercial or cooperative banks do. Profits are partially used to strengthen their capital and the remainder is used to fund the social activities that each caja de ahorros carries out through its OBS.

13 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.

(16) On 10 March 2011, as a result of the new legislation, the BoS informed Caja CEISS that under the new regime it required EUR 463 million of additional capital in order to meet a 10% capital principal solvency ratio over its risk weighted assets ("**RWA**")[14].

(17) On 28 April 2011, the BoS approved a recapitalisation plan submitted by Caja CEISS ("**the April 2011 Recapitalisation Plan**"), which included various strategies and measures to reach the new solvency levels by 30 September 2011. That plan incorporated two options:

i. Merger with Unicaja Banco[15]. The integration of both banks would allow them to reach a core capital ratio of 10%.

ii. In case that the first option failed, Caja CEISS would request a capital injection from the FROB of EUR 463 million.

(18) In July 2011, Caja CEISS passed the European Banking Authority (**"EBA"**) stress test exercise with a core tier 1 ratio of 8.2%.

(19) The April 2011 Recapitalisation Plan was amended in September 2011 as part of a due diligence performed on Caja CEISS and Unicaja Banco by the auditing firm Deloitte Touche Tohmatsu Limited. That due diligence was requested by the FROB anticipating the event that State aid would be needed. In that new plan, the merger with Unicaja Banco remained the preferred option. However, if the merger were not to materialise, Caja CEISS, accordingly to the due diligence results, would need EUR 746 million capital from the FROB to comply with the new capital ratios by 30 September 2011[16].

(20) On 30 March 2012, after the approval of the new provisioning rules by BoS[17], the boards of directors of both Unicaja Banco and Banco CEISS amended the previously approved agreement of merger. The entities have been working on a new merger plan since the summer of 2012 but have not arrived to any agreement to date.

(21) On 28 September 2012, the results of the bottom-up stress test and asset quality review conducted by an independent consultant, Oliver Wyman, in the context of the MoU[18] ("**the MoU Stress Test**") revealed that Banco CEISS had a capital shortfall of EUR 2 063 million under the adverse scenario and EUR 1 269 million in the base case for the three-year time horizon (2012-2014) of that exercise.

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[14] 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.

[15] Unicaja was a Spanish savings bank, registered with the BoS, whose main activity was retail banking in the region of Andalucía. In June 2011, before any discussions of a possible merger with Caja CEISS were started, it possessed total assets of EUR 36 250 million and a market share in its core region of 9.27% in loans and 12.91% in deposits.
In December 2011, Unicaja transferred all its assets and liabilities to a new bank: Unicaja Banco. This operation was done as part of the merger with Banco CEISS. Currently, Unicaja Banco performs all the financial activity stemming from Unicaja.

[16] See footnote 13.

[17] RDL2/2012 on the sanitation of the banking sector.

[18] 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/

(22) Banco CEISS faces important operational challenges stemming mainly from the expansion undergone by each of its two founding savings banks between 2002 and 2008. That expansion has *inter alia* resulted in high exposure to the real estate sector[19], which has driven up its non-performing loans[20], and a large reliance on wholesale funding with a loan-to-deposit ratio of 125% as of 31 December 2010, which is predominately caused by the commercial gap of the branches in the regions outside Banco CEISS' traditional operating area.

2.3 Overview of the aid measures

(23) Since 2010, Caja CEISS and Banco CEISS have benefitted or will benefit from several State aid measures. Overall, Spain has or will provide State aid in the form of: a) capital injections totalling EUR 1 129 million, b) transferred assets to the AMC amounting to approximately EUR [5 – 10] billion gross (estimated transfer price is approximately EUR [0 – 5] billion) and c) State guarantees on senior unsecured debt worth EUR 3 193 million. Table 2 provides an overview of those aid measures.

Table 2: Overview of the aid measures

Measure	**Description**	**Amount (€ million)**	**Approved by the Commission**	**% RWA**
A	State Guarantees on senior unsecured debt	3 193	2009 - 2012	Not applicable
B	FROB I: convertible preference shares in Caja CEISS	525	30.03.2010	1.82%[21]
C	FROB I: conversion of preference shares into ordinary shares of Banco CEISS	525	Approved by this Decision	RWA impact already accounted for in Measure B
D	Recapitalisation Measure by the FROB in the form of new shares in Banco CEISS	604	Approved by this Decision	2.6%[22]
E	Transfer of impaired assets to the AMC	717	Approved by this Decision	3.03%[23]

[19] The overall exposure of Banco CEISS to the real estate sector represents [10 – 20]% of its balance sheet on 31 December 2010.
[20] The non-performing loan ratio stood at 9.6% on 31 December 2010.
[21] RWA as of 31 December 2009.
[22] RWA as of 31 December 2011.
[23] RWA as of 31 December 2011.

2.4 Measure A: State Guarantees on liabilities

(24) Between 2009 and 2012, Caja CEISS and Banco CEISS have received guarantees on unsecured senior debt securities under the approved Spanish guarantee scheme[24] worth EUR 3 193 million, out of which Caja CEISS and Banco CEISS issued State-guaranteed securities for total amount of EUR 2 988 million.

2.4.1 Measure B: FROB I preference shares

(25) On 25 March 2010, the FROB decided to support the merger of the two founding savings banks of Caja CEISS by subscribing for EUR 525 million (or 1.82% of RWA as of 31 December 2009) in newly issued convertible preference shares under the FROB Recapitalisation Scheme[25]. Table 3 summarises the main financial features of the FROB Preference Shares.

Table 3: Main financial features of the FROB Preference Shares

Nominal amount subscribed	EUR 525 million
Nominal value of each preference share	EUR 100 000
Number of preference shares	5 250
Remuneration:	
First (annual) coupon	7.75%
Set up until fifth year	0.15 bps[26]
Step up between fifth and seventh year	100 bps

(26) Under the terms the FROB Recapitalisation Scheme, those 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, those convertible preference shares had to be bought back or converted into ordinary shares of the beneficiary. In addition, if the BoS were to 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.

(27) Caja CEISS and later Banco CEISS paid the coupon due on the FROB Preference Shares for the following amounts and on the following dates in accordance with the features of the securities described in Table 3 above: EUR 40.7 million on 29 October 2011 and EUR 41.5 million on 29 October 2012.

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[24] 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 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 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 of 29 June 2012 (SA.34904 2012/N OJ C 232/2012).

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

[26] Basis points.

2.4.2 Measure C: Conversion of the FROB I Preference Shares

(28) The Spanish authorities have informed the Commission that the BoS considers it unlikely that Banco CEISS will redeem or repurchase the FROB Preference Shares within the period prescribed and that the FROB therefore intends to trigger the conversion option described in recital (25). Accordingly, the initial capital injection subscribed in 2010 by the FROB will be converted into ordinary shares of Banco CEISS. That conversion does not modify the common equity tier 1 ("**CET1**") ratio. Furthermore in the Oliver Wyman Stress Test, the FROB Preference Shares were included as CET1. After the conversion, the FROB's equity stake in Banco CEISS (before measure D described below) is expected to be reduced to zero in order to compensate for 2012 losses.

