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Subject: State aid n° SA.35490 (2012/N) – Spain
Restructuring of Liberbank S.A.

Sir,

1 PROCEDURE

(1) 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.

(2) The MoU sets a strict timeline for the recapitalisation and restructuring of the different groups of banks established on the basis of stress test results[1]. In

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

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particular, for credit institutions categorized as Group 2 banks, the Fondo de Reestructuraciòn Ordenanda Bancaria ("**the FROB**") will only provide further financial support once individual restructuring plans have been approved by the Commission. The MoU indicates that the restructuring plans will be finalised in light of the stress test exercise and presented in time to allow the Commission to approve them by December 2012.

(3) On 31 October 2012, the Bank of Spain ("**BoS**") announced[2] that Liberbank S.A. ("**Liberbank**") is expected to resort to public support within the framework of its capitalisation processes, thereby classifying Liberbank in Group 2 of the MoU stress test results.

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

(5) On 12 December 2012, Spain communicated the final content of the restructuring plan ("**the Restructuring Plan**") to the Commission, including the capital injection to be made through the FROB and the final figures pertaining to the size, composition and valuation of the assets and credit portfolio to be transferred to an Asset Management Company ("**AMC")** in the context of an impaired asset measure. With regards to issues pertaining to the asset valuation methodologies employed in the context of the impaired asset measure, the Commission has drawn on technical assistance provided by independent experts.

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

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiaries

(7) Liberbank is a Spanish commercial bank registered with the BoS. It was created as a result of the integration between three Spanish savings banks (*cajas de ahorros*)[3]: Caja de Ahorros de Asturias ("CajAstur"), Caja de Ahorros y Monte de Piedad de Extremadura ("Caja Extremadura") and Caja de Ahorros de Santander y Cantabria ("Caja Cantabria"). Liberbank owns 75% of Banco Castilla La Mancha. Figure 1 provides the structure of the Liberbank group.

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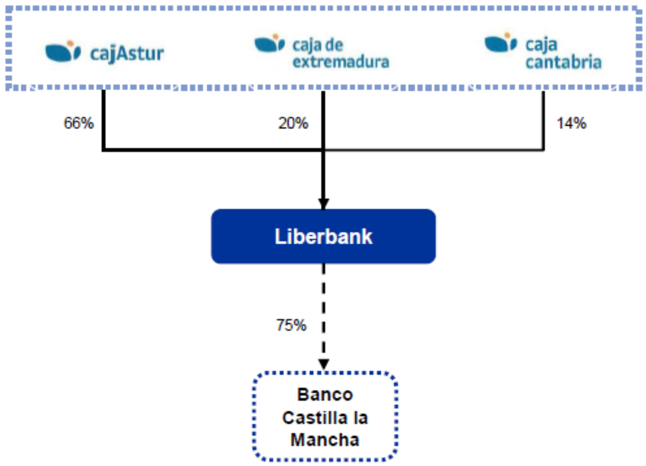
2 Ref. Bank of Spain Press Release, 31 October 2012, http://www.bde.es/f/webbde/SSICOM/20121031/presbe2012_49e.pdf

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

Figure 1: The Liberbank Group structure



(8) Within the framework of the Spanish Royal Decree Law of 18 February 2011, CajAstur, Caja Extremadura and Caja Cantabria transferred, in August 2011, their entire banking businesses to Liberbank. CajAstur, Caja Extremadura and Caja Cantabria each maintained an Obra Benéfico Social ("**OBS**"), a charitable institution, within their activities after the transfer of the banking business to Liberbank. Liberbank is thus the sole beneficiary of the measures for the purposes of the Decision.

(9) Liberbank focus is on retail banking. It operates mainly in four Spanish regions, which are the home of its founding shareholders: Asturias, where it has a [30-40][4] % share of the deposits' market; Cantabria, where it has a [30-40]% share of that market; Extremadura, where it has a [20-30]% share of that market and Castilla La Mancha, where it has a [20-30]% share of that market. Liberbank is the market leader in retail banking services in some of those regions. Its share of the deposits' market at a national level is approximately [2-3]%. Table 1 provides Liberbank's main economic indicators.

Table 1: Liberbank's main economic indicators

	30.06.2010 (peak)	**31.12.2011**
Total assets (EUR billion)	53.0	50.72
Loans to customers (EUR billion)*	39.6	36.58
Retail deposits (EUR billion)**	30.4	27.80
Total wholesale funds (EUR billion) ***	17.2	17.3
Employees	6,536	5,809
Number of branches	1,342	1,173
National market shares in deposits****	[2-3]%	[2-3]%
Regional market shares in deposits****	[20-30]%	[20-30]%
National market shares in loans****	[2-3]%	[2-3]%
Regional market shares in loans****	[20-30]%	[20-30]%

* Gross Value
** Without money market repos and client repos
*** Includes Central Bank, Liabilities from financial institutions, Covered bonds and bonds and marketable debt securities
**** According to the baseline scenario for the sector

2.2 The events triggering the measures

(10) On 28 September 2012, the results of the bottom-up stress test and asset quality review conducted by an independent consultant, Oliver Wyman, in the context of the MoU ("**the MoU Stress Test**")[5] revealed that Liberbank had a capital shortfall of EUR 1 198 million under the adverse scenario and an excess of capital of EUR 103 million in the base case for the three-year time horizon (2012-2014) of that exercise. Liberbank's capital needs in the adverse scenario amount to [40-50]% risk weighted assets ("**RWA**") as of 31 December 2011.

