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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.35488 (2012/N) – Spain
Restructuring of Banco Mare Nostrum S.A.

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 29 June 2010, Spain informed the Commission that the FROB had decided to participate in the merger of four saving banks – Caja Murcia, Caja Penedès, Caja

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2 After the enactment of Law 9/2012, which repealed and replaced the Royal Decree Law 24/2012, the FROB has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit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

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Granada and Sa Nostra – creating Banco Mare Nostrum S.A. ("BMN"), with total assets of EUR 72 billion[3]. To this end, the FROB agreed to subscribe EUR 915 million of convertible preference shares pursuant to the terms of the FROB recapitalisation scheme.

(3) On 29 June 2010, the Commission informed the Spanish authorities that it considered that the requirements of the FROB recapitalisation scheme were met for BMN to receive a capital injection in the form of convertible preference shares from the FROB, concluding that, based on the Bank of Spain's (“**BoS**”) assessment, the merging entity was fundamentally sound and its integration plan would ensure the return to viability[4], so that there was no need for a restructuring plan.

(4) 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 the results of a bottom-up stress test and asset quality review conducted by the independent consultant Oliver Wyman ("**the MoU Stress Test**").[5] In particular, for credit institutions placed in Group 2, such as BMN, 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 MoU Stress Test. Finally, the restructuring plans were to be presented in time to allow the Commission to approve them by the end of December 2012.

(5) On 25 October 2012, the Spanish authorities submitted an outline of the restructuring plan for BMN to the Commission, which was discussed in a number of meetings and conference calls. Additional information exchanges took place frequently.

(6) On 12 December 2012, the Spanish authorities notified the Commission of their intention to provide BMN with a capital injection of EUR 730 million through the FROB and an impaired asset measure, consisting of the transfer of a portfolio of EUR [10 - 20]* billion to an Asset Management Company ("**AMC**").

(7) On 17 December 2012, Spain communicated the final content of the restructuring plan ("**the Restructuring Plan**"), including the final figures pertaining to the size, composition and valuation of the assets and credit portfolio to be transferred to the AMC. With regards to issues pertaining to the asset valuation methodologies employed in the context of the impaired asset measure, the Commission has drawn on technical assistance provided by independent experts.

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

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[3] As of 31 December 2009.

[4] The integration plan implied a reduction of 10% of BMN's branches and 12% staff.

[5] On the basis of the MoU Stress Test results and the recapitalisations plans, banks are categorised accordingly: Group 0 - banks for which no capital shortfall is identified and no further action is required; Group 1 - banks already owned by the FROB; Group 2 - banks with capital shortfalls identified by the MoU 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 MoU 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). BMN was categorised as Group 2 bank.

* Business secret

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiaries

(9) On 7 June 2010, an agreement was signed to merge four Spanish savings banks (Caja Murcia, Caja Penedès, Caja Granada and Sa Nostra) into BMN[6] through a so-called Institutional Protection Scheme ("**IPS**"). The merger required the granting of State aid by the FROB under the FROB recapitalisation scheme for a total amount of EUR 915 million in the form of interest-bearing convertible preference shares.

(10) On 22 December 2010, BMN, a commercial bank, was set up as the central vehicle of the IPS, wholly-owned by the four founding savings banks with their respective stakes as follows:

Caja Murcia	41%
Caja Penedès	28%
Caja Granada	18%
Sa Nostra	13%

(11) Within the framework of the Spanish Royal Decree Law of 18 February 2011, the four founding savings banks transferred, on 14 September 2011, their banking business (all assets and liabilities) to BMN, a commercial bank registered with the BoS. The assets attached to social activities (Obra Benéfico Social ("**OBS**"), a charitable institution), remained within the Cajas.

(12) On 24 October 2011, BMN issued EUR 242 million in convertible contingent debt (listed in Luxembourg), granting 25.1% of voting rights to the syndicate of bondholders. The remaining 74.9% stayed with the founding savings banks.

(13) BMN operates mainly in the Spanish Mediterranean coast, with a 4.0%, 15%, 6.5%, 7.8% and 0.3% market share in deposits in Cataluña y Aragón, Baleares, Andalucia, Levante and Madrid, respectively (or 4.3%, 12.1%, 4.8%, 5.8% and 0.3% market share in loans, respectively). Its market share at a national level is around 3.6% in deposits and 2.9% in loans. Traditionally, its focus has been on retail banking, mainly to SMEs and individuals, in the area of Murcia, Baleares, Granada, Alicante, Jaen, Almeria, Albacete and Valencia. In recent years, BMN's predecessors went through a period of geographical expansion and broadening of business activities in particular in the area of real estate development. Table 1 provides BMN's main financial figures.

Table 1: BMN's main financial figures

	31.12.2010	**31.12.2011**	**31.12.2017**
Total assets (billion EUR)	69	67	[40 - 50]
Loans to customers (billion EUR)	48	47	[20 - 30]
Retail deposits (billion EUR)[7]	32	31	[20 - 30]

[6] Caja Murcia, Caja Penedès, Caja Granada and Sa Nostra.
[7] Includes SME & corporate deposits.

Total wholesale funds (billion EUR)	24	21	[5 - 10]
Employees Total Group	8,687	7,709	[4000 - 5000]
Number of branches	1,640	1,454	[700 - 800]
National Market share in deposits	[0 - 5]%	[0 - 5]%	[0 - 5]%
Regional Market share in deposits	[5 - 10]%	[5 -10]%	[0 - 5]%
National Market share in loans	[0 - 5]%	[0 - 5]%	[0 - 5]%
Regional Market share in loans	[0 - 5]%	[0 - 5]%	[0 - 5]%

2.2 The events triggering the measures

(14) Following the outbreak of the financial crisis in 2008, the Spanish authorities laid down, via the Royal Decree Law 9/2009, the legal foundations for the restructuring of the Spanish banking sector. The savings banks (*cajas de ahorro*)[8], which form a significant part of this sector, had several structural limitations, such as the legal restrictions on the raising of regulatory capital and, in some cases, weak corporate governance systems which prevented those institutions from detecting problems at an early stage.

(15) Pursuant to that legislation, BMN benefited from a capital injection in December 2010 in the form of convertible preference shares in the amount of EUR 915 million from the FROB to support the merger of the four founding savings banks and partially fund their restructuring. That aid measure was based on the FROB recapitalisation scheme. Under the terms of that scheme, beneficiaries committed to repurchase the convertible preference shares as soon as they are in a position to do so. At the end of the fifth year, those preference shares would have to be bought back or converted into ordinary shares of the beneficiary. In addition, at the request of the FROB, should the Bank of Spain ("**BoS**") consider a buy-back to be unlikely in light of the situation of the beneficiary (or its group), the FROB could convert the preference shares into ordinary shares (or its equivalent item) of the beneficiary at any time.

(16) On 18 February 2011, the Spanish authorities adopted more stringent regulatory capital requirements for the entire banking sector, which, inter alia, obliged all credit institutions operating in Spain to meet, by 30 September 2011 at the latest, higher minimum regulatory solvency levels, known as "*capital principal*"[9]. On 10 March 2011, as a result of the new legislation, the BoS informed BMN that under the new regime it required EUR 637 million of additional capital in order to meet a 10% capital principal solvency ratio over its risk weighted assets ("**RWA**") by September 2011.[10]

(17) On 14 April 2011, the BoS approved a recapitalisation plan submitted by BMN, which included various strategies and measures to reach the new solvency levels by

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

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

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

30 September 2011. The plan incorporated some capital-generating organic measures that would fill BMN's capital deficit.

(18) On 25 October 2011, BMN successfully issued EUR 242 million in mandatorily convertible contingent debt[11] in Luxembourg, granting 25% of the voting rights to the syndicate of bondholders whereas the remaining stake remained with the founding savings banks.