2.4.3 Measure D: Recapitalisation of December 2012

(29) Following the MoU Stress Test and a series of measures proposed by the FROB, (including (i) subordinated liabilities exercises ("**SLE**") reducing the capital needs by EUR [1 000 – 5 000] million and (ii) the transfer of some impaired assets and loans to an AMC reducing the capital needs by EUR [100 – 500] million), an additional capital injection of EUR 604 million is still needed for Banco CEISS to meet the new Spanish regulatory solvency levels.

(30) Accordingly, the FROB will subscribe for EUR 604 million in the form of new ordinary shares issued by Banco CEISS on the basis of the Restructuring Plan. The FROB will contribute bonds issued by the European Stability Mechanism ("**ESM**") for the same amount in consideration for the new shares in Banco CEISS.

(31) In line with the recapitalisation scheme for credit institutions[27], the entry price for the recapitalisation of Banco CEISS via ordinary shares will be based upon a discount, of at least 25%, on the market or economic value of Banco CEISS. The dilution effects, due to the recapitalisation by the FROB, will be taken into consideration before that discount is computed.

(32) Based on the initial best estimates provided by the Spanish authorities and pending the economic valuation of Banco CEISS, the FROB will control at least 50% of Banco CEISS as a result of measures C and D and the conversion of hybrid capital instruments into equity as described in the burden-sharing section below[28].

[27] See Case SA.35069 approved on 27 July 2012 New recapitalisation Scheme for credit institutions

[28] […].

2.4.4 Measure E: The transfer of impaired assets to the Asset Management Company

a. Objective

(33) Banco CEISS will benefit from an impaired asset measure whereby it transfers assets to the AMC. The aim of that measure is to remove uncertainty about the future value of its most problematic asset portfolio and allow Banco CEISS to concentrate on the implementation of the Restructuring Plan.

b. AMC: Set up and characteristics

(34) 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 framework[29] was prepared by the Spanish authorities in consultation with the Commission, the European Central Bank ("**ECB**"), the ESM, and the International Monetary Fund ("**IMF**").

(35) 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 that 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.

(36) 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.

(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. That 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 CNMV[30]), 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.

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29 Law 9/2012 on credit institution restructuring and resolution specifies the details of the AMC.

30 Comisión Nacional del Mercado de Valores: 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 2, such as Banco CEISS, shall transfer, as from December 2012, the following categories of assets to the AMC: 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 Banco CEISS to the AMC amounts to approximately EUR [5 – 10] billion 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 RWA of Banco CEISS will be reduced by EUR [0 – 5] billion. The figures included in this section 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 those levels as the transfer will only take place in the first quarter of 2013.

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 were used as a reference for Banco CEISS. 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 the AMC. That discount is the result of aspects such as: a) the aggregate acquisition of the assets; b) the consideration of certain expenses previously borne by Banco CEISS, 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 that 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 ("**IAC**")[31,] which serves as the reference framework for that measure.

f. Purchase of those assets by the AMC

(45) The AMC will pay Banco CEISS the established transfer value by State-guaranteed debt securities issued by the AMC ("**the AMC bonds**"). The AMC

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

bonds have a one-, two- or 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 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 Banco CEISS amounts to approximately EUR [0 – 5] billion, which is equal to [40 – 50]% of the gross book value of those assets as of 30 June 2012. Those 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 those levels as the transfer will only take place in the first quarter of 2013. The Spanish authorities have provided a letter from the BoS certifying the detailed results of the asset transfer to the AMC by Banco CEISS.

h. Market price

(47) According to arguments brought forward by Spain regarding Group 2 banks, 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 BANCO CEISS

(48) The Restructuring Plan states that, in accordance with Law 9/2012 and in view of: a) its significant capital shortfall as revealed in the MoU Stress Test; and b) the amount of State aid already received since 2010, Banco CEISS will be placed under resolution under the meaning of that Law.

(49) Accordingly, the Spanish authorities will carry out an in-depth restructuring of Banco CEISS' 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, Banco CEISS will be placed under orderly resolution in accordance with Law 9/2012. The commitments by the Spanish authorities have been presented in a separate document entitled: *"Term Sheet of the Spanish authorities commitments for the approval of the Restructuring Plan of Banco CEISS by the European Commission"* (hereinafter referred to as "**the Term Sheet**", annexed to the Decision)[32].

[32] See Annex.

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

(50) Table 4 below presents the main financial projections contained in the Restructuring Plan for Banco CEISS ("**the Summary Table**"):

P&L	2011	2012	2013	2014	2015	2016	2017	• 2012 - 20 (%)
Profit before tax (in EUR, million)	[20 - 30]	-[4 000 - 3 000]	[40 - 50]	[100 - 200]	[100 - 200]	[100 - 200]	[100 - 200]	-[200 - 100]%
Cost of Income ratio (in EUR, million)	[70 - 80]%	[100 - 200]%	[60 - 70]%	[50 - 60]%	[50 - 60]%	[50 - 60]%	[40 - 50]%	-[70 - 60]%
FTE	[4 000 - 5 000]	[4 000 - 5 000]	[3 000 - 4 000]	[3 000 - 4 000]	[3 000 - 4 000]	[3 000 - 4 000]	[3 000 - 4 000]	-[40 - 30]%
Branch	[800 - 900]	[800 - 900]	[600 - 700]	[500 - 600]	[500 - 600]	[500 - 600]	[500 - 600]	-[40 - 30]%
ROE (after tax)	[0 - 5]%	-[200 - 100]%	[0 - 5]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	-[200 - 100]%

Assets (in EUR, million)	2011	2012	2013	2014	2015	2016	2017	• 2012 - 20 (%)
Loans to clients (net)	[20 000 - 30 000]	[20 000 - 30 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	-[10 - 5]%
Non Performing Loans	[2 000 - 3 000]	[1 000 - 2 000]	[1 000 - 2 000]	[1 000 - 2 000]	[1 000 - 2 000]	[1 000 - 2 000]	[1 000 - 2 000]	-[5 - 0]%
Total Assets	[40 000 - 50 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	-[20 - 10]%
RWA	[20 000 - 30 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	-[20 - 10]%

Liabilities	2011	2012	2013	2014	2015	2016	2017	• 2012 - 20 (%)
Central bank (in EUR, million)	[4 000 - 5 000]	[8 000 - 9 000]	[8 000 - 9 000]	[8 000 - 9 000]	[0 - 5]	[0 - 5]	[0 - 5]	-[100 - 50]%
Liabilities to clients (in EUR, million)	[20 000 - 30 000]	[20 000 - 30 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[10 000 - 20 000]	[20 000 - 30 000]	-[5 - 0]%
Total liabilities (excluding own funds) (in EUR, million)	[40 000 - 50 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	[30 000 - 40 000]	-[20 - 10]%
LTD	[100 - 120]%	[90 - 100]%	[100 - 120]%	[100 - 120]%	[100 - 120]%	[90 - 100]%	[90 - 100]%	-[10 - 5]%
EBA CT1	[5 - 10]%	[5 - 10]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[60 - 70]%
Basel III CET1	[5 - 10]%	[5 - 10]%	[10 - 20]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	-[20 - 10]%

(51) As illustrated in the Summary Table, Banco CEISS' balance sheet will be reduced by [10 – 20]% between 2012 and 2017, mainly due to a decrease in the loans portfolio of [5 - 10]%, a reduction in Eurosystem funding of [50 – 100]% and a decline in deposits of [0 – 5]%. If added to previous restructuring efforts (2010-2012), this represents a total reduction of the balance sheet by [20 – 30]%.