[4] Business secrets
[5] 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/

(11) Liberbank faces some operational challenges stemming mainly from its high exposure to the real estate sector[6] which has driven up its non-performing loans' and a significant reliance on wholesale funding with a loan-to-deposit ratio of [100-130]% as of June 2012.

2.3 Overview of the aid measures

(12) Since 2010, Liberbank has benefitted or will benefit from three aid measures. The first concerns the use of government guarantees to issue liabilities, while the second and the third are related to MoU requirements for banks which fail the stress test and are categorised as Group 2 banks. The second measure consists of financial support provided by the FROB in the form of convertible contingent bonds ("**CoCos**"). That measure amounts to EUR 124 million in support, i.e., 0.45% of its RWA in December 2011. The third measure is the transfer of its real estate development assets and its real estate related foreclosed assets to an AMC. This amounts to EUR [5-10] million gross book value (transfer price estimated at EUR [0-5]million) of assets transferred to an AMC. Table 2 provides an overview of the three aid measures.

Table 2: –Overview of the aid measures

Measure	Description	Amount (EUR million)	Approved	% RWA[7]
A	Spanish Guarantee Scheme	3 875	2009-2012	Not applicable
B	Recapitalisation measure	124	20.12.2012	0.45 %
C	Transfer of impaired assets	1 000	20.12.2012	3.6%

2.3.1 Measure A: Guarantees on liabilities

(13) Between 2009 and 2012, Liberbank has received guarantees on bonds issued, under the approved Spanish guarantee scheme, worth EUR 3 875 million[8].

2.3.2 Measure B: Recapitalisation measure

(14) Following the results of the MoU Stress Test and a series of measures proposed by the FROB (including a number of subordinated liabilities exercises and the transfer

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6 The overall exposure of Liberbank to the real estate sector represented [10-20]% of its balance sheet on 31 December 2011.

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

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

of some impaired assets and loans to an AMC, forming part of the Restructuring Plan), an additional capital injection of EUR 124 million is still needed for Liberbank to meet the new Spanish regulatory solvency requirements taking into account the results of that stress test.

(15) Accordingly, the FROB, on the basis of the Restructuring Plan, will subscribe for EUR [around 124] million in the form of CoCos issued by Liberbank. The FROB will contribute bonds issued by the European Stability Mechanism ("**ESM**") for an amount of EUR 124 million for those new CoCos in Liberbank.

(16) The CoCos will be instruments eligible as Core Tier 1 capital for solvency purposes, with an investment period by the FROB of five years. At the end of the relevant period, the CoCos will have to be bought back and redeemed by the beneficiary or converted into ordinary shares by the FROB. The remuneration of CoCos will be, as a minimum, 8.5% per annum for the first year of the investment and will increase, thereafter, through annual step-ups (increased by 25 basis points for the second year and by 50 basis points each year from the third year onwards).

(17) If Liberbank is unable to pay the remuneration on the CoCos, the payment due will be made in kind via issuance of new ordinary shares (alternative coupon satisfaction mechanism). If the CoCos have not been amortised by the Liberbank at the end of the investment period, they will be converted into ordinary shares. TheCoCos will be subject to automatic conversion into ordinary shares in the following circumstances: (i) whenever Liberbank presents a ratio of capital, as defined by the BoS, lower than 5.125%; (ii) if the CoCos become ineligible for treatment as Core Tier 1 capital; or (iii) if Liberbank or the combined entity goes into dissolution, liquidation, or bankruptcy.

(18) Any conversion of the CoCos into ordinary shares of Liberbank must be approved by the Commission. The rights of the new shares in the combined entity in case of conversion will be allocated, following an independent economic valuation of the combined entity.

2.3.3 Measure C: The transfer of impaired assets to the Asset Management Company

a. Objective

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

b. AMC: Set up and characteristics

(20) 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[9] was prepared by the Spanish authorities in consultation with the Commission, the European Central Bank ("**ECB**"), the European Stability Mechanism ("**ESM**"), and the International Monetary Fund ("**IMF**").

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

(21) The overall objective of the AMC will be the management and orderly divestment of the portfolio of assets and loans received, maximising their recovery over a maximum of 15 years. In pursuing that activity, the AMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.

(22) 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.

(23) The volume of assets to be transferred to the AMC – taking into account only the portion corresponding to Group 1 banks following the classification pursuant to the MoU Stress Test – is estimated to be around EUR 45 billion. That amount will increase after the assets of the Group 2 banks, among which Liberbank, are transferred to the AMC. However, the maximum volume of impaired assets that Spanish banks can transfer to the AMC will in principle not exceed EUR 90 billion.

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

(25) As part of the AMC's governing bodies a so-called "Monitoring Committee" was established as part of the AMC's governing bodies, consisting of four parties (the MOF, the Ministry of Financial Affairs and Public Administration, the BoS and the CNMV[10]), with a mandate to oversee compliance with the general objectives for which the AMC was set up. The Monitoring Committee's functions include the analysis of the business plan and of possible deviations from it, the monitoring of divestment plans and of the repayment of guaranteed debt. The Monitoring Committee will ask the AMC for such periodic information as it considers appropriate for the carrying out of its task.

c. Scope of the transfer of impaired assets and loans

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

(27) Based on asset values as of 30 June 2012, the overall portfolio of impaired assets and loans to be transferred by Liberbank to the AMC amounts to EUR [5-10]billion in terms of gross book value. The value of the controlling corporate holdings linked to the real estate sector has been estimated based on the value of the underlying assets held by those holdings.