(19) On 28 September 2012, the results[12] of the MoU Stress Test revealed that BMN had a capital shortfall of EUR 2 208 million under the adverse scenario and EUR 368 million in the base case for the three year time horizon (2012-2014) of that exercise. On 31 October 2012, the BoS announced that BMN would need to resort to public support, and, pursuant to the MoU classified BMN as a Group 2 bank.

(20) BMN faces operational challenges stemming mainly from the expansion undergone by two of its four founding savings banks (Caixa Penedès and Sa Nostra) between 2002 and 2008. This expansion has *inter alia* resulted in high exposure to the real estate sector[13], which has driven up its non-performing loans[14], and a large reliance on wholesale funding with a loan-to-deposit ratio of [100 - 200]% as of 30 June 2012, which is predominately caused by the commercial gap of the branches in the regions outside BMN's traditional operating area. During the expansion phase, BMN also exposed itself to higher-risk banking operations such as corporate banking operations. In addition, BMN has had also pressure exerted on its net interest because of the heightened competition for deposits in the Spanish banking sector over recent years.

2.3 Overview of the aid measures

(21) Since 2010, BMN has benefitted or will benefit from several aid measures. Overall, Spain has provided or will provide capital injections totalling EUR 1 645 million and transferred assets amounting to EUR [10 000 - 20 000] million gross (estimated EUR [5 000 – 10 000] million transfer price) to an AMC, and provided guarantees worth EUR 4 424 million[15]. Table 2 provides an overview of these aid measures.

Table 2: Overview of the aid measures

Measure	Description	Amount (EUR million)	Approved by the Commission	% RWA[16]
A	Guarantees	4 424	2009 - 2012	Not applicable

[11] This instrument is junior to the FROB preference shares, and was considered as CT 1 in the context of the MoU Stress test.

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

[13] For Caixa Penedès and Sa Nostra, the exposure to real estate sector amounted to approximately 25% of their total credit portfolio as of December 2009. The overall exposure of BMN to the real estate sector represents 18% of its balance sheet on 30 June 2012.

[14] The non-performing loan ratio stood at [5 - 10]% on 30 June 2012.

[15] Based on these guarantees, BMN issued bonds totalling EUR 3 672 million.

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

B & C	FROB I preference shares & conversion into equity	915	29.6.10 (in relation to their issuance)	2%
D	Recapitalisation measure (December 2012)	730	20.12.2012	1.9 %
E	Transfer of impaired assets	2 100	20.12.2012	5.5 %

2.3.1 Measure A: Guarantees on liabilities

(22) Between 2009 and 2012, BMN have received guarantees on bonds issued under the approved Spanish guarantee scheme worth EUR 4 424 million.[17]

2.3.2 Measure B: FROB I preference shares

(23) On 29 June 2010, the FROB decided to support the merger of the four founding savings banks by subscribing for EUR 915 million in newly issued convertible preference shares under the FROB recapitalisation scheme.[18] The aid represented 2% of BMN's RWA as of December 2009.

(24) Under the terms the FROB recapitalisation scheme, these convertible preference shares had to be repurchased as soon as the beneficiaries were in a position to do so. At the end of the fifth year, these convertible preference shares had to be bought back or converted into ordinary shares of the beneficiary. In addition, should the BoS consider the buy-back to be unlikely in light of the situation of the beneficiary (or its group), the FROB could convert the preference shares into ordinary shares (or its equivalent item) of the beneficiary at any time.

2.3.3 Measure C: Conversion of FROB I preference shares

(25) Due to the present financial climate, the Spanish authorities have informed the Commission that the BoS considers it unlikely that BMN will redeem or repurchase the convertible preference shares within the period prescribed by the FROB recapitalisation scheme. In consequence, the FROB wishes to trigger the conversion option described in recital (24). Accordingly, the initial capital injection of EUR 915 million subscribed by the FROB in 2010 will be converted into equity.

(26) This conversion will reinforce the capital position of BMN, as equity capital is junior to the convertible preference shares.

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

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

2.3.4 Measure D: Recapitalisation of December 2012

(27) Following the results of the MoU Stress Test and a series of measures proposed by the FROB, including the divestment of assets, a number of subordinated liabilities exercises and the transfer of some impaired assets and loans to an AMC forming part of the Restructuring Plan, an additional capital injection of EUR 730 million is still needed for BMN to meet the new Spanish regulatory solvency levels.

(28) Accordingly the FROB, on the basis of the Restructuring Plan, will subscribe for EUR 730 million in ordinary shares issued by BMN. The FROB will contribute bonds issued by the European Stability Mechanism ("**ESM**") for an amount of EUR 730 million in consideration for the new shares in BMN. The aid represents 1.9% of BMN's RWA as of December 2011.

(29) In line with the FROB recapitalisation scheme for credit institutions[19], the entry price for the recapitalisation of BMN via ordinary shares will be based upon a discount, of at least 25%, on the market or economic value of BMN. The dilution effects, due to the recapitalisation by the FROB, will be taken into consideration before that discount is computed.

(30) Based on the initial best estimates provided by the Spanish authorities, the FROB will control at least 64% of BMN as a result of measures C and D and the conversion of hybrid capital instruments into equity as described in the section on burden sharing below[20].

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

a. Objective

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

b. AMC: Set up and characteristics

(32) 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[21] was prepared by the Spanish authorities in consultation with the Commission, the European Central Bank ("**ECB**"), the ESM, and the International Monetary Fund ("**IMF**").

(33) The overall objective of the AMC will be the management and orderly divestment

19 See Case SA.35069 approved on 27 July 2012

20 […].

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

of the portfolio of assets and loans received, maximising their recovery over a maximum of 15 years. In pursuing this activity, the AMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.

(34) 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.

(35) The own funds of the AMC, established as a limited liability company, will be approximately 8% of the volume of its total assets and its capital structure will consist of a non-majority holding of the FROB and a majority holding by private investors. This structure was chosen in order to prevent the consolidation of the overall debt of the AMC with the debt of the Spanish state.

(36) 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 Finance and Public Administration, the BoS and the CNMV[22]), 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 tasks.

c. Scope of the transfer of impaired assets and loans

(37) As envisaged in the MoU, all banks classified in Group 2, such as BMN, 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.

(38) The overall portfolio of impaired assets and loans to be transferred by BMN to the AMC amounts to EUR [10 - 20] 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.

(39) As a result of the asset transfer, the RWA of BMN will be reduced by EUR [5 - 10] billion[23].

d. Methodology for the calculation of the transfer value

(40) 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

22 The Spanish government agency responsible for regulating the securities market.

23 According to the best estimates available

loans related to the real estate development sector. Furthermore, for calculating the transfer value, the expected losses in the baseline scenario of the MoU Stress Test for BMN was used as a reference. The methodology of that valuation was endorsed by a dedicated group composed of the Spanish supervisory authority (the BoS), the Commission and the ECB, with the IMF acting as an observer.

(41) Second, the estimate of the economic value was adjusted by applying a discount due to the characteristics inherent to the transfer of the assets to AMC. This is the result of aspects such as: a) the aggregate acquisition of the assets; b) the consideration of certain expenses previously borne by BMN, which must now be assumed by the AMC, such as asset management and administration costs, including financial costs; and c) the negative short-term outlook for divestment of the assets by the AMC. The methodology of this valuation has been endorsed by a dedicated group composed of the BoS, the Commission and the ECB, with the IMF acting as an observer.

e. Independent expert advice for the Commission

(42) 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**[24,] which serves as the reference framework for this measure.

f. Purchase of those assets by the AMC

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

g. The transfer value

(44) Based on the methodology and discounts described in recitals (40) and (41), the transfer value of the assets of BMN amounts to EUR [5 - 10] billion, which is equal to [50 - 60] % of the gross book value of those assets. These figures are an estimate based on the situation of those assets as of 30 June 2012. It is possible that the final figures could differ from these levels as the transfer will only take place in the first quarter of 2013.