(52) As explained in recitals (33) to (47), Banco CEISS will transfer impaired assets and loans to the AMC with a gross value of approximately EUR [5 – 10] billion, which implies a reduction in its RWAs of EUR [0 – 5] billion.

(53) As part of that restructuring, Banco CEISS will refocus on its Core Region, which will lead to additional branch and staff adjustments in its branch network and central services. Those measures involve branch and staff adjustments, which will lead to a reduction between 2012 and 2017 of [30 – 40]% in branches and [30 – 40]% in staff, which, if added to previous restructuring efforts (2010-2012), represents a total [50 – 60]% closure of branches and [40 – 50]% reduction in staff since the restructuring of Banco CEISS started.

(54) In addition to those measures, the total balance sheet of Banco CEISS will be reduced as a result of divesting the portfolio of industrial stakes[33].

(55) Accordingly, the volume of RWA in Banco CEISS will fall by [10 – 20]% by the end of 2017 (as compared to 2012), which, if added to previous restructurings, represents a net reduction of [40 – 50]% from 31 December 2010.

(56) Following that deep restructuring, Banco CEISS projects to post profits before tax in 2017 of EUR [200 – 300] million (compared to a EUR [3 000 – 4 000] million loss in 2012), a cost-of-income ratio of [40 – 50]% (compared to 125% in 2012) and capital ratios according to EBA (core tier 1) and Basel III[34] (CET1) rules of [10 – 20]% and [5 – 10]% respectively.

(57) As recorded in the Term Sheet, Banco CEISS will abandon real estate development, large corporates and capital market activities[35]. Most of Banco CEISS' assets outside its Core Region will be managed with the objective of being divested, liquidated or wound down in an orderly manner, and minimizing the cost for taxpayers.

3.2 Contribution to the restructuring costs of Banco CEISS

(58) In accordance with the MoU and Law 9/2012, prior to benefiting from State aid, aided banks must 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 Banco CEISS

(59) The absorption of accounting losses as of 31 December 2012, followed by the conversion of the FROB Preference Shares and the required new capital injection to meet regulatory solvency levels mean that all existing shareholder will be asked to bear losses in proportion to their stakes prior to any new capital injection under the MoU.

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33 See Term Sheet paragraph 5.6.

34 International regulatory framework for banks developed by the Basel Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the banking sector.

35 See Term Sheet paragraph 5.7.

3.2.2 Subordinated Liability Exercise in Banco CEISS

(60) In view of the significant losses posted and forecasted by Banco CEISS for 2012 and pursuant to the MoU, holders of preference shares and perpetual/dated subordinated debt instruments will contribute to the adequate recapitalisation of Banco CEISS 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. That action will generate immediate capital gains for Banco CEISS estimated at EUR [200 – 300] million which will significantly reduce its needs to raise new capital.
- Second the proceeds of the buy-back will take the form of ordinary shares (or other equity-equivalent instruments) of Banco CEISS 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 Sheet[36], 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 Banco CEISS to raise new capital by EUR [900 – 1 000] 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.

(61) Consequently, there will be no cash outflow from Banco CEISS to the holders of those 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.

(62) As a result of the burden-sharing exercise, the holders of those securities will hold […]% stake in Banco CEISS before the implementation of measure D, after which, the FROB will hold at least a 50% stake in Banco CEISS.

3.3 Sale of the Bank

(63) Spain will dispose or procure the disposal of Banco CEISS. The sale will be conducted through a competitive tender process, with the objective to minimize the cost to taxpayers.

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

(65) If Spain has not entered into such an agreement by […], it will appoint a divestiture trustee (“**the Divestiture Trustee**”) with the exclusive mandate to sell Banco CEISS or any commercial activity of Banco CEISS considered relevant by the potential buyer, at […].

(66) By […], the Divestiture Trustee will propose a selected buyer or communicate the impossibility of selling Banco CEISS, […].

[36] See Term Sheet section 7.

(67) Spain is entitled to reject the buyer proposed by the Divestiture Trustee. If the proposed buyer is rejected or if it is not possible to sell Banco CEISS, Spain will present a resolution plan for Banco CEISS within the three months following the announcement by the Divestiture Trustee of the results of its mandate.

(68) If the buyer of Banco CEISS considers 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

(69) The Spanish authorities accept that measures A through E 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.

(70) 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.

(71) *Appropriate and well-targeted*. The Spanish authorities submit that Banco CEISS is important within the Spanish financial system, especially in its Core Region.[37]

(72) *Necessary and limited to the minimum amount*. The Spanish authorities submit that the measures proposed are required to bring Banco CEISS' 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 Banco CEISS meets a solvency ratio of 9% Core Tier 1 of RWA as required by the Spanish banking rules and of 6% Core Tier 1 under an adverse scenario, as determined in the MoU Stress Test.

(73) *Proportionate*. The Spanish authorities submit that the terms and conditions of the proposed measures together with the terms and conditions imposed on Banco CEISS 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

(74) 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. The Spanish authorities commit to comply with the commitments listed in the Term Sheet, if necessary, by ensuring that Banco CEISS complies with these commitments.

(75) In the event that market conditions allow for a sale of Banco CEISS before the Restructuring Plan is completed and should the buyer of Banco CEISS 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.

[37] Banco CEISS' market share in deposits in the region where it operates is currently approximately [20 – 30]%.

(76) 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 Banco CEISS towards the Commission ("**the Monitoring Trustee**"). The Monitoring Trustee will be appointed by Banco CEISS, and must be endorsed by the Commission. The Monitoring Trustee must be independent of Banco CEISS and be remunerated by Banco CEISS. The Monitoring Trustee will report to the Commission. In case the sale of the Bank has not been completed by the end of […][38], a Divestiture Trustee will be appointed, in line with the provisions of the Term Sheet.

5 ASSESSMENT

5.1 Existence of State Aid

5.1.1 Overview - measures already temporarily approved / not approved

(77) With regards to the measures temporarily approved by the Commission as rescue aid in earlier decisions or under a scheme (namely, measures A and B), the Commission has already concluded that they constitute State aid in favour of Banco CEISS. As a consequence, it is not necessary to reassess whether those measures constitute State aid under the Decision.

(78) The measures which need to be assessed for State aid under this Decision are measures C, D and E.

(79) 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.

(80) The qualification of a measure as State aid within the meaning of that 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. The Commission observes that the Spanish authorities do not dispute that measures C through E constitute State aid.

5.1.2 State resources and imputability

(81) The Commission recalls at the outset that the FROB, the intervening authority 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 C and D) are financed by State resources.

[38] See recital (64).

(82) As regards the transfer of assets to the AMC (measure E), 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 sheets 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 a 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 E is imputable to the State and constitutes State resources.

5.1.3 Advantage

(83) As regards the conversion of the FROB Preference Shares into ordinary shares (measure C), the Commission recalls that it considered the original recapitalisation measure (measure B) as State aid. Although that 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 Banco CEISS. The new capital is more junior and therefore of a higher quality than the initial injection in terms of loss absorption. Moreover, unlike the FROB Preference Shares that had a fixed coupon, the remuneration for the new equity is decided by Banco CEISS and has therefore become more uncertain. Consequently, measure C can be considered as Core Tier 1 capital, unlike measure B. That change in nature clearly provides an advantage to Banco CEISS, 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.