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

(28) As a result of the asset transfer, the RWA of Liberbank will be reduced by EUR [0-5]billion and entails a total reduction of capital needs of EUR [100-200] million. Those figures are an estimate based on the situation of those assets as of 30 June 2012. It is possible that the final figures could differ from those levels as the transfer will only take place in the first quarter of 2013.

d. Methodology for the calculation of the transfer value

(29) The transfer value has been established on the basis of two components. First, the economic value of the assets was determined, both for the foreclosed assets and the loans related to the real estate development sector. Furthermore, for calculating the transfer value, the expected losses in the baseline scenario of the MoU Stress Test for Liberbank 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.

(30) 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. That discount is the result of aspects such as: a) the aggregate acquisition of the assets; b) the consideration of certain expenses previously borne by Liberbank, 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.

e. Purchase of those assets by the AMC

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

f. The transfer value

(32) Based on the methodology and discounts described in recitals (29) and (30), the transfer value of the assets of Liberbank amounts to EUR [0-5]billion, which is equal to [50-60]% of the gross book value of those assets. Those figures are an estimate based on the situation of those assets as of 30 June 2012. It is possible that the final figures could differ from those levels as the transfer will only take place in first quarter of 2012.

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

g. Market price

(34) 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.

h. Independent expert advice for the Commission

(35) The Commission has relied on independent experts 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 **the Impaired Assets Communication**[11], which serves as the reference framework for measure C.

3 RESTRUCTURING OF LIBERBANK

(36) The Restructuring Plan states that, in accordance with Law 9/2012 and in view of its capital shortfall as revealed in the MoU Stress Test, that Liberbank is able to fully repay the public funds granted through the impaired asset measure proposed in that plan.

(37) The commitments by the Spanish authorities have been presented in a separate document entitled: *"Term Sheet of LIBERBANK S.A."* (hereinafter referred to as "**the Term Sheet**", annexed to the Decision)[12].

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

[12] See the Annex to the Decision.

3.1 Restoration of viability through refocusing on the core activities of Liberbank

(38) Table 3 below presents the main financial projections contained in the Restructuring Plan for Liberbank

Table 3- the main financial projections contained in the Restructuring Plan of the Bank ("the Summary Table")

P&L	2011	2012	2013	2014	2015	2016	2017
Profit before tax	287	[...]	[...]	[...]	[...]	[...]	[...]
Cost of Income Ratio	67.1%	[50-60]%	[40-50]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
FTE (2)	5,809	[...]	[...]	[...]	[...]	[...]	[...]
Branch	1,173	[...]	[...]	[...]	[...]	[...]	[...]
ROE (3)	11.1%		[0-5]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%

Balance sheet	2011	2012	2013	2014	2015	2016	2017	Evolution rate 2012-2016 (%)
Assets								
Loans to clients (net)	36,582	[...]	[...]	[...]	[...]	[...]	[...]	(-)[10-20]%
NPLs (non-APS)	2,505	[...]	[...]	[...]	[...]	[...]	[...]	[20-30]%
Total assets	50,721	[...]	[...]	[...]	[...]	[...]	[...]	(-)[10-20]%
RWA	27,703	[...]	[...]	[...]	[...]	[...]	[...]	(-)[5-10]%

	2011	2012	2013	2014	2015	2016	2017	Evolution rate 2012-2016 (%)
Liabilities								
Central bank	2,001	[...]	[...]	[...]	[...]	[...]	[...]	(-)[90-100]%
Liabilities to clients (4)	27,804	[...]	[...]	[...]	[...]	[...]	[...]	[0-5]%
Total Liabilities (5)	47,801	[...]	[...]	[...]	[...]	[...]	[...]	(-)[20-30]%
LTD	136.1%	[100-120]%	[100-120]%	[100-120]%	[100-120]%	[100-120]%	[100-120]%	(-)[10-20]%
EBA CT1	2,716	[...]	[...]	[...]	[...]	[...]	[...]	[50-60]%
Basel III CET1 [(1)]	2,716	[...]	[...]	[...]	[...]	[...]	[...]	[20-30]%

(1) assuming all DTAs are fully deducted from CET1 .

Figures for end-december each year , and in Eur Million

(2) FTE of LBK & CCM without group companies

(3) Net income less expenses of Cocos after-tax / Own funds plus cocos

(4) Refer to Deposits. Corporates deposits represent only 7,4% of retail deposits

(5) Total liabilities excluding own funds

(39)

(40) According to the Restructuring Plan, the foremost measure to achieve the intended structural change is a refocusing of Liberbank's activities on its core business lines in its traditional core regions and the closing-down of risky and/or loss-making activities outside the core regions.

(41) As illustrated in Table 3, Liberbank's balance sheet will be reduced by [10-20]% between 2012 and 2017, mainly due to a decrease of [10-20] % in its loans portfolio and a significant reduction of around [50-60]% in wholesale funding, which includes a […] from the Eurosystem funding. If added to previous restructuring efforts undertaken by the bank (2010-2012), it represents a total reduction of the balance sheet by [20-30]%.

(42) As explained in recitals (19) to (35), Liberbank will transfer impaired assets and loans to the AMC with a gross value of EUR [5-10]billion, which implies a reduction in its RWA of EUR [0-5]billion.