(45) The Spanish authorities have provided a letter from the BoS certifying the detailed results of the asset transfer to the AMC by BMN.

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

h. Market price

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

3 RESTRUCTURING OF BMN

(47) The Spanish authority together with BMN prepared a Restructuring Plan which demonstrates the ability of the bank to return to viability as well as to fully repay the public funds granted through various aid measures proposed in the Restructuring Plan.

(48) The commitments by the Spanish authorities with regard to the Restructuring Plan have been presented in a separate document entitled: "Term Sheet of BMN S.A." (hereinafter referred to as "**the Term Sheet**", annexed to the present decision)[25].

[25] See Annex

3.1 Restoration of viability

(49) Table 3 below presents the main financial projections contained in the Restructuring Plan[26] for BMN ("**the Summary Table**"):

Table 3: The Summary Table

P&L	2011	2012	2013	2014	2015	2016	2017	Evolution rate 2011-2017 (%)		
								in %	absolute figures	
Profit before tax	92,704	[-5,000,000 - 0]	[50,000 - 100,000]	[200,000 - 300,000]	[400,000 - 500,000]	[400,000 - 500,000]	[400,000 - 500,000]	N/A	[300,000 - 400,000]	
Cost of Income Ratio	77.76%	[60 -70]%	[40 - 50]%	[40 - 50]%	[40 - 50]%	[40 - 50]%	[40 - 50]%	N/A	N/A	
FTE	7,709	[5000 - 6000]	[5000 - 6000]	[5000 - 6000]	[5000 - 6000]	[5000 - 6000]	[5000 - 6000]	[-40 - 50]	[-3000 - 4000]	
Branch	1,454	[900 - 1000]	[800 - 900]	[700 - 800]	[700 - 800]	[700 - 800]	[700 - 800]	[- 40 - 50]	[-600 - 700]	
ROE	2.40%	[-100 - 200]%	[0 - 5]%	[5 - 10]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	N/A	N/A	
								Evolution rate 2011-2017 (%)		
Balance sheet	2011	2012	2013	2014	2015	2016	2017	2011	2017	2011-2017
Assets (2) Central bank	954,360	[500,000 - 600,000]	[500,000 - 600,000]	[500,000 - 600,000]	[500,000 - 600,000]	[500,000 - 600,000]	[500,000 - 600,000]	954,360	[500,000 - 600,000]	[-40 - 50]
Loans to clients (net)	46,880,352	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	46,880,352	[2000000 - 30000000]	[-40 - 50]
NPLs	3,448,669	[2,000,000 - 3,000,000]	[2,000,000 - 3,000,000]	[1,000,000 - 2,000,000]	[1,000,000 - 2,000,000]	[1,000,000 - 2,000,000]	[1,000,000 - 2,000,000]	3,448,669	[1,000,000 - 2,000,000]	[-50 - 60]
Total assets	67,110,917	[50,000,000 - 60,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	67,110,917	[40,000,000 - 50,000,000]	[-30 - 40]
RWA (3)	37,846,809	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[10,000,000 - 20,000,000]	[10,000,000 - 20,000,000]	[10,000,000 - 20,000,000]	37,846,809	[10,000,000 - 20,000,000]	[-40 - 50]
								Evolution rate 2011-2017 (%)		
Liabilities	2011	2012	2013	2014	2015	2016	2017	2011	2017	2011-2017
Central bank	3,903,351	[5,000,000 - 6,000,000]	[6,000,000 - 7,000,000]	[5,000,000 - 6,000,000]	[3,000,000 - 4,000,000]	[3,000,000 - 4,000,000]	[1,000,000 - 2,000,000]	3,903,351	[3,000,000 - 4,000,000]	[-60 - 70]
Liabilities to clients	32,175,745	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	[20,000,000 - 30,000,000]	32,175,745	[20,000,000 - 30,000,000]	[-20 - 30]
Total Liabilities	67,110,917	[50,000,000 - 60,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	[40,000,000 - 50,000,000]	67,110,917	[40,000,000 - 50,000,000]	[-30 - 40]
LTD	145.70%	[100 - 150]%	[100 - 150]%	[100 - 150]%	[100 - 150]%	[100 - 150]%	[100 - 150]%	145.7%	[100 - 150]%	[-20 - 30]
EBA CT1	8.97%	9.23%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[10 - 20]%	[5 - 10]%	[10 - 20]%	[-50 - 60]
Basel III CET1 (1)	N/A	N/A	[10 - 20]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	[5 - 10]%	N/A	[5 - 10]%	N/A

[26] In the above table, the figures for 2012 already reflect major restructuring measures, such as the transfer of assets to the AMC and the sale of assets, such as those of former Caixa Penedès. Thus, the development of BMN throughout the restructuring period is better captured by the evolution rates for the period between 2011 and 2017.

(50) According to the Restructuring Plan, the foremost measure to achieve the intended structural change is a refocusing of BMN's activities on its core business lines in its traditional core regions, the hiving-off of the real estate developments loans to the AMC and the closing-down of activities outside the core regions, as well as an adjustment of the loan book to match the available funding through deposits. Moreover, on 13 November 2012 BMN has concluded a sale agreement with Banco Sabadell for the branch network of former Caixa Penedès, encompassing 461 branches, 2 003 employees and approximately EUR 10.6 billion of assets.

(51) As illustrated in the Summary Table, BMN's balance sheet will be reduced by [40 - 50]% during the restructuring period, mainly due to a decrease in the loans portfolio (in particular through the transfer of assets to the AMC and the sale of the Caixa Penedès network.

(52) As explained in recitals (31) to (46), BMN will transfer real estate development assets and loans to the AMC with a gross value of EUR [10 - 20] billion, which implies a reduction in its RWAs of EUR [5 - 10] billion. Moreover, BMN has committed not engage in any new production of such loans during the restructuring period.

(53) BMN will also significantly reduce its geographical reach. It will exit the regions of Catalonia and Aragorn, and close and/or sell [500 - 600] branches both within and outside its core region, and reduce the total headcount considerably. The envisaged branch and staff adjustments will lead to a reduction of [40 - 50]% in branches and [40 - 50]% in staff during the restructuring period, which, if added to internal restructuring efforts undertaken by BMN since 2010, represents a total of [50 - 60]% closure of branches and [50 - 60]% reduction in staff.

(54) Moreover, as a general rule, there will be no new production in the branches slated for closure except in the cases set out in the Term Sheet, based on strict limitations on new lending, new deposits, transactional products and the management of the existing assets.[27]

(55) In addition to these measures, the total balance sheet of BMN will be reduced as a result of divesting subsidiaries and equity participations, as set out in the Term Sheet.[28]

(56) Accordingly, the volume of RWA will fall by [50 - 60]% by the end of 2017 (as compared to the beginning of the restructuring period), which, if added to restructuring efforts undertaken by BMN since 2010, represents a net reduction of [50 - 60]%.

(57) Following this restructuring BMN projects to post profits before tax in 2017 of EUR [500 - 600] million (compared to a EUR 93 million profit in 2011), a cost-to-income ratio of [40 - 50]% (compared to [60 - 70]% in 2012) and capital ratios according to EBA (core tier 1) and Basel III (common equity tier 1) rules of [10 - 20]% and [5 - 10]%, respectively.

27 See Term Sheet paragraph 5.6
28 See Term Sheet paragraph 5.7

3.2 Contribution to the restructuring costs of BMN

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

3.2.1 Burden sharing on existing shareholders of BMN

(59) All existing shareholders will bear losses proportionate to their stake prior to the injection of new capital and the SLE described below. Moreover, the mandatorily convertible contingent debt as described in recital (18) will be converted into equity prior to these measures. The consecutive absorption of accounting losses as of 31 December 2012 will lead to a remaining equity of approximately EUR [200 - 300] million.