(84) As regards the additional recapitalisation measure (measure D), it allows Banco CEISS to 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 Banco CEISS, it is doubtful whether that 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.

(85) Finally, as regards the transfer of assets to the AMC (measure E), Banco CEISS 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 of about EUR [5 – 10] billion.

(86) 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 Banco CEISS' portfolio, the measure therefore confers an advantage on Banco CEISS.

(87) 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.

(88) 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

(89) For these reasons, the Commission agrees with Spain that measure E would not have been provided by a market economy investor expecting a reasonable return on his investment, particularly in light of the overall volume of the intervention and given the current market circumstances.

5.1.4 Selectivity

(90) Since measures C, D and E are exclusively addressed to Banco CEISS (or Caja CEISS respectively), they should be considered selective in nature.

5.1.5 Distortion of competition and effect on trade between Member State

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

(92) The Commission also considers that the measures are likely to affect trade between Member States because Banco CEISS continues to compete on the Spanish retail market, the mortgage lending markets and the commercial lending markets. In all those markets, some of Banco CEISS' competitors are subsidiaries and branches of foreign banks.

(93) Thus, measures C, D, and E strengthen the competitive position of Banco CEISS *vis-à-vis* its competitors in Spain and in other Member States.

5.1.6 Beneficiaries of the aid

(94) As described in recital (9), Banco CEISS is the economic successor of Caja CEISS, which transferred its entire banking business to Banco CEISS and retained only its ownership over OBS and a stake in Banco CEISS. It is evident that Banco CEISS benefits from all the measures, as its banking business could not have continued without aid from Spain. As for Caja CEISS, it is clear that it derived a benefit from the aid initially granted (measures A and B). Following measures C and D, which will lead Caja CEISS to […] stake in Banco CEISS, Caja CEISS no longer benefits from aid measures granted to Banco CEISS.

(95) As regards the founding saving banks, Caja Duero and Caja España, as beneficiaries of State aid, their position 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 Caja CEISS and Banco CEISS, successive legal and corporate changes increasingly broke those links.

(96) 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 Banco CEISS, 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 those charitable activities. Since they have lost control over Banco CEISS 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 C, D and E fulfil the conditions laid down in Article 107(1) TFEU and that those measures therefore constitute State aid within the meaning of that provision. The Commission also recalls that it had already found measures A and B 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)

(97) Caja CEISS and Banco CEISS received total guarantees on liabilities worth EUR 3 193 million.

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

(98) Caja CEISS and Banco CEISS have received or will receive recapitalisations of approximately EUR 1 129 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 1 129 million (4.8% of RWA[39]).

[39] RWA as of December 2011.

5.2.3 Impaired asset measure (measure E)

(99) 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 point 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 Banco CEISS, the transfer price is about EUR [5 – 10] billion, while the market price is estimated at about EUR [5 – 10] billion by the Spanish authorities[40].

(100) Consequently, the aid granted to Banco CEISS as a result of the impaired asset measure amounts to about EUR 0.7 billion (3% of RWA[41]).

5.2.4 Conclusion

(101) On the basis of the foregoing, it should be concluded that Caja CEISS and Banco CEISS have received State aid in form of capital injections and impaired asset measures amounting up to EUR 1 846 million (7.8% of RWA[42]), in addition to the guarantee worth EUR 3 193 million.

5.3 Legality of the aid

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

6 COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET

(103) As regards the compatibility of the aid provided to Banco CEISS, 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.

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40 The Commission services have assessed those arguments and agree with the market value as proposed by Spain. While those market values are above the central valuation provided by the independent experts on whom the Commission had relied on in relation to the technical aspects of the transfer of the impaired assets to the AMC, they are still within the error range provided by them.

41 RWA as of December 2011.

42 RWA as of 31 December 2011.

6.1 Legal basis for the compatibility of the aid

(104) 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 disturbance[43]. The Commission confirmed that view by adopting the 2011 Prolongation Communication[44].

(105) 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 crisis[45]. Therefore, the legal basis for the assessment of the measures is Article 107(3)(b) TFEU.

6.2 Compatibility assessment

(106) Caja CEISS and Banco CEISS have benefitted and will continue to benefit from aid granted under a scheme (measures A and B) which has already been found compatible by the Commission. They will further benefit from several State aid measures whose compatibility has not previously been assessed by the Commission, namely measures C, D and E.

(107) Since measures A to E have been provided in the context of the restructuring of Banco CEISS, they will need to be examined as restructuring aid under the Restructuring Communication, in light of the Restructuring Plan submitted by the Spanish authorities.

(108) However, prior to that examination, it will need to be examined whether the recapitalisation measures C and D are compatible with the Commission's Banking and Recapitalisation Communications and whether the impaired assets measure E is compatible with the Impaired Assets Communication.

(109) As regards the position of Caja CEISS and the founding saving banks, Caja Duero and Caja España, vis-à-vis measures A through E, those banks have […] stake in Banco CEISS, as explained in the section 5.1.6 on the beneficiaries of aid, and are, therefore, no longer active in the financial market. It is therefore no longer 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 compatibility assessment equally applies to them.

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43 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).

44 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.

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

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

(110) 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[46]:

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 that 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

(111) As regards the conversion of the FROB Preference Shares (measure C), that measure will reinforce the capital position of Banco CEISS, as equity capital is junior to the FROB Preference Shares. Since the conversion contributes to the strengthening of Banco CEISS' capital base, the Commission considers it as appropriate to the intended objective.

(112) As regards the recapitalisation measure (measure D), the MoU stress test revealed a capital deficit of EUR 2 063 million, which will be reduced by the transfer of assets to the AMC and the burden-sharing exercise to EUR 604 million. Owing to the lack of confidence on the markets in Banco CEISS and the general uncertainty regarding the economic situation of Spain overall, it is virtually impossible for Banco CEISS to raise the necessary capital from private investors. The Commission is therefore considers the recapitalisation measure appropriate to effectively achieve the objective of remedying a serious disturbance in the economy, as it fills the remaining capital deficit of Banco CEISS.

b. Necessity – limitation of the aid to the minimum

(113) 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 intended objective. With the additional aid provided through measures C and D, Banco CEISS will continue to meet regulatory capital ratios and, thus, the aid amount is limited to the minimum necessary to achieve the intended objective.

(114) 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 2011 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 Banco CEISS […].

[46] 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.

(115) Nevertheless, the Commission notes that an adequate remuneration of the entire capital injected is unlikely to be forthcoming, given the current troubled financial state of Banco CEISS 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 an adequate remuneration is not ensured in this case, further restructuring is required.

c. Proportionality – measures limiting negative spill-over effects

(116) The Commission considers that, in principle, the proportionality of measures C and D should be assessed in 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.

(117) It is, however, worth highlighting that given the significant degree of burden-sharing and Banco CEISS' commitment to exist 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 […][47], that measures C and D can be considered proportionate.

Conclusion

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

6.4 Compatibility of measure E with the Impaired Assets Communication

(119) 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 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

(120) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of the 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[48].