(43) Liberbank will further close and/or sell its business outside its core region. The envisaged branch and staff adjustments will lead to a reduction of [5-10]% in branches and [0-5]% in staff between 2012 and 2017, which, if added to internal restructuring efforts undertaken by Liberbank since its creation in August 2011, represents a total of [5-10]% closure of branches and [10-20]% reduction in staff.

(44) In addition to those measures, the total balance sheet of Liberbank will be reduced as a result of divesting the portfolio of industrial stakes.[13]

(45) Accordingly, the volume of RWA will fall by [5-10]% by the end of 2017 (as compared to 2012), which, if added to internal restructuring efforts undertaken by Liberbank since its creation in August 2011, represents a net reduction of [30-40]%.

(46) Following this restructuring, Liberbank projects to post profits before tax in 2017 of EUR [500-600] million (compared to a EUR [0-5]billion loss in 2012), a cost-of-income ratio of [30-40]% (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.

3.2 Contribution to the restructuring costs of Liberbank

(47) In accordance with the MoU and Law 9/2012, 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.

[13] See Annex: Term Sheet paragraph 5.6.

3.2.1 Subordinated Liability Exercise in Liberbank

(48) In view of the […] losses posted and forecasted by Liberbank for 2012 and pursuant to the MoU, the bank will carry out a voluntary subordinated liability exercise ("**SLE**") whereby the holders of preference shares and perpetual/dated subordinated debt instruments will contribute to the adequate recapitalisation of Liberbank as described below:

- Retail holders: All dated subordinated debt will be converted into CoCos eligible as Core Tier 1 Capital. A portion ([10-20]%) of the perpetual subordinated debt and preference shares will be converted into shares while [90-100]% of those instruments will be converted into CoCos eligible as Core Tier 1.
- Institutional holders: All subordinated debt instruments will be converted into shares.

(49) In case the take up in the voluntary SLE is below [90-100]%, the FROB will adopt not later than […]the necessary measures for ensuring the entity will perform a mandatory exercise on the holders of such securities on the basis of the sections below in two different ways:

- First, the securities shall be bought back by Liberbank at their net present value, calculated in accordance with the methodology set out in the Term Sheet, plus premiums accounting up to [30-40]% of the face value, with the limit of [90-100]% of the face value. That methodology implies […] discounts from the nominal value of the instruments. That action will generate immediate capital gains for Liberbank estimated at EUR [100-200] million, which will significantly 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 Liberbank, with the sole exception of the dated subordinated debt whose holders will be afforded the opportunity to convert into an equity-equivalent instrument eligible as core capital under BoS and EBA rules, as described in the Term Sheet[14]. The conversion into core capital will further reduce the needs of Liberbank to raise new capital by EUR [500-600] million.

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

(51) The economic rights of the new shares in Liberbank will be allocated, following an independent economic valuation of the bank, in proportion to the value established by said valuation after the recapitalisation.

[14] See Annex: Term Sheet paragraph 5.6.

4 POSITION OF THE SPANISH AUTHORITIES

4.1 Position of the Spanish authorities on the Restructuring Plan

(52) The Spanish authorities accept that the measures A through C constitute State aid. As regards measure A, the guarantees on liabilities were notified as aid under the Spanish guarantee scheme. As regards measures B and C, Spain submits that the recapitalisation and impaired asset 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.

(53) In particular, the Spanish authorities submit that those 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.

(54) *Appropriate and well-targeted*. The Spanish authorities submit that Liberbank is important within the Spanish financial system, especially in its core regions.[15]

(55) *Necessary and limited to the minimum amount*. The Spanish authorities submit that the measures proposed are required to de-risk the bank and to help bring Liberbank's solvency position in line with the new solvency requirements in Spain (Core Tier 1 of 9% of its RWA) and with the requirements as required in the MoU Stress Test (Core Tier 1 of 6% of its RWA under an adverse scenario).

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

4.2 Commitments of the Spanish Authorities

(57) 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[16]. The Spanish authorities commit to comply with the commitments listed in the Term-Sheet, if necessary, by ensuring that Liberbank complies with those commitments.

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

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[15] Liberbank's market share in deposits in the region where it operates is currently approximately [20-30]%.

[16] See Annex.

5 ASSESSMENT

5.1 Existence of State Aid

5.1.1 Overview - measures already temporarily approved / not approved

(59) With regards to the Spanish State guarantee scheme approved by the Commission (measure A), the Commission has already concluded that the measure constitutes State aid in favour of Liberbank. As a consequence, it is not necessary to reassess whether it constitutes State aid under the Decision.

(60) The measures which need to be assessed for State aid under the Decision are the recapitalisation measure (measure B) and the impaired assets measure (measure C).

(61) 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.

(62) The qualification of a measure as State aid within the meaning of that provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States. The Commission observes that the Spanish authorities do not dispute that measures B and C constitute State aid.

5.1.2 State resources and imputability

(63) The Commission recalls at the outset that the FROB, the intervening authority providing the measures, is directly financed through State resources and that its decisions are directly imputable to the State. The FROB essentially acts as the prolonged arm of the State. The Commission therefore considers that the recapitalisation measure (measure B) is financed by State resources.

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

the State and constitutes State resources.

5.1.3 *Advantage*

(65) As regards the recapitalisation measure (measure B), it allows Liberbank to cover further losses and remain above the minimum solvency ratio in the adverse case. In the current circumstances it is evident that the subscription of CoCos would not have been available on the market.