3.2.2 Subordinated Liability Exercise in BMN

(60) In view of the significant losses forecasted by BMN for 2012 and pursuant to the MoU, holders of preference shares and perpetual/dated subordinated debt instruments, including the FROB preference shares, will contribute to the adequate recapitalisation of BMN by means of a mandatory subordinated liability exercise to be approved by the FROB in two different ways:

- First, the securities shall be bought back by the issuing banks at their net present value, calculated in accordance with the methodology set out in the Term Sheet, which implies deep discounts from the nominal value of the instruments. This action will generate immediate capital gains for BMN estimated at EUR [50 - 100] million that will reduce its needs to raise new capital.
- Second the proceeds of the buy-back will automatically take the form of ordinary shares (or other equity-equivalent instruments) of BMN 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[29], 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 BMN to raise new capital by EUR [200 – 300] 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, as a result of the burden sharing exercise, there will be no cash

[29] See Term Sheet section 6.

outflow from BMN to the holders of these securities with the sole exception of the holders of dated subordinated debt instrument who decide to convert their shares into new debt securities of the same maturity.

(62) The subordinated liability exercise will also include FROB preference shares which will be converted into equity, as described in recitals (25) and (26), with a discount factor according to its seniority and other specific characteristics of these securities.

(63) The economic rights of the new shares in BMN will be allocated, following an independent economic valuation of BMN, in proportion to their contribution to capital base of BMN, after the absorption of losses by the former owners. Based on the initial best estimates provided by the Spanish authorities, the FROB will hold at least a 64% stake in BMN as a result of measures C and D and the conversion of hybrid capital instruments into equity as described in the burden-sharing section.

3.3 Listing of the Bank

(64) Spain will present a credible timeline in order to allow BMN to eventually become publicly traded within the restructuring period.

4 POSITION OF THE SPANISH AUTHORITIES

4.1 Position of the Spanish authorities on the Restructuring Plan

(65) The Spanish authorities accept that the 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.

(66) 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.

(67) *Appropriate and well-targeted*. The Spanish authorities submit that BMN is important within the Spanish financial system, especially in its core region.[30]

(68) *Necessary and limited to the minimum amount*. The Spanish authorities submit that the measures proposed are limited in size to what is necessary to ensure that BMN meets a solvency ratio of 9% Core Tier 1 of its risk weighted assets as required by the Spanish banking rules and of 6% Core Tier 1 under an adverse scenario, as determined in the MoU Stress Test.

(69) *Proportionate*. The Spanish authorities submit that the terms and conditions of the proposed measures together with the terms and conditions imposed on BMN as set out in the Term Sheet contain an extensive range of safeguards against possible abuses and distortions of competition.

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[30] BMN's market share in deposits in the region where it operates is currently approximately [0 - 5]%.

4.2 Commitments of the Spanish Authorities

(70) 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.[31] The Spanish authorities commit to comply with the commitments listed in the Term-Sheet, if necessary, by ensuring that BMN complies with the said commitments.

(71) 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 BMN towards the Commission ("**the Monitoring Trustee**"). The Monitoring Trustee will be appointed by BMN, and must be endorsed by the Commission. The Monitoring Trustee must be independent of BMN and be remunerated by BMN. The Monitoring Trustee will report to the Commission.

5 ASSESSMENT

5.1 Existence of State Aid

5.1.1 Overview - measures already temporarily approved / not approved

(72) 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 these measures constitute State aid in favour of BMN. As a consequence, it is not necessary to reassess whether those measures constitute State aid under the Decision.

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

(74) 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.

(75) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States. 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

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

[31] See Term Sheet.

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 new recapitalisation measures (measures C and D) are financed through State resources.

(77) 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 assets measure to involve State resources. First, the AMC was set up for a public policy objective, namely to help troubled Spanish banks by transferring their most risky assets off their balance sheet and thus by helping them implement their restructuring plans. That genesis in public policy considerations is also underlined by the fact that the AMC was set-up between the Spanish authorities and its international partners as a result of the MoU and the special legal setting implemented by the Spanish authorities for the AMC. Second, the FROB will be the single largest investor in the AMC and the bonds issued by the AMC will be guaranteed by the State. Without that State guarantee, the measure could not be financed. Indeed, the amount of own funds invested by private investors is very small when compared to the amount of State guaranteed bonds. Third, the Spanish public authorities will keep 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

(78) As regards the conversion of convertible 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 BMN. The new capital is more junior and therefore of a higher quality than the initial injection in terms of loss absorption. Moreover, unlike the convertible preference shares that had a fixed coupon, the remuneration for the new equity is decided by BMN and has therefore become more uncertain. That change in nature clearly provides an advantage to BMN, considering the current financial market environment where market participants are especially focussed on the capital quality. The Commission also agrees with the assessment of the Spanish authorities that the conversion of preference shares cannot be seen in isolation when assessing the issue of aid. Instead, it must be seen in the context of the additional capital injection (measure D). This lends further support to the analysis that the conversion confers an advantage on the Bank as well.

(79) As regards the additional recapitalisation measure (measure D), it allows BMN to cover further losses and remain above the minimum solvency ratio under the adverse case. In view of the comparatively limited expected profitability of BMN in the near future, it is doubtful whether this additional capital injection will be remunerated in line with market terms and, in the current circumstances, that it would have been available on the market.

(80) Finally, as regards the transfer of assets to the AMC (measure E), BMN receives a clear advantage in that its most risky portfolio is transferred off its balance sheet, thus avoiding the consequences (i.e. additional provisions, management of the assets, etc.) of potential future losses on those assets. The transfer of impaired assets will be EUR [10 - 20] billion.

(81) 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 BMN's portfolio, the measure therefore confers an advantage on BMN.

(82) 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.

(83) 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

(84) For these reasons, the Commission agrees with Spain that measure D 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

(85) Since measures C, D and E are exclusively addressed to BMN, they should be considered selective in nature.

5.1.5 Distortion of competition and effect on trade between Member State

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

(87) The Commission also considers that the measures are likely to affect trade between Member States because BMN continues to compete on the Spanish retail market, the mortgage lending markets and the commercial lending markets. In all those markets,

some of BMN's competitors are subsidiaries and branches of foreign banks.

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

5.1.6 Conclusion

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

(89) BMN received total guarantees on liabilities worth EUR 4 424 million.

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

(90) BMN has received or will receive recapitalisations of approximately EUR 1 645 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 1 645 million.

5.2.3 Impaired asset measure (measure E)

(91) 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 BMN, the transfer price is EUR [5 - 10] billion, while the market price is estimated at EUR [5-10] billion.[32]

(92) Consequently, the aid granted to BMN as a result of the impaired asset measure amounts to EUR 2.1 billion, representing 5.5% of BMN's RWA as of December 2011.

5.2.4 Conclusion

(93) On the basis of the foregoing, it should be concluded that BMN has received State

[32] According to arguments brought forward by Spain relevant for Group 2 banks, the market value of the transferred portfolio is 37.2% of the transferred nominal amount. The Commission services have assessed those arguments and agree with the market value as proposed by Spain. While these market values are above the central valuation provided by the independent experts on whom the Commission had relied 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.

aid in form of capital injections and impaired asset measures amounting up to EUR 3 745 million (9.4% of RWA)[33], in addition to guarantees worth EUR 4 424 million.

5.3 Legality of the aid

(94) The Commission notes that Spain notified measures C through 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

(95) As regards the compatibility of the aid provided to BMN, 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.

6.1 Legal basis for the compatibility of the aid

(96) 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[34]. The Commission confirmed that view by adopting the 2011 Prolongation Communication[35].