[47] See Term Sheet paragraph 8.5.
[48] Cf. Case N 725/2009, Irish asset relief - NAMA, OJ C 94 of 14 4.2010.

(121) As regards the present case, the impaired assets measure (measure E) 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 those 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

(122) 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.

(123) As regards measure E, 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.

(124) However, while it is accurate that the definitive number of impaired assets falling under measure E is not currently available due to accounting and other changes that may occur between the date of the 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 that 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 Banco CEISS.

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

Management of the assets

(126) 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 such a separation should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.

(127) As regards measure E, the Commission notes that the assets will be managed by the AMC, which is fully independent from Banco CEISS. The Commission therefore concludes that the separate asset management is thus in line with the requirements of Impaired Assets Communication.

Valuation

(128) Section 5.5 of the Impaired Assets Communication notes 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. That value constitutes the benchmark level in so far as a transfer of impaired assets at that 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.

(129) As regards measure E, 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.

(130) The Commission has scrutinized the valuation and, in particular, the underlying general methodology in order to ensure a consistent approach at EU level. For that purpose, the Commission has contracted external experts to scrutinize the valuation prepared by Oliver Wyman.

(131) The valuation is therefore in line with the Impaired Asset Communication.

Burden-sharing and remuneration

(132) 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.

(133) 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 Impaired Assets Communication 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.

(134) As regards measure E, 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 [600 – 700] million and the payment through bonds.

(135) In addition, Banco CEISS 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 lower of the rate for government bonds of the corresponding maturity 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-year period. As a result, Banco CEISS 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.

(136) The Commission therefore considers that the requirements regarding burden-sharing in the Impaired Assets Communication have been met.

Conclusion on compatibility

(137) In light of the above, the Commission considers measure E – the impaired asset measure – to fulfils 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-E) with the Restructuring Communication

(138) 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 down 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

(139) As the Commission sets forth in its Restructuring Communication[49], 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.

(140) The Spanish authorities have submitted a restructuring plan for Banco CEISS with a five-year time span, going up to the end 2017 and showing a return to viability at the end of the restructuring period.

(141) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. In that regard, the Restructuring Plan adequately addresses the weaknesses of Banco CEISS. First, the segregation and transfer of the assets and loans related to the real estate development sector to the AMC (measure E) is an adequate response to the high concentration of Banco CEISS' balance sheet on that sector and level of non-performing assets[50], and its past expansion outside its core retail banking business and historical Core Regions. That transfer will allow Banco CEISS to refocus 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.

(142) Second, a significant overhaul of strategy has been undertaken in order to strengthen the corporate governance management of Banco CEISS, most notably on risk management practices and controls. Thus, Banco CEISS had a cost/income ratio of 70% in 2011, one of the highest among its peers. Banco CEISS plans to reduce that ratio via a significant reduction in its branch network and personnel. The Restructuring Plan projects a new cost/income ratio of [40 – 50]% in 2017.

(143) Third, the Restructuring Plan foresees 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.

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49 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.

50 15% of its balance sheet in 2011 and 28% of foreclosed assets. Source: Oliver Wyman analysis.

(144) In terms of the viability of the Banco CEISS, the Commission notes that the Restructuring Plan uses underlying conservative assumptions in terms of market share evolution in the core areas, net margins on the pricing of 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 Banco CEISS. Those measures will ensure a clean-up of the core business in terms of lending book, allowing Banco CEISS to focus on its strong client base amongst retail and SMEs. At the end of the restructuring period, Banco CEISS will be able to cover all its costs and provide an appropriate return on equity of [5 - 10]%, taking into account an adequate cost of risk in view of its new risk profile

(145) 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. Banco CEISS 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.

(146) 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 [1 000 – 2 000] million from the burden-sharing exercise, Banco CEISS plans to be recapitalised to a level that will allow it to reach a Basel III common equity tier 1 ratio of [5 – 10]% and an EBA core tier I ratio of [10 – 20]% at the end of December 2017, which is the end of the restructuring period.

(147) Finally, the Restructuring Plan provides information on the future funding profile of Banco CEISS. The Restructuring Plan factors in conservative assumptions in terms of deposits evolution and wholesale and central bank reliance. At the end of the restructuring period, Banco CEISS will have a loan-to-deposit ratio of [90 – 100]% and reliance on central bank funding will have been reduced to […].

(148) 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 less than [100 – 120]% and an exit from central bank reliance, will ensure a conservative funding profile of Banco CEISS.

6.5.2 Own contribution and burden-sharing

(149) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary 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.

(150) 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 Banco CEISS. As described in recital (21), the capital shortfall which needs to be covered by the recapitalisation measure (measure D) was determined on the basis of a stress test. In addition to the transfer of assets to the AMC (measure E), a number of elements reduce the magnitude of public funds that are required to ensure that Banco CEISS will remain above the regulatory minimum capital requirements, even in a adverse scenario.

(151) 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 (60) to (62), 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, it 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 Banco CEISS to the holders of those securities will be avoided, with the sole exception of the holders of dated subordinated debt instrument who will be offered the option to convert their debt instruments – subject to a [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 Banco CEISS' viability.

(152) 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 (62), the State will acquire a significant ownership of Banco CEISS and its previous owners will be […]. The State will also receive a large part of future profits and/or the revenue from the envisaged sale of Banco CEISS. The Commission therefore considers the level of remuneration associated with the State's stake in Banco CEISS of at least 50%, as appropriate.

(153) Third, so as to ensure that Banco CEISS is not overcapitalised if the adverse scenario used for the purposes of the MoU Stress Test does not materialise, Spain has committed that Banco CEISS 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 […].

(154) Finally, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by Banco CEISS, the Commission notes that Banco CEISS 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 [90 – 100]% 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.

(155) Furthermore, Spain also committed to several behavioural constraints, such as the limitation on remuneration of Banco CEISS' employees, a ban on advertising State support, a ban on aggressive commercial practices and an acquisition ban. The Commission would like to underline the coupon ban which Spain also commits to and that is applicable throughout the restructuring period. That commitment ensures an appropriate contribution to the restructuring costs of the holders of securities.

(156) Accordingly, burden-sharing on equity, hybrid and subordinated debt-holders; cost reductions; divestments[51] and adequate remuneration for the aid represent a sufficient own contribution by Banco CEISS 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 […] of the original shareholders of Banco CEISS ensures appropriate burden-sharing. For those reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

6.5.3 Limiting distortion of competition

(157) 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 Banco CEISS' own contribution and burden-sharing over the restructuring period.

(158) The Commission recalls that Caja CEISS and Banco CEISS have received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 1 846 million in addition to the liquidity guarantees worth EUR 3 193 million.

(159) The aid amount of EUR 1 846 million is equivalent to 7.8% of Banco CEISS' RWA[52]. 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.

(160) The two main measures that will limit distortions of competition are (i) the downsizing of Banco CEISS in terms of total assets, RWA, geographical footprint, business segments and staff and; (ii) the sale of Banco CEISS (or the orderly winding down should the sale not materialise).

(161) First, Banco CEISS will become a smaller bank. As indicated in the Summary Table, its total balance sheet will shrink from EUR [30 – 40] billion on 31 December 2012 to EUR [30 – 40] billion by December 2017, whilst its total RWAs will be reduced from EUR [10 – 20] billion on 31 December 2012 to EUR [10 – 20] billion by December 2017.