(66) With regards to the impaired assets measure (measure C), the transfer of assets to the AMC confers a clear advantage on Liberbank 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 [5-10]billion.

(67) 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 Liberbank's portfolio, the measure therefore confers an advantage on Liberbank.

(68) 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 Liberbank will not, however, be providing vendor financing as part of the asset transfer. Furthermore, private investors are purchasing such assets only at very low prices (i.e. fire-sale conditions), given the uncertainty surrounding their value. Those lows prices are due to liquidity constraints affecting the European financial system, particularly prevalent in Spain at the moment.

(69) 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

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

5.1.4 *Selectivity*

(71) Since measures B and C are exclusively addressed to Liberbank, they should be considered selective in nature.

5.1.5 *Distortion of competition and effect on trade between Member State*

(72) The Commission finds that measures B and C potentially distort competition as they

allow Liberbank to strengthen its capital position and to de-risk its activities.

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

(74) Thus, measures B and C strengthen the competitive position of Liberbank vis-à-vis its competitors in Spain and in other Member States.

5.1.6 Beneficiaries of the aid

(75) As described in recital (7), Liberbank is the economic successor of CajAstur, Caja Extremadura and Caja Cantabria, its three founding members. CajAstur, Caja Extremadura and Caja Cantabria transferred their entire banking business to Liberbank and retained only their ownership over OBS and over Liberbank.

(76) Therefore, Liberbank is the sole beneficiary of all the measures. The banking business of Liberbank could not have continued in its present form without aid from Spain.

5.1.7 Conclusion

(77) On the basis of the forgoing, the Commission considers that measures B and C fulfil the conditions laid down in Article 107(1) TFEU and that those measures therefore constitute State aid within the meaning of that provision. The Commission also recalls that it has already found that the measure on the guarantees on bonds issued under the approved Spanish guarantee scheme (measure A) constitutes State aid within the meaning of Article 107(1) TFEU.

5.2 Amount of aid

5.2.1 Guarantees of liabilities (measure A)

(78) Liberbank received guarantees on liabilities worth EUR 3 875 million.

5.2.2 Recapitalisation (measure B)

(79) Liberbank will receive a recapitalisation of EUR 124 million. The Commission considers the aid element in the recapitalisation to be up to 100% of the nominal amount, and hence concludes that the full amount of the recapitalisation measure up to EUR 124 million (0.45% RWA[17]) constitutes aid.

5.2.3 Impaired asset measure (measure C)

(80) 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 Liberbank, the transfer price is EUR [0-5]billion, while the market price is

[17] RWA as of 31 December 2011.

estimated at EUR [0-5]billion.

(81) Consequently, the amount of aid granted to Liberbank as a result of the impaired asset measure is EUR 1.0 billion (3.6% of RWA[18]).

5.2.4 Conclusion

(82) On the basis of the foregoing, it should be concluded that Liberbank has received State aid in form of capital injection and impaired asset measure amounting up to EUR 1 124 million (4.06% of RWA)[19], in addition to the guarantee worth EUR 3 875 million.

(83) The Commission in that context observes that the Spanish authorities do not dispute that those measures constitute State aid.

5.3 Legality of the aid

(84) The Commission notes that Spain notified aid measures A, B and C 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

(85) As regards the compatibility of the aid provided to Liberbank, 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

(86) 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[20]. The Commission confirmed that view by adopting the 2011 Prolongation Communication[21].

[18] RWA as of December 2011.

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

[20] 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).

[21] 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.

(87) 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[22]. Therefore, the legal basis for the compatibility assessment of the measures is Article 107(3)(b) TFEU.

6.2 Compatibility assessment

(88) Liberbank has benefitted and will continue to benefit from the Spanish State guarantee scheme (measure A), which has already been found compatible by the Commission and will further benefit from State aid in the form of a recapitalisation measure (measure B) and an impaired assets measure (measure C), whose compatibility needs to be assessed by the Commission in light of the Banking Communication, the Recapitalisation Communication and the Impaired Asset Communication. Finally, since the three measures have been provided in the context of the restructuring of Liberbank, they will have to be examined as restructuring aid under the Restructuring Communication, in light of the Restructuring Plan submitted by the Spanish authorities

6.3 Compatibility of measure B with the Banking and Recapitalisation Communications: Appropriateness, necessity, proportionality

(89) As recalled in point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with general criteria for compatibility under Article 107(3) TFEU, which imply compliance with the following conditions[23:]

a. *Appropriateness*: The aid must be well-targeted in order to effectively achieve the objective of remedying a serious disturbance in the economy.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve this objective. Thus it must be of the minimum amount necessary to reach the objective, and take the most appropriate form to remedy the disturbance.

c. *Proportionality***:** The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

a. Appropriateness of the Measure B

(90) As regards the recapitalisation measure, as described in recitals (14) to (18), the MoU Stress Test revealed a capital deficit of EUR 1 198 million, for Liberbank, which will be reduced to EUR 124 million after the transfer of assets to the AMC and the

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

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

burden-sharing exercise. Owing to the lack of confidence on the markets in Liberbank and the general uncertainty regarding the economic situation of Spain overall, it is virtually impossible for Liberbank 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 Liberbank.

b. Necessity – limitation of the aid to the minimum

(91) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the intended objective. That requirement implies that the aid measure must be of the minimum amount necessary to reach the intended objective. With the additional aid entailed in the recapitalisation measure, Liberbank will continue to meet regulatory capital ratios, and thus, the aid amount is limited to the minimum necessary to achieve the intended objective.