(97) 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[36]. Therefore, the legal basis for the assessment of the measures is Article 107(3)(b) TFEU.

6.2 Compatibility assessment

(98) BMN has benefitted and will continue to benefit from aid measures granted under a

33 RWA as of the relevant reference date when the aid measure was granted.

34 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).

35 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.

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

scheme (measures A and B) which have already been found compatible by the Commission. BMN will further benefit from several State aid measures whose compatibility has not been previously assessed by the Commission, namely measures C, D and E.

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

(100) However, prior to this examination, it will have 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.

(101) It should be noted that the founding saving banks, whose stake in BMN has been significantly reduced, have not been active in the financial market since the creation of BMN, when it received the first aid measures. The Commission considers that it is therefore not necessary to further assess the compatibility of the State aid measures as regards them. However, if and to the extent they are still considered to indirectly benefit from residual restructuring aid as a result of receiving income through their remaining ownership in BMN and engaging in an economic activity through OBS, the below compatibility assessment equally applies to them.

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

(102) 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:[37:]

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.

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

a. Appropriateness of the Measures

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

(104) As regards the recapitalisation measure (measure D), the MoU Stress Test revealed a capital deficit of EUR 2 208 million, which will be reduced by the disposal of assets, the transfer of assets to the AMC and the burden-sharing exercise to EUR 730 million. Owing to the lack of confidence on the markets in BMN and the general uncertainty regarding the economic situation of Spain overall, it is virtually impossible for BMN to raise the necessary capital from private investors. The Commission 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 BMN.

b. Necessity – limitation of the aid to the minimum

(105) 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. The additional aid provided through measures C and D, BMN are necessary to ensure that BMN meets regulatory capital ratios and, thus, the aid amount is limited to the minimum necessary to achieve the intended objective.

(106) 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. In the case at hand, the entry price for the recapitalisation of BMN via ordinary shares will be based upon a discount of at least 25% on the market or economic value of BMN.

c. Proportionality – measures limiting negative spill-over effects

(107) The Commission considers that, in principle, the proportionality of measures C and D should be assessed in the light of the depth of the Restructuring Plan, taking into account measures to ensure burden-sharing and limiting distortions of competition. It therefore refers to its assessment of the measures under the Restructuring Communication below.

(108) It is, however, worth highlighting that, given the significant degree of burden-sharing, measures C and D can be considered as proportionate.

Conclusion

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

6.4 Compatibility of measure D with the Impaired Assets Communication

(110) 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

(111) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility. Whilst the Impaired Assets Communication explicitly refers to "toxic assets", it also makes clear that an overtly narrow relief measure would not be advisable. Rather, it notes that a proportionate approach needs to be developed to allow a Member State whose banking sector is affected by factors of such magnitude as to jeopardise financial stability, such as the burst of a bubble in their own real estate market, to extend eligibility to well-defined categories of assets corresponding to the systemic threat.[38]

(112) 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 these assets are in line with asset categories set out in Annex II to the Impaired Assets Communication and, therefore, are in line with the eligibility criteria of that Communication.

Transparency and disclosure

(113) 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

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

the relevant supervisory authority. In other words, the Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.

(114) 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.

(115) 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 BMN.

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

Management of the assets

(117) 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.

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

Valuation

(119) 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.

(120) 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.

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

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

Burden-sharing and remuneration

(123) 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.

(124) 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.

(125) 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 [50-60]% 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 [400-500] million, and the payment through bonds.

(126) In addition, BMN 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 period of 15 years. As a result, BMN 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.

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

Conclusion on compatibility

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

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

(129) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current financial crisis. According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis must (i) lead to a restoration of the viability of the bank, or to the orderly winding-up thereof; (ii) ensure that the aid is limited to the minimum necessary and include sufficient own contribution by the beneficiary (burden-sharing); and (iii) contain sufficient measures limiting the distortion of competition.

6.5.1 Restoration of viability

(130) As the Commission sets forth in its Restructuring Communication[39], 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.

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

(132) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy to the entity's weaknesses. In that regard, the Restructuring Plan adequately addresses the weaknesses of BMN.

(133) 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 BMN’s balance sheet on that sector and level of non-performing assets[40] and its past expansion outside its core retail banking business and historical core regions. That transfer will allow BMN to refocus on its core activities, in

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

[40] 18% of its balance sheet in 2011 and 8.2% of foreclosed assets. Source: Oliver Wyman analysis.

particular, the new production of loans to its clients, such as residential mortgages and SME loans.

(134) Second, BMN had a cost/income ratio of 77.7% in 2011, high in comparison to its peers. BMN 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.

(135) Third, the Restructuring Plan foresees a re-focusing of BMN's business profile and its core competences and a winding-down of its non-core activities and more risky activities. BMN will exit […] and will mainly engage in Madrid, Castilla-La Mancha, Valencia, Murcia, Andalucía, Melilla, and the Balearic and Canary Islands.

(136) Furthermore, BMN will divest the large majority of its equity stakes and subsidiaries[41]. Apart from minor exceptions provided for in the Term Sheet[42], BMN will also cease investment banking activities during the restructuring period 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.

(137) In terms of the profitability of BMN, the Commission notes that the Restructuring Plan uses underlying conservative assumptions in terms of market shares evolution in the core areas, net margins on pricing new productions of loans, and cost of funding. In particular, BMN 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. This will contribute to improving the profitability of BMN. It will gradually become smaller and a more balanced entity with a balance sheet of EUR [40 - 50] billion by 2017. At the end of the restructuring period, BMN will be able to cover all its costs and provide an appropriate return on equity of [10 - 20]%, taking into account an adequate cost of risk in view of its new risk profile.

(138) 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. BMN 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.

(139) As a result of taking accounting losses following increased loan loss provisions in December 2012 and deducting the estimated increase in own funds from the burden-sharing exercise, BMN plans to be recapitalised to a level that will allow it to reach a Basel III common equity tier 1 ratio of [5 - 10]% at the end of December 2017, which is the end of the restructuring period.

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[41] See Term Sheet 5.6.

[42] See Term Sheet paragraph 5.7

(140) Finally, the restructuring plan provides information on the future funding profile of BMN. 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 BMN will have a loan-to-deposit ratio of [100 - 120]% and its reliance on central bank funding will have been reduced to EUR [1 - 2] billion.

(141) 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 107% and a significant reduction in central bank reliance, will ensure a conservative funding profile of BMN.

(142) Finally, BMN will become a listed institution during the restructuring period. This will contribute to reinforce the best practices of the bank in terms of the risk management process.

(143) On the basis of the above assessment, the Commission considers that the restructuring plan is apt to restore BMN's long term viability.

6.5.2 Own contribution and burden-sharing

(144) 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.

(145) 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 BMN. As described in recital (19), 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 BMN will remain above the regulatory minimum capital requirements, even in an adverse scenario:

(146) 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, this will lead to a haircut as compared to the nominal value of the instrument, and thereby lead to a decrease in the capital shortfall. Moreover, cash outflows from BMN to the holders of these securities will be avoided, with the sole exception of the holders of dated subordinated debt instrument who will be offered the option to convert 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 BMN's viability.

(147) 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 BMN and the stake of its previous owners will be significantly reduced. The State will consequently receive a large part of future profits and/or the revenue from the envisaged listing of BMN in the future. The Commission therefore considers the level of remuneration associated with the State's stake in BMN of at least 64% as appropriate.

(148) Third, so as to ensure that BMN is not overcapitalised if the adverse scenario used for the purposes of the MoU Stress Test does not materialise, Spain has committed that BMN 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 […].[43]

(149) Finally, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by BMN, the Commission notes that BMN has carried out and will continue to implement cost-cutting measures, resulting in a reduction of annual operational costs by approximately EUR [200 - 300] million by the end of the restructuring period, a decrease of approximately [30 - 40]% 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 and recalled below in recital (155).