(162) In parallel, Banco CEISS will also shrink in terms of branches and headcount. It will also divest a number of subsidiaries and will sell its portfolio of equity holdings by steps, until the end of […] at the latest. Should a sale not have succeeded by then, Banco CEISS will […] its stake in those entities and each of them will be offered for EUR […].

51 See recital (54).
52 RWA as of 31 December 2011.

(163) Altogether, the Commission considers the reduction of the total balance sheet of Banco CEISS by more than [20 – 30]%[53] to be appropriate, as compared to the distortions of competition stemming from the large amount of aid received.

(164) In addition, Banco CEISS will focus exclusively on retail, SME and public sector banking and will exit the market in all other segments (real estate development, large corporations and capital market activities). At the same time, it will also reduce its presence both outside and in its Core Region. The Commission considers that the projected decrease of Banco CEISS' market share by [10 – 20]% in terms of deposits and [20 – 30]% in terms of loans in its Core Region addresses that distortion in an appropriate manner.

(165) Third, Spain has committed to sell Banco CEISS by the end of the restructuring period, which will be undertaken in an open, transparent and non-discriminatory procedure by a Divestiture Trustee. If Banco CEISS cannot be sold, it will be wound down according to a resolution plan that Spain will have to submit to the Commission by the end of 2017.

(166) The sale of Banco CEISS, 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[54]. That process, which gives potentially harmed competitors the possibility to assume that 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.

(167) 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 Banco CEISS' 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 Banco CEISS 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 Banco CEISS' viability.

(168) Taking into account that 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 despite the high amount of aid Banco CEISS will receive.

6.6 Monitoring

(169) 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

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[53] From 31 December 2010 to 31 December 2017.

[54] Cf. Case C 10/2008, IKB Commission decision of 21 October 2008, OJ L 278, 23.10.2009, p. 32, recital 113; Case sNN 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.

(170) The Restructuring Plan will need to be properly implemented throughout its duration. To ensure proper implementation, the Spanish authorities will make sure that Banco CEISS, […], complies with the commitments listed in the Term Sheet.

(171) 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 Banco CEISS for explanations and clarifications. Spain and Banco CEISS 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

(172) The Commission concludes that the notified measures (measures C, D and E), namely, the conversion of the FROB Preference Shares, the new capital injection in the form of ordinary shares in Banco CEISS, and the transfer of impaired assets to the AMC, constitute State aid in favour of Banco CEISS pursuant to Article 107(1) TFEU.

(173) The Commission finds that the restructuring aid, namely measures A through E referred to above, in favour of Caja CEISS and Banco CEISS is compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU, in light of the commitments of the Term Sheet.

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

SOLE ANNEX:

TERM SHEET OF THE SPANISH AUTHORITIES COMMITMENTS FOR THE APPROVAL OF THE RESTRUCTURING PLAN OF BANCO CEISS BY THE EUROPEAN COMMISSION

(CASE SA 34536 (2012/N)

1. BACKGROUND

1.1. This document (the “Term Sheet”) sets out the terms (the “Commitments”) for the recapitalisation and restructuring of BANCO CEISS ("BANCO CEISS" or "the Bank"), which the Kingdom of Spain and BANCO CEISS have committed to implement.

1.2. Whenever appropriate, in response to a request from the Kingdom of Spain showing good cause, the Commission will make changes when justified on the merits to (i) grant an extension of the time period of the Commitments or (ii) waive, modify or substitute one or more of the aspects of the Commitments hereunder.

2. DEFINITIONS

2.1. “**AMC**" (Asset Management Company) is an independent commercial entity established by the Spanish Law 8/2012. The Spanish Government decision to set up the AMC was introduced on 31 August 2012 through the Royal Decree 24/2012 with a view to addressing in a comprehensive way the problem of the real estate exposure in the Spanish banking system. Assets will be transferred from banks to the AMC to strengthen the banks' balance sheets and ensure that uncertainty over real estate exposure is reduced.

2.2. "**Banco CEISS**" means Banco de Caja España de Inversiones, Salamanca y Soria, S.A.

2.3. "**Core Region**" means the geographic region where Banco CEISS developed its initial core banking activities and in which Banco CEISS will be primarily focused following this Restructuring Plan, which includes the Spanish region of Castilla y León and the province of Cáceres.

2.4. "**Decision**" means the decision of 20 December 2012 of the European Commission on the restructuring of Banco CEISS in the context of which these Commitments are undertaken.

2.5. “**FTE**”means full time equivalent employee.

2.6. “**Loan to deposit ratio**” means a ratio calculated with the numerator equal to the net credit loan portfolio (chapter 5.2 of the Bank of Spain’s public format balance sheet) and the denominator equal to the customer deposits and debt instruments sold to retail customers net of repo transactions and wholesale funding.

2.7. “**Monitoring Trustee**” is the person who will verify the adherence to the Commitments listed in this term-sheet, as set out in Appendix IV to this Term Sheet.

2.8. "**RWA**" means risk weighted assets that shall be calculated on a consolidated basis in accordance with Circular 3/2008[55] and with the IRB models approved by Bank of Spain as of 30 June 2012.

2.9. “**Remedial Actions**” shall mean action(s) that will allow BANCO CEISS to meet the identified target(s). The Remedial Actions need to be submitted within one month by BANCO CEISS to the Monitoring Trustee. 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.

2.10. "**Restructuring Period**" is the time period specified in clause 3.3 herein. All Commitments in the Term Sheet apply throughout the Restructuring Period unless otherwise specified.

2.11. "**Restructuring Plan**" means the plan submitted by BANCO CEISS to the European Commission, via the Kingdom of Spain, on 12 December 2012, as amended and supplemented from time to time by written communications.

2.12. "**Service Locations**" means branches which only carry out those transactions (either asset or liability side) necessary to manage their existing assets and liabilities, not engaging in new operations nor generating new clients.

[55] Circular 3/2008, de 22 de mayo, del Banco de España, a entidades de crédito, sobre determinación y control de los recursos propios mínimos.

3. GENERAL

3.1. Spain is to ensure that the Restructuring Plan for BANCO CEISS submitted on 12 December 2012 is correctly and fully implemented.

3.2. Spain is to ensure that the Commitments listed below are fully observed during the Restructuring Period.

3.3. The Restructuring Period will end on 31 December 2017. 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 BANCO CEISS:

4.1. The transfer and/or contribution to the AMC of BANCO CEISS real estate exposure at the cut-off date of 30 June 2012 falling within the following parameters :

a) all the loans to developers exceeding a net book value of EUR 250 000;

b) the foreclosed real estate assets exceeding a net book value of EUR 100 000 and

c) the equity interests in controlled real estate companies (jointly, the "**Real Estate Business**").

The gross book value of these assets at BANCO CEISS amounts to EUR [5 – 10] billion and the transfer value amounts to EUR [0 – 10] billion as of 30 June 2012[56].

The abovementioned 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, as well as the final definition of the perimeter to be transferred.

56 Cut-off date established by Spanish royal decree 1559/2012 of 15 November, concerning the legal regime of asset management companies.