(92) In addition, adequate remuneration of any State intervention contributes to ensuring that the aid is limited to the minimum necessary. The required remuneration of the recapitalisation in the form of CoCos, which starts at 8.5% for the first year and increases over time with step-ups, encourages Liberbank to wean itself from State intervention and is in line with points 26 to 29 of the Recapitalisation Communication. Furthermore, an alternative coupon satisfaction mechanism applies to the CoCos pursuant to which unpaid quarterly interest will be paid in the form of new CoCos or ordinary shares.

(93) The Commission is therefore of the opinion that the recapitalisation measure is limited to the minimum and adequately remunerated and thus is necessary to achieve the intended objective.

c. Proportionality – measures limiting negative spill-over effects

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

(95) Considering the depth of the Liberbank's Restructuring Plan and the fact that there is a significant degree of burden-sharing, the recapitalisation measure seems prima facie proportionate.

Conclusion

(96) The Commission thus concludes that the recapitalisation measure is appropriate, necessary and, in light of the foreseen restructuring, proportionate to the intended objective of remedying a serious disturbance in the Spanish economy.

6.4 Compatibility of measure C with the Impaired Asset Communication

(97) 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

(98) 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.

(99) 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[24].

(100) As regards the present case, measure C is targeted at foreclosed assets related to real estate and development loans, being the most risky asset class emanating from the recent burst of the Spanish real estate bubble. The Commission notes that those assets are in line with asset categories set out in Annex II to the Impaired Assets Communication and, therefore, are in line with the eligibility criteria of that Communication.

Transparency and disclosure

(101) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. In other words, the Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.

(102) As regards the transfer of impaired assets to the AMC, 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

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

international institutions.

(103) However, while it is accurate that the definitive number of impaired assets falling under measure C 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 Liberbank.

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

Management of the assets

(105) 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.

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

Valuation

(107) Section 5.5 of the Impaired Assets Communication notes in that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of valuation is to establish the real economic value of the assets. 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.

(108) As regards measure C, 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.

(109) 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.

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

Burden sharing and remuneration

(111) 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.

(112) 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.

(113) As regards measure C, the Commission notes that the assets have been fully written down to their transfer value. The transfer price is on a relative basis [5-10] % 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 [200-300] billion, and the payment through bonds.

(114) In addition, Liberbank will receive bonds of a maturity of one, two or three-years, rather than cash, in exchange for its assets. The yield on those bonds is set at the lower of the rate for government bonds of the corresponding maturity and 12-month Euribor plus 200 bps. It is very likely that the bonds will be rolled over several times at the request of the AMC, as eventual redemption will depend on the sales of the assets transferred over a 15-year period. As a result, Liberbank 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.

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

Conclusion on compatibility

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

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

(117) 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

(118) As the Commission sets forth in its Restructuring Communication, 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.

(119) The Spanish authorities have submitted a restructuring plan for Liberbank, with a five-year time span up to 2017, showing a return to viability well before the end of the restructuring period.

(120) 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 Liberbank.

(121) First, the segregation and transfer of the assets and loans related to the real estate development sector to the AMC is an adequate response to the high concentration of Liberbank's balance sheet on that sector and level of non-performing assets[25] and its past expansion outside its core retail banking business and historical core regions. That transfer will allow Liberbank to focus on its core activities, in particular the new production of loans to its clients in the core region, such as residential mortgages and SME loans.

(122) Second, Liberbank, led by its main shareholder (CajAstur), has been genuinely engaged in the optimization of the risk management process and in the implementation of a more cost efficiency policy.

(123) Third, the Restructuring Plan foresees a significant change to Liberbank's business profile as it intends to concentrate on its core competences and to wind down more risky activities. Therefore, Liberbank will be able to focus on retail and local banking

[25] 15% of its balance sheet in 2011 and 28% of foreclosed assets. Source: Oliver Wyman analysis.

activities in its core regions. Those activities will be based on a more sustainable funding structure, as Liberbank intends to reduce very significantly its wholesale funds.

(124) Finally, Liberbank commits to use the results of the SLE as an opportunity to become a listed institution in the short-term. That development would certainly contribute to reinforce the best practices of the bank in terms of the risk management process.

6.5.2 Own contribution and burden-sharing

(125) 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.

(126) 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 Liberbank. As described in recital (10), the capital shortfall which needs to be covered by the recapitalisation measure (measure B) was determined on the basis of a stress test. In addition to the transfer of assets to the AMC (measure C), a number of elements reduce the magnitude of public funds that are required to ensure that Liberbank will remain above the regulatory minimum capital requirements, even in an adverse scenario:

(127) 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 (47) to (49), all hybrids will be converted into equity and CoCos eligible as Core Tier 1. That conversion will be done at the fair value of the different financial instruments determined on basis of their net present value. Irrespective of the characteristics of each hybrid instrument, it will lead to a haircut as compared to the nominal value of the instrument, and thereby lead to a decrease in the capital shortfall. Moreover, cash outflows from Liberbank to the holders of those securities will be avoided. 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 Liberbank's viability.

(128) Second, the Commission notes positively that, should the capital raised through the voluntary SLE not be enough to cover the capital requirement, Spain commits to launch a mandatory SLE to ensure that those requirements are fully met. The mandatory SLE shall take place no later than at the end of […].