(150) Accordingly, burden-sharing on equity, hybrid and subordinated debt-holders (and the commitment of a coupon ban until the SLE is implemented); cost reductions; divestments and adequate remuneration for the aid represent a sufficient own contribution by BMN 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 dilution of the original shareholders of BMN 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

(151) 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

[43] See Term Sheet paragraph 7.5

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 BMN's own contribution and burden-sharing over the restructuring period.

(152) The Commission recalls that BMN has received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 3 745 million.

(153) The aid amount of EUR 3 745 million is equivalent to 9.4% of BMN's RWA.[44] The Commission notes that in spite of the relative amount of aid to the beneficiary, which is relatively limited compared to other cases, and that the remuneration of the various aid instruments is in line with the Commission's respective State aid guidelines, adequate measures to limit potential distortions of competition remain necessary.

(154) The main structural measure that will limit distortions of competition is the downsizing of BMN in terms of total assets, RWA, geographical footprint, business segments and staff.

(155) First, BMN will become a much smaller bank. As indicated in the Summary Table, its total balance sheet will shrink from EUR 67 billion on 30 June 2012 to EUR [40 - 50] billion by December 2017, whilst its total RWAs will be reduced from EUR 37 billion on 30 June 2012 to EUR [10 - 20] billion by December 2017. Its market shares will decrease considerably, for example from [0 - 5]% to [0 - 5]% in terms of nation-wide deposits and from [0 - 5]% to [0 - 5]% in terms of deposits in the region where BMN operates.

(156) In parallel, BMN will also shrink in terms of branches and headcount. It will also divest the majority of its subsidiaries and the network of one of its former founding savings banks, Caixa Penedès, and will sell a majority of its portfolio of equity holdings, as set out in the Term Sheet[45]. If BMN does not reduce those holdings within the deadlines set out in the Term Sheet, BMN will […] until the reduction objectives are accomplished. Overall, the Commission considers the reduction of the total balance sheet of BMN by more than [30 - 40]% to be appropriate, as compared to the distortions of competition stemming from the amount of aid received.

(157) Second, BMN will discontinue business in a number of segments, branches and regions (Catalonia and Aragorn). In principle, subject to the limited exemptions in the Term Sheet, the branches of BMN which will be wound up and cannot enter into new activities will stop the collection of deposits, while their lending activities will be limited to the normal management and work-out of its loan book. They will eventually be closed, pursuant to the time table of the Term Sheet, and thus no longer distort competition. Accordingly, the distortions of competition that will continue to result from the residual business allocated to the branches before they are closed will be minor in scope[46].

(158) In addition to those structural measures, Spain also committed to several behavioural

[44] RWA as of the relevant reference date when the aid measure was granted.

[45] See Term Sheet paragraph 5.6.

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

constraints. On the one hand, Spain will ensure that the remuneration of BMN's employees is in line with the limitations set forth in Spanish legislation. On the other hand, the Commission welcomes a ban on advertising State support and a ban on aggressive commercial practices, thus preventing BMN 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 BMN's viability.

(159) 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.

6.6 Monitoring

(160) 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

(161) The Restructuring Plan will need to be properly implemented throughout its duration. To ensure proper implementation, the Spanish authorities will make sure that BMN, in which the FROB will hold a significant participation, complies with the commitments listed in the Term Sheet.

(162) 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 BMN for explanations and clarifications. Spain and BMN 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

(163) The Commission concludes that the notified measures (measures C through E), namely the conversion of convertible preference shares into ordinary equity, the capital injection in the form of ordinary shares and the transfer of impaired assets to the AMC, constitute State aid in favour of BMN pursuant to Article 107(1) TFEU.

(164) The Commission finds that the restructuring aid, namely measures A through E, in favour of BMN 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

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

(CASE SA.35488 - Restructuring of Banco Mare Nostrum**)**

1. BACKGROUND

1.1. This document (the "Term Sheet") sets out the terms (the "commitments") for the recapitalisation and restructuring of BANCO MARE NOSTRUM S.A. ("BMN"), which the Kingdom of Spain and BMN 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 any Commitment hereunder.

2. DEFINITIONs

In this document, unless the context requires otherwise, the capitalised terms used herein have the following meanings

2.1 "Asset Management Company" ("AMC")" is an independent commercial entity established by the Spanish Law 9/2012. The Spanish Government decision to set up 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 state exposure in the Spanish banking system. Assets will be transferred from banks to AMC to strengthen the bank's balance sheets and ensure that uncertainty over real state exposure is reduced. The official name given to the entity is Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria ("**Sareb**").

2.2 "FTE" means full time equivalent employee.

2.3 "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.

2.4 "Monitoring Trustee" is the person who will verify the adherence to the commitments listed in this Term-Sheet, as set out in Appendix IV.

2.5 RWA means risk weighted assets that shall be calculated on a consolidated basis in accordance with Circular 3/2008.

2.6 "Remedial actions" shall mean action(s) that will allow BMN to meet the identified target(s). The remedial actions need to be submitted within one month by BMN 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.

2.7 "Restructuring Period" is the period indicated in Section 3.3.

3. GENERAL

3.1. Spain is to ensure that the Restructuring Plan ("the Restructuring Plan") for BMN submitted on 13 December 2012 is correctly and fully implemented.

3.2. Spain is to ensure that the commitments listed below ("Commitments") 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 mainly includes the execution of the following adjustments to the current perimeter of BMN:

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

a) Loans to developers exceeding a net book value of €250,000

b) Foreclosed real estate assets exceeding a net book value of €100,000; and

c) The equity interests in controlled real estate companies (jointly, the “Real Estate Business”)

As of 30 June 2012 the gross book value of the assets at BMN amounts to [10 - 20] billion and the transfer value of Real Estate Business of EUR [5 - 10] billion.

The above mentioned figures on the impact of the assets transferred to the Asset Management Company (SAREB) 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.

The gross book value of the assets and the transfer value as of 31 December 2012 is estimated at around EUR [10 - 20] billion and EUR [5 - 10] billion, respectively.

4.2. The divestiture of Cataluña and Aragón business and branches (Caixa Penedès network) in the terms and conditions set out in the agreement executed with Banco Sabadell on 13 November 2012. The assets sold are EUR 10.6 billion, containing 461 branches and 2 003 employees. According to this agreement the final purchase agreement need to be signed before the end of December 2012 and the real transfer of assets and liabilities will take place after BMN carried out the transfer of the assets to the AMC.

5. RESTRUCTURING OF BMN

5.1. The Restructuring Plan for BMN consists in particular on the transfer of the Real Estate Business to the AMC and the sale of business and branches of Cataluña and Aragón to Banco Sabadell as stated on section 4, and additionally BMN will accomplish the restructuring of the remaining business according to what it is set below.

5.2. Loan book size (data refers to confidential consolidated statements):

5.2.1. By 31 December 2014, the size of the net loan book value of BMN will not be higher than EUR [20 - 30] billion.

5.2.2. By 31 December 2016, the size of the net loan book value of BMN will not be higher than EUR [20 - 30]billion.

If these loan book reduction targets are not met, BMN 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 (data refers to confidential consolidated statements):

5.3.1. By 31 December 2014, the balance sheet size of BMN will not be higher than EUR [40 - 50]billion.

5.3.2. By 31 December 2016, the balance sheet size of BMN will not be higher than EUR [40 - 50] billion.

5.4. Loan to Deposit ratio:

5.4.1. BMN commits to achieve a Loan to Deposit ratio of [110 - 130]% in 2014 and a ratio of [100 - 120]% in 2016.

If the above targets regarding the balance sheet size and the Loan to Deposit ratio are not met, BMN shall present remedial actions.