5. RESTRUCTURING OF BANCO CEISS

5.1. The Restructuring Plan for BANCO CEISS consist in particular on the transfer of the majority of the real estate assets and exposures to an external Assets Management Company, as well as the restructuring of the remaining business of BANCO CEISS according to what it is set below.

5.2. **Loan book size**

5.2.1. By 31 December 2014, the size of the loan book of BANCO CEISS will not be higher than EUR [10 – 20] billion.

5.2.2. By 31 December 2016, the size of the loan book of BANCO CEISS will not be higher than EUR [10 – 20]billion.

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

5.3. **Balance sheet size**

5.3.1. By 31 December 2014, the balance sheet size of BANCO CEISS will not be higher than EUR [30 – 40] billion.

5.3.2. By 31 December 2016, the balance sheet size of BANCO CEISS will not be higher than EUR [30 – 40] billion.

5.4. **Loan to Deposit ratio**

5.4.1. BANCO CEISS commits to achieve a Loan to Deposit ratio of [100 – 120]% in 2014 and of [90 – 110]% in 2016.

If the above targets regarding the balance sheet size and the Loan to Deposit ratio are not met, BANCO CEISS 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.

5.5. Reduction of Branches and FTEs

5.5.1. BANCO CEISS will reduce its current structure from [800 – 900] to [500 – 600] branches and Service Locations before the end of 2014 and from [4 000 – 5 000] to [3 000 – 4 000] employees (FTEs) before the end of 2014. It will be present with [500 – 600] commercial branches in the regions of Castilla-León, Madrid and Cáceres, and with [20 - 30] Service Locations in the rest of Spain.

5.5.2. The calendar for the execution of these measures will be as follows:

	June 2012	Dec.2013	Dec. 2014	Post-restructuring
Branches	**[800 – 900]**	**[600 – 700]**	**[500 – 600]**	**[500 – 600]**
Branch Reduction		**-[200 – 100]**	**-[200 – 100]**	
FTEs	**[4 000 – 5 000]**	**[3 000 – 4 000]**	**[3 000 – 4 000]**	**[3 000 – 4 000]**
FTEs Reduction		**-[800 – 700]**	**-[800 – 700]**	

5.5.3. Within the month after the appointment of the Monitoring Trustee BANCO CEISS shall identify those branches that it will close and inform the Monitoring Trustee.

5.6. Subsidiaries Portolio Divestment

5.6.1. Listed subsidiaries/equity holdings

BANCO CEISS commits to divest the portfolio of listed companies set out in Appendix I by December 2014.

5.6.2. Unlisted subsidiaries/equity holdings

BANCO CEISS commits to sell the portfolio of unlisted companies set out in Appendix II by December 2016.

In particular BANCO CEISS will sell the portfolio under the following divestment calendar:

BANCO CEISS will at least divest in accumulative terms [0 – 20]% of the number of its subsidiaries / equity holdings in 2013, [30 – 50]% in 2014, [50 – 80]% in 2015 and [70 - 100]% in 2016; namely, expressed in number of subsidiaries accumulated, [10 – 20] in 2013, [60 – 70] in 2014, [100 – 200] in 2015 and [100 – 200] in 2016.

Moreover, BANCO CEISS will at least divest in accumulative terms [0 – 20]% of the book value of subsidiaries and equity holdings in 2013, [50 – 80]% in 2014, [50 - 80]% in 2015 and [70 - 100]% in 2016; namely, expressed in EUR million accumulated, EUR [70 – 80] million in 2013, EUR [200 – 300] million in 2014, EUR [300 – 400] million in 2015 and EUR [500 – 600] million in 2016. Until the above-referred subsidiaries/equity holdings are sold, BANCO CEISS 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 BANCO CEISS does not sell the planned holdings/subsidiaries in the set out deadlines, BANCO CEISS will […] its stakes, and terminate any financial and operational involvement in the said companies forecasted to be sold. Each of these written down equity holding/subsidiary will be offered to the market at a price of […] Euro.

5.7. **Activities of the BANCO CEISS**

5.7.1. BANCO CEISS shall be a retail bank, primarily focused on the regions in which it will maintain a presence. Consequently, the Bank shall not engage in any new business during the Restructuring Period in the following areas:

a) Real estate development.

b) 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 BANCO CEISS' balance hedges).

5.8. **Principles which apply to the branches to be closed**

5.8.1. **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 branch 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 branch complies with "management of existing assets" paragraph below.

5.8.2. **Management of existing assets**

The branches will manage existing assets in a way that maximises net present value ("NPV") of the assets. Specifically, if a client cannot respect the terms of his loan, the branch 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 branch 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 or regulations.

5.8.3. **Limitation on new deposits**

Branches to be closed 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 [0 - 5] billion.

5.8.4. Limitation on transactional products

Branches to be closed 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.

6. SALE OF BANCO CEISS

Spain shall dispose or procure the disposal either of BANCO CEISS as described below.

(A) To carry out the said disposal, Spain shall start approaching potentially interested buyers for BANCO CEISS by […]. It shall use its best efforts to sign a sale and purchase agreement with a prospective purchaser by no later than […].

(B) If Spain has not entered into such an agreement by […], Spain shall appoint a Divestiture Trustee ("**the Divestiture Trustee**") with the exclusive mandate to sell the Bank or any other CEISS' commercial activity considered relevant by the potential buyer at […].

(C) By […], the Divesture Trustee shall propose the selected buyer or communicate the impossibility of selling the Bank, […].

(D) Spain is entitled to reject the buyer proposed by the Divesture Trustee. In this case, or in the event that is not possible to sell the Bank [..], Spain shall present a resolution plan for the Bank within the three months following the announcement by the Divestiture Trustee of the results of its mandate.

(E) **Conditions on potential buyers**

The buyers of BANCO CEISS, the equity holdings and/or subsidiaries mentioned above must be entities that are legally and economically independent of the Kingdom of Spain and BANCO CEISS. 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.

7. BURDEN SHARING MEASURES ON SUBORDINATED DEBT AND PREFERENCE SHARES HOLDERS

7.1. Key principles

7.1.1. By performing voluntary or mandatory subordinated liability exercises BANCO CEISS commits to generate EUR [0 – 5] billion of Core Tier 1 capital through the issuance of capital or capital like instruments and/or the retention of the profits generated as consequence of the exercises.

7.1.2. BANCO CEISS can conduct a voluntary exercise on these kind of instruments not later than […].

7.1.3. If such exercise is not conducted or its result is not sufficient for achieving the target set out in point 7.1.1 or the exercises would result in an acceptance lower than [60 - 100]% the FROB will adopt not later than […] the necessary measures for ensuring the entity will perform a mandatory exercise on the holders of such securities on the basis of the sections below.

7.2. Key principles for subordinated liability exercises

7.2.1. 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.

7.2.2. Calculation of the fair value of the different financial instruments subject to burden sharing will be based on the NPV of the instruments according to the methodology set out below.

7.2.3. Consequently, as a result of the burden sharing there will be no cash outflow from BANCO CEISS to the holders of these securities with the sole exception of the holders of dated subordinated debt instrument who decide to convert into new debt securities with the maturity matching that of the subordinated debt being exchanged.