(129) Third, point 24 of the Restructuring Communication provides that an adequate remuneration of State capital is also a means of achieving burden-sharing. As explained in recital (16), the annual remuneration for the CoCos subscribed by the FROB will start at 8.5% for the first year and increase over time with step-ups. That remuneration structure encourages Liberbank to wean itself from State intervention

and is in line with the Recapitalisation Communication. Furthermore, an alternative coupon satisfaction mechanism applies to the CoCos pursuant to which unpaid quarterly interest will be paid in the form of new CoCos or ordinary shares. The Commission therefore considers the level of remuneration associated with the State's injection of CoCos into Liberbank as appropriate.

(130) Third, Liberbank has committed to repay the CoCos subscribed by the FROB in full within […] years. If there is any doubt as to the ability of Liberbank to repay that aid six months before the dates of the repayment schedule, the Monitoring Trustee can request remedial actions in order to free up capital. In case of no repayment, the CoCos will automatically convert into equity and will trigger a new notification to the Commission.

(131) Finally, as regards covering the restructuring costs stemming from the Restructuring Plan through internal measures by Liberbank, the Commission notes that Liberbank has carried out and will continue to implement cost-cutting measures, resulting in a reduction of annual operational costs by EUR [80-90]million by the end of the restructuring period. The restructuring costs are also partly borne by the future proceeds from the divestments of equity stakes in non-core entities, as set out in the Term Sheet.

(132) Accordingly, burden-sharing on equity, hybrid and subordinated debt-holders, cost reductions; divestments; and adequate remuneration for the aid represent sufficient own contribution by Liberbank to the costs of its restructuring. 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

(133) 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, in absolute and relative terms, and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the Liberbank’s own contribution and burden-sharing over the restructuring period.

(134) The Commission recalls that Liberbank will receive State aid in the form of capital injections and impaired asset measures to an amount of EUR 1 124 million in addition to guarantees worth EUR 3 875 million.

(135) The aid amount of EUR 1 124 million is equivalent to [0-5]% of Liberbank's RWA[26]. However, since the absolute amount of aid to the beneficiary is relatively small, the restructuring measures proposed by Spain are sufficient to limit potential distortions of competition.

(136) The main measures that will limit distortions of competition are the rationalising of

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

Liberbank in terms of total assets, RWA, geographical footprint, business segments and staff.

(137) Liberbank will become a smaller bank. Using 31 December 2010 as a reference date, its total balance sheet will be reduced from EUR [50-60] billion on to EUR [30-40]billion by December 2017 (i.e. a reduction of [20-30]%), whilst its total RWAs will be reduced from EUR [20-30]billion on that date to EUR [10-20]billion by December 2017 (i.e. a reduction of [30-40]%).

(138) In parallel, Liberbank will sell its portfolio of equity in non-financial companies, part of its fixed income and swap portfolio, its written-off portfolio, its depositary business, its investment fund management company and its point of sale terminals. An overview of the largest divestments is provided by Table 4:

Table 4 – Divestment of important participations

Business	Initial Plan (€m)		
	2012	2013	Total
Insurance business	**[…]**	**[…]**	**[…]**
Life Insurance	**[…]**	**[…]**	**[…]**
General Insurance	**[…]**	**[…]**	**[…]**
Equity stakes & Fixed income portfolio	**[…]**	**[…]**	**[…]**
Equity stakes	**[…]**	**[…]**	**[…]**
Fixed income	**[…]**	**[…]**	**[…]**
Fully written-off assets	**[…]**	**[…]**	**[…]**
Depositary / Custody	**[…]**	**[…]**	**[…]**
Investment fund management company (1)	**[…]**	**[…]**	**[…]**
PoS business	**[…]**	**[…]**	**[…]**
Total	**[200-300]**	**[60-70]**	**[200-300]**

(1) Signing in 28th December 2012. Final Closing pending of regulatory approvals (CNMV) to take place by end of Q1 2013

(139) Altogether, the Commission considers the reduction of the total balance sheet of Liberbank between 30 June 2012 and December 2017 by [20-30]% to be appropriate,

as compared to the distortions of competition stemming from the amount of aid received.

(140) In addition to those structural measures, Spain also committed to several behavioural constraints. On the one hand, Spain will ensure that the remuneration of Liberbank'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 Liberbank 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 Liberbank 's viability.

(141) 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, in particular given the "relatively" low amount of aid that Liberbank will receive.

6.6 Monitoring

(142) 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

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

(144) 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 Liberbank for explanations and clarifications. Spain and Liberbank 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

(145) The Commission concludes that the notified measures, namely the recapitalisation measure and the transfer of impaired assets to the AMC, constitute State aid in favour of Liberbank pursuant to Article 107(1) TFEU.

(146) The Commission finds that the restructuring aid, namely measures A through C, in favour of Liberbank 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

ANNEX

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

(CASE SA.35490 Restructuring of Liberbank**)**

1. BACKGROUND

1.1. This document (the “term sheet”) sets out the terms (the “Commitments”) for the recapitalisation and restructuring of LIBERBANK S.A. ("LIBERBANK"), which the Kingdom of Spain and LIBERBANK 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 either to (i) grant an extension of the time period of the Commitments or (ii) waive, modify or substitute one or more of the aspects of the Commitments.