5.5. Reduction of Branches and FTEs

5.5.1. BMN will reduce its current structure from 1 364 to [700 - 800] branches before the end of 2014 and from 7 055 to [4 000 – 5 000] FTEs before the end of 2014. It will be present with [700 - 800] commercial branches in the *Comunidades autónomas* of Madrid, Castilla-La Mancha, Comunidad Valenciana, Región de Murcia, Andalucía, Islas Baleares, Islas Canarias and Melilla.

5.5.2. BMN will reduce [500 - 600] branches before the end of 2014. The calendar for the execution of this reduction will be as follows:

- 462 branches located in Cataluña and Aragón will be transferred to Banco Sabadell S.A;

- [50 - 60] branches will be reduced in 2013; and
- the [50 - 60] remaining branches will be reduced in 2014.

As regards FTEs, the execution of this reduction will be as follows:

- 2 003 will be reduced at the transfer date of the Cataluña and Aragon branches to Banco Sabadell;
- [400 - 500] will be reduced in 2013 and the remaining [400 - 500] in 2014.

5.5.3. By the end of March 2013 BMN shall identify those branches to be closed in the Restructuring Period. BMN reserves the right to substitute identified branches depending on business requirements, and inform the Monitoring Trustee.

5.6. Subsidiaries Portfolio Divestment (data refers to confidential consolidated statements)

5.6.1. Listed subsidiaries/equity holdings: Listed subsidiaries/equity holdings: BMN commits to divest the portfolio of listed companies set out in Appendix I by December 2014.

5.6.2. Unlisted subsidiaries/equity holdings: BMN commits to sell the portfolio of unlisted companies set out in Appendix II by December 2017.

In particular BMN will reduce its unlisted subsidiary portfolio under the following divestment calendar:

a) BMN will at least reduce in accumulative terms [40 - 60]% of the book value of its unlisted subsidiaries / equity holdings in […] and [80 - 100]% in […]. Such percentages refer to the relevant book values as of June 2012 as indicated in Appendix II.

b) Moreover, BMN will at least reduce in accumulative terms [70 - 90]% of the number of its subsidiaries / equity holdings in [80 - 100] and 100% in […]. Such percentages refer to the total number of subsidiaries and equity holdings as of June 2012 as indicated in Appendix II.

If BMN does not reduce the holdings in the deadlines set out, BMN will […] 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 BMN

5.7.1. BMN commits that its core commercial activities are retail banking activities, primarily focused on its core regions in which it will maintain a geographical presence. Consequently, BMN shall not engage in any new business during the Restructuring Period in the following areas:

a) Real estate development activity. Nevertheless BMN will be allowed to carry out banking activities related to the maintenance of the value of BMN's real estate exposure which is not transferred or contributed to the AMC

b) BMN shall not increase its marginal investment banking activities during the restructuring period, 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 BMN's balance hedges).

5.8. Principles which apply to the branches to be closed identified in section 5.5.2

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 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 [900 – 1 000] million.

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. BURDEN SHARING MEASURES ON SUBORDINATED DEBT AND PREFERENCE SHARES HOLDERS

6.1. Key principles

6.1.1. Before the subordinated liability exercise the Mandatory Convertible Bonds (EUR 242.25 million) issued by BMN in November 2011, will be converted into ordinary shares at the [2 - 3] EUR/share conversion price, by means of the execution of the following conversion trigger: “A mandatory conversion event will take place where the Bank of Spain at any time requires conversion, on the basis of the financial status or solvency of BMN or the Group.”

6.1.2. The preference shares subscribed by the FROB (EUR 915M) will be converted into equity subject to a haircut.

6.1.3. By performing voluntary or mandatory subordinated liability exercises under the methodology described in section 6.3, BMN expects to generate EUR [300 - 400] million of Core Tier 1 capital through the issuance of capital or capital like instruments and/or the retention of the profits generated as a consequence of the exercise. EUR [100 – 300] million were already considered as Core Tier 1 in the Oliver Wyman stress test exercise. Thus the net effect of the amount to be generated would be EUR [100 - 200] million.

6.1.4. BMN could conduct a voluntary exercise on these instruments in […].

6.1.5. If the result of such exercise is not sufficient for achieving the target set out in point 6.1.3 or the exercises would result in an acceptance lower than [90 - 100]% the FROB will adopt not later than […] the necessary measures for ensuring that the entity will perform a mandatory exercise on the holders of such securities on the basis of the sections below.

6.2. **Key principles for subordinated liability exercises**

6.2.1. 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.

6.2.2. Calculation of the fair value of the different financial instruments subject to burden sharing will be based on the net present value ("npv") of the instruments according to the methodology set out below

6.2.3. Consequently, as a result of the burden sharing there will be no cash outflow from BMN 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.

6.2.4. A list of all outstanding preference shares and subordinated debt instruments subject to the subordinated liability exercise (including preference shares issued by FROB) is set out in Appendix III.

6.3. **Methodology for the conversion into capital**

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

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

6.3.3. The NPV will be augmented by a take-up premium of [10 - 20]% and a further [20 - 30]% premium for those securities for which conversion into equity or equity-like instruments of the issuing institution is envisaged.

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

6.3.5. FROB preference shares will have a discount factor according to its seniority and other specific characteristics of these securities.

6.4. **Specific provision for dated subordinated debt**

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

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

(ii) Conversion into core capital of BMN. The conversion rate to be applied will be the higher of: a) the amount resulting from the methodology for the conversion into core capital as described in 6.3.1 to 6.3.4 above; and b) the amount resulting from the calculation in point (i) above.

6.5. **Equity stakes in BMN as a result of the burden sharing and recapitalisation measures**

6.5.1. The Mandatory Convertible Bonds (EUR 242.25 million) issued by BMN in November 2011 will be converted previously to the SLE exercise into ordinary shares at a 2.89 EUR/share fix conversion price set out in the terms of the issue.

6.5.2. The holders of other securities subject to burden sharing will receive an equity stake in BMN in the form of new ordinary shares or equity-equivalent instruments.

6.5.3. As a consequence of the conversion and recapitalization measures described above and the subsequent recapitalisation, the FROB will receive an equity stake in BMN in the form of new ordinary shares of at least 64%.

7. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

7.1. **Ban on acquisitions**

BMN will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and package of assets which form a business.

That commitment will apply for a period of 5 years starting from the date of the Commission Decision. Acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms do not fall under the ban on acquisition.

BMN may acquire stakes in undertakings provided that the purchase price paid by the entity for any acquisition is less than [0 - 5]% of the balance sheet size of BMN at 30 June 2012 and that the cumulative purchase prices paid by BMN for all such acquisitions over the whole restructuring period is less than [0 - 5]% of the balance sheet size of BMN at the before mentioned date.

7.2. **Ban on Coupon**

Until the burden sharing measures provided for in section 6 of this Term Sheet will have been implemented, BMN 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.

7.3. **Advertising**

BMN must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.

7.4. **Remuneration of bodies, employees and essential agents**

The Spanish Government undertakes to ensure that BMN 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 Government. 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 Government also undertakes to ensure the most efficient use of public resources, regarding compensation and salaries issues, as inspiring principle of Law 9/2012, 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 BMN consolidated financial statements.

7.5. CAPITAL REPAYMENT MECHANISM

7.5.1. Based on the audited year end accounts BMN 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 I and Pillar II) 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 European and Spanish law (including Pillar I and Pillar II) 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 BMN to the Bank of Spain it is considered that it would endanger the solvency position of the bank in the following years.

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

7.6. BAN ON COMMERCIAL AGGRESSIVE PRACTICES

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

7.7. **LISTING OF BMN**

Spain shall present no later than [...]a credible timeline in order to allow BMN to eventually become publicly traded. Spain shall make BMN a listed company by no later than [...].

8. MONITORING TRUSTEE

8.1. 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).