7.2.4. A list of all outstanding preference shares and subordinated debt instruments is set out in Appendix III.

7.3. Methodology for the conversion into capital

7.3.1. 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.

7.3.2. 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.

7.3.3. Should coupon payments be discretionary or linked to the profitability of the BANCO CEISS, it will be assumed, for the purpose of the NPV calculation, that no coupon payment will take place for the years that BANCO CEISS is not profit-making, according to the Restructuring Plan submitted by the Spanish authorities in the context of the Decision.

7.3.4. 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.

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

7.4. Specific provision for dated subordinated debt

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

a) 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 […]. The new senior debt instrument will have a zero-coupon until maturity and

b) Conversion into core capital of BANCO CEISS. The conversion rate to be applied will be the higher of: i) the amount resulting from the methodology for the conversion into core capital as described in clause 7.2 above and ii) the amount resulting from the calculation in point i) above.

7.5. Equity stake for the holders of securities subject to burden sharing

As a consequence of the conversion and recapitalization measures described in the Decision, the holders of securities subject to burden sharing will receive an equity stake in BANCO CEISS in the form of new ordinary shares of up to [30 – 60]%.

8. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

8.1. Ban on acquisitions

BANCO CEISS will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and packages of assets which form is a business.

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 on-going business. The obligation is to apply until the restructuring phase ends.

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

8.2. Ban on Coupon

Until the burden sharing measures provided for in section 7 of this Term Sheet will have been implemented BANCO CEISS will not make any payments to holders of preference shares and subordinated debt instruments in so far as those payments are not owed on the basis of a contract or the law.

8.3. Ban on Advertising

BANCO CEISS must not use the granting of the aid measures or any advantages arising there from for advertising purposes.

8.4. Remuneration of bodies, employees and essential agents

The Spanish Authorities undertake to ensure that BANCO CEISS meets the legislation applicable at the time in all salary and compensation matters, especially regulation related to remuneration limits applicable to credit institutions (primarily currently 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 Spanish Authorities. Likewise, it commits to ensure that the bank complies scrupulously with the conditions specifically imposed by the European Commission in this subject within the EU framework for State aid.

The Spanish Authorities also undertake 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 BANCO CEISS consolidated financial statements.

8.5. CAPITAL REPAYMENT MECHANISM

8.5.1. Based on the audited year end accounts BANCO CEISS will pay in form of dividend disbursement the following amounts to its shareholders:

a) 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 […] basis points.

b) For the fiscal years […]: [90 - 100]% of the excess capital above the applicable minimum capital requirement under EU and Spanish law (including pillars 1 and 2) plus a capital buffer of […] basis points.

The dividend disbursement shall be, totally or partially suspended if, on the basis of a reasoned request by BANCO CEISS to the Bank of Spain it is considered that it would endanger the solvency position of the Bank in the following years.

8.5.2. Until 31 December 2014, no dividend will be paid.

8.6. BAN ON COMMERCIAL AGGRESSIVE PRACTICES

BANCO CEISS shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Period. To that end BANCO CEISS shall make sure 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 BANCO CEISS operates in the core regions. To this end BANCO CEISS will operate in conformity with the restrictions approved by the Board of the FROB on 22 December 2010.

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 the "Monitoring Trustee" Appendix IV.

9.3. Spain and BANCO CEISS 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 this Decision. The Commission or the Monitoring Trustee may ask BANCO CEISS for explanations and clarifications. Spain and BANCO CEISS are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of this Decision.

Appendix I- Holdings on listed companies to be divested

Company	Stake (%)	Book Value	Sale Date
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Appendix II- Holdings on unlisted companies to be divested

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Appendix III- List of hybrid capital issues

Emission	Date of emission	Maturity	Balance	Interestrate (%)
Preferred shares	29/12/2003	Perpetual	48,1	3,3%
Preferred shares	11/11/2004	Perpetual	112	5,2%
Preferred shares	19/05/2009	Perpetual	200	8,3%
Preferred shares	25/05/2009	Perpetual	100	9,2%
Preferred shares	29/10/2010	29/10/2015	525	8,1%
SubordinatedDebt	30/10/2008	29/12/2018	16,6	1,9%
SubordinatedDebt	30/06/2005	30/06/2015	147,4	2,3%
SubordinatedDebt	07/12/2005	07/12/2015	96,2	2,4%
SubordinatedDebt	28/08/2008	28/08/2018	200	7,5%
SubordinatedDebt	19/12/2008	19/12/2018	124,7	5,4%
SubordinatedDebt	30/06/2009	28/09/2019	200	5,5%
SubordinatedDebt	23/02/2010	23/02/2020	98,7	5,9%
SubordinatedDebt	29/06/2010	29/06/2020	83,3	3,5%
SubordinatedDebt	21/06/1990	Perpetual	6,6	0,0%
Total			**1.958,5**	

Appendix IV. - Monitoring Trustee

(A) Appointment of the Monitoring Trustee

(i) Spain undertakes to ensure that BANCO CEISS appoints a Monitoring Trustee to carry out the duties of a Monitoring Trustee "Trustee" as set out in paragraph C (x) of this Appendix. 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 BANCO CEISS. The Trustee must possess, for example as an investment bank, consultant or auditor, the specialized 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 BANCO CEISS in a way that must not impede the independent and effective fulfillment of its mandate.

(iii) Spain undertakes to ensure that BANCO CEISS 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 fulfills 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 fulfill 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 fulfill its obligations. If only one name is approved, BANCO CEISS 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, BANCO CEISS 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 BANCO CEISS 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 BANCO CEISS 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 BANCO CEISS' 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 BANCO CEISS, issue orders or instructions to the Trustee in order to ensure compliance with the Commitments. BANCO CEISS 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 BANCO CEISS' 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 BANCO CEISS in order to ensure compliance with the Commitments attached to the Decision.

(x) TheTrustee:

(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 BANCO CEISS' Restructuring Plan.

(c) is to assume the other functions assigned to the Trustee in the Commitments attached to the Decision;

(d) is to propose measures to BANCO CEISS that it considers necessary to ensure that BANCO CEISS fulfills the Commitments attached to the Decision; and

(e) 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.

(f) is to submit a draft written report to the Commission, Spain and BANCO CEISS within thirty days after the end of each six-month period. The Commission, Spain and BANCO CEISS 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 BANCO CEISS. If the draft report or the final report contains any information that may not be disclosed to BANCO CEISS, only a non-confidential version of the draft report or the final report is to be sent to BANCO CEISS. Under no circumstances is the Trustee to submit any version of the report to Spain and/or BANCO CEISS 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 BANCO CEISS, thus enabling the Commission to assess whether BANCO CEISS 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 BANCO CEISS is failing to comply with these obligations, sending a non-confidential version to BANCO CEISS at the same time.

(D) Duties and obligations of BANCO CEISS

(xi) BANCO CEISS 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 BANCO CEISS or of the business to be sold that are necessary to fulfill its duties under the mandate. BANCO CEISS is to make available to the Trustee one or more offices at its business premises and all employees of BANCO CEISS 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 BANCO CEISS' 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 BANCO CEISS refuse to approve the advisors proposed by the Trustee, the Commission may approve their appointment instead, after hearing BANCO CEISS' 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 BANCO CEISS to replace it, or

(b) BANCO CEISS, 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.