2. DEFINITIONS

2.1 “AMC” (Asset Management Company) is an independent commercial entity established by the Spanish Law 8/2012. The Spanish Government decision to set up 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.

2.2 “APS” means the asset protection scheme granted by the Spanish FONDO DE GARANTÍA DE DEPÓSITOS EN ENTIDADES DE CRÉDITO to BANCO DE CASTILLA-LA MANCHA, S.A., authorised by the European Commission in June 2010 under the case number NN61/2009.

2.3 “FTE” means full time equivalent employee.

2.4 "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 (chapter 3.3 of the Bank of Spain' public format sheet) and debt instruments sold to retail customers net of repo transactions and wholesale funding.

2.5 "Monitoring Trustee" is the person who will verify the adherence to the Commitments listed in this term-sheet, as set out in Appendix III to this term sheet.

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

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

3. GENERAL

3.1. Spain is to ensure that the Restructuring Plan ("the Restructuring Plan") for LIBERBANK submitted on 12 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 includes the execution of the following adjustments to the current perimeter of LIBERBANK:

4.1. The transfer and/or contribution to the "AMC" of LIBERBANK real estate exposure (not protected by an APS) at the cut off date of 30 June 2012 falling within the following parameters :

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

b) the 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**").

The gross value of these assets at LIBERBANK amounts to EUR [6,000-7,000]million and the transfer value amounts to EUR [3,000-4,000]million at 30 June 2012.

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

5. RESTRUCTURING OF LIBERBANK

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

5.2. **Loan book size:**

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

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

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

5.3. **Balance sheet size:**

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

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

5.4. **Loan to Deposit ratio:**

5.4.1. LIBERBANK commits to achieve a Loan to Deposit ratio not higher than [90-120]% in 2014 and a ratio not higher than [90-100]% in 2016.

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

5.5. **Reduction of Branches and FTEs**

5.5.1. LIBERBANK will reduce its current structure from [1000-2000]to [1000-2000]branches before the end of 2013 and from [5000-6000]to [4000-5000]FTE before the end of 2015. As a result, LIBERBANK will be present in the regions set out in the attached Appendix IV.

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

	Current	12/2012	12/2013
Branches	[…]	[…]	[…]

	Current	12/2012	12/2013	12/2014	12/2015
FTE *(Individuals Liberbank+ CCM)*	[…]	[…]	[…]	[…]	[…]

5.5.3. By end of March 2013 LIBERBANK shall identify those branches that it will close, and inform the Monitoring Trustee.

5.6. **Equity Portfolio Divestment**

5.6.1. Equity holdings: LIBERBANK commits to divest the portfolio set out in Appendix I by end of 2016.

In particular LIBERBANK will sell the portfolio set out in Appendix I under the following divestment calendar:

LIBERBANK will at least divest in accumulative terms [0-30]% of the book value of the specified portfolio by [...], [30-50]% by [...], [60-80]% by [...] and [80-100]% by 2016. Such percentages refer to the relevant book values as of 30 September 2012.

Moreover, LIBERBANK will at least divest in accumulative terms [0-30]% of the number of equity holdings of the specified portfolio by [...], [30-50]% by [...], [50-70]% by [...] and [90-100]% by [...]. Such percentages refer to the total number of equity holdings included in the specified portfolio as of 30 September 2012.

LIBERBANK shall try to maximise the sale price of any listed equity holding taking into consideration market conditions and the adjusted book value plus disposal costs and appropriate discounts of the relevant holding. The Book Value of the listed equity holdings will be adjusted to Market Value before [...].

5.6.2. If LIBERBANK does not sell the portfolio in the deadlines set out above:

(a) Listed Portfolio

LIBERBANK will accelerate the divestment of the listed equity holdings in the event:

(i) There is enough liquidity in the market to acquire the entire stake;

(ii) For a continuous 30 business days period the volume weighted average market price exceeds [10-20]% of adjusted book value plus disposal costs and appropriate discounts; and

(iii) The relevant equity holding can be sold at a price equal to or above that resulting from paragraph (ii).

If a divestment of any listed equity holding has not taken place by [...] and on the basis of a sufficiently reasoned request by LIBERBANK the divestment period may be extended. Such extension may be granted in particular when the divestment of the listed equity holding will not be implemented by the proposed dates through no fault of LIBERBANK. If no such extension is granted by the European Commission then LIBERBANK will have a 3 month period to execute the divestment.

(b) Non-listed Portfolio

If LIBERBANK does not comply with the minimum number of equity holdings or with the minimum % of book value any given year, then LIBERBANK will send in the first quarter of the following year an updated divestment report including (a) the justification for that deviations, (b) a strict impairment test agreed with the statutory auditor of LIBERBANK that reflects the potential further deterioration to be registered and (c) a commitment to sell the remaining difference (in terms of numbers of companies and investment amount) at no minimum price.

5.7. **Activities of LIBERBANK**

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

a) Real estate development in excess of EUR [100-200] million and excluding any business in relation to assets covered by the APS; and

b) Investment and corporate banking activities, including, among others, specialised lending related to residential real estate, commercial real estate and commodities, M&A advisory, equity underwriting, equity and debt trading, speculative derivatives, volatility book or positions in currencies (other than, in each case, those related to commercial clients and LIBERBANK's balance hedges in the ordinary course of business as determined from time to time in consultation with the Monitoring Trustee).

5.7.2. For the avoidance of doubt, the above restrictions shall not affect LIBERBANK'