8.2. The appointment, duties, obligations and discharge of the monitoring trustee must follow the procedures set out in the "Monitoring Trustee" Appendix IV.

8.3. Spain and BMN 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 trustee may ask BMN for explanations and clarifications. Spain and BMN 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 of listed companies to be divested

[…]

Appendix II. - Unlisted subsidiaries/equity holdings to be divested (1)

[…]

Appendix II. - Unlisted subsidiaries/equity holdings to be divested (2)

[…]

Appendix II. - Unlisted subsidiaries/equity holdings to be divested (3)

[…]

Appendix II. - Unlisted subsidiaries/equity holdings to be divested (4)

[…]

Appendix II. - Unlisted subsidiaries/equity holdings to be divested (5)

[…]

Appendix III. - List of hybrid capital issues (in EUR)

ISIN	ISSUER	Outstanding volume	CAPITAL	Maturity
ES0214600225	BMN	50.000.000	Lower Tier 2 capital	30/12/2017
ES0214600233	BMN	50.000.000	Lower Tier 2 capital	30/12/2018
ES0214926018	BMN	11.300.000	Lower Tier 2 capital	30/12/2014
ES0214926042	BMN	15.000.000	Lower Tier 2 capital	17/06/2019
ES0214982110	BMN	43.300.000	Lower Tier 2 capital	30/06/2015
V84879741	BMN	75.000.000	Lower Tier 2 capital	17/11/2016
V84879741	BMN	70.000.000	Lower Tier 2 capital	17/11/2016
	TOTAL LOWER TIER 2 PROFESSIONAL INV.	**314.600.000**		
ES0214982102	BMN	295.000	Lower Tier 2 capital	08/10/2014
ES0214982136	BMN	300.000	Lower Tier 2 capital	16/03/2019
ES0214600175	BMN	285.000	Lower Tier 2 capital	15/12/2014
ES0214600191	BMN	655.000	Lower Tier 2 capital	30/06/2023
ES0214600043	BMN	79.335	Upper Tier 2 capital	Perpetuo
ES0214600050	BMN	106.080	Upper Tier 2 capital	Perpetuo
ES0214600084	BMN	73.324	Lower Tier 2 capital	Perpetuo
	BMN	12.000.000	Lower Tier 2 capital	Perpetuo
ES0214600092	BMN	138.535	Lower Tier 2 capital	Perpetuo
ES0214600035	BMN	70.019	Upper Tier 2 capital	Perpetuo
ES0214966022	BMN	1.779.000	Lower Tier 2 capital	22/12/2016
ES0214966030	BMN	5.741.000	Lower Tier 2 capital	29/06/2019
ES0214966014	BMN	387.000	Upper Tier 2 capital	Perpetuo
ES0214966006	BMN	388.252	Upper Tier 2 capital	Perpetuo
ES0214926026	BMN	177.000	Lower Tier 2 capital	18/03/2015
ES0214926034	BMN	187.000	Lower Tier 2 capital	30/06/2019
	TOTAL LOWER TIER 2 RETAIL INV.	**22.661.545**		
	TOTAL LOWER TIER 2	**337.261.545**		
ES0114818042	CAJAMURCIA PREFERENTES, S.A.U.	50.000.000	Additional tier 1 Capital	Perpetuo
ES0114818026	CAJAMURCIA PREFERENTES, S.A.U.	50.000.000	Additional tier 1 Capital	Perpetuo
XS0257959113	CAIXA PENEDÈS CAPITAL II, S.A.U.	9.450.000	Additional tier 1 Capital	Perpetuo
	TOTAL TIER 1 PROFFESIONAL INV.	109.450.000		
ES0158952004	CAJAGRANADA PREFERENTES, S.A.U.	249.300	Additional tier 1 Capital	Perpetuo
KYG175552051	CAJAMURCIA FINANCE, S.A.U.	374.000	Additional tier 1 Capital	Perpetuo
ES0114818000	CAJAMURCIA PREFERENTES, S.A.U.	292.000	Additional tier 1 Capital	Perpetuo
ES0114818059	CAJAMURCIA PREFERENTES, S.A.U.	222.000	Additional tier 1 Capital	Perpetuo
ES0158672008	CAIXA PENEDÈS CAPITAL I, S.A.U.	646.000	Additional tier 1 Capital	Perpetuo
KYG1755N1079	CAIXA PENEDÈS CAPITAL I, S.A.U.	160.000	Additional tier 1 Capital	Perpetuo
KYG7803W1069	SA NOSTRA SOCIEDAD DE PARTICIPACIONES PREFERENTES, S.A.U.	635.000	Additional tier 1 Capital	Perpetuo
	TOTAL TIER 1 RETAIL INV.	**2.578.300**		
	TOTAL TIER 1	**112.028.300**		

N/A	BMN (Preference shares FROB)	915.000.000	Core Tier 1	31/12/2015

Appendix IV. - Monitoring trustee

(A) Appointment of the monitoring trustee

(i) Spain undertakes to ensure that BMN 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 31st December,2017. At the end of the mandate, the Trustee must submit a final report.

(ii) The Trustee must be independent of BMN. The Trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest. The Trustee is to be remunerated by BMN in a way that must not impede the independent and effective fulfilment of its mandate.

(iii) Spain undertakes to ensure that BMN submits the names of two or more persons to the Commission for approval as monitoring Trustee no later than four weeks after notification of the Decision.

(iv) These proposals must contain sufficient information about those persons to enable the Commission to verify whether the proposed Trustee fulfils the requirements set out in paragraph A(ii), and must in particular include the following:

(a) the full terms of the proposed mandate with all the provisions which are necessary to enable the Trustee to fulfil its duties; and

(b) the draft of a work plan describing how the Trustee intends to carry out its assigned duties.

(v) The Commission has the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Trustee to fulfil its obligations. If only one name is approved, BMN 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, BMN 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 BMN 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 BMN 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 BMN' 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 BMN, issue orders or instructions to the Trustee in order to ensure compliance with the Commitments. BMN 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 BMN's Restructuring Plan. The Commission may, on its own initiative or at the request of the Trustee, issue any orders or instructions to the Trustee or BMN in order to ensure compliance with the Commitments attached to the Decision.

(x) The Trustee:

(a) is to propose to the Commission in its first report a detailed work plan describing how it intends to monitor compliance with the Commitments attached to the Decision;

(b) is to monitor the full and correct implementation of BMN's 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 BMN that it considers necessary to ensure that BMN fulfils 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 BMN within thirty days after the end of each six-month period. The Commission, Spain and BMN 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 BMN. If the draft report or the final report contains any information that may not be disclosed to BMN, only a non-confidential version of the draft report or the final report is to be sent to BMN. Under no circumstances is the Trustee to submit any version of the report to Spain and/or BMN 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 BMN, thus enabling the Commission to assess whether BMN 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 BMN is failing to comply with these obligations, sending a non-confidential version to BMN at the same time.

(D) Duties and obligations of BMN

(xi) BMN 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 BMN or of the business to be sold that are necessary to fulfil its duties under the mandate. BMN is to make available to the Trustee one or more offices at its business premises and all employees of BMN 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 BMN's approval (this approval may not to be unreasonably withheld or delayed) and at its expense, the Trustee may appoint advisors (in particular for corporate finance or legal advice), if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any costs and other expenses incurred by the Trustee are reasonable. Should BMN refuse to approve the advisors proposed by the Trustee, the Commission may approve their appointment instead, after hearing BMN's reasons. Only the Trustee is entitled to issue instructions to the advisors.

(E) Replacement, discharge and reappointment of the Trustee

(xiii) If the Trustee terminates its functions under the Commitments or if there are any other significant grounds, such as a conflict of interest on the part of the Trustee:

(a) the Commission can, after hearing the Trustee, require BMN to replace it, or

(b) BMN, 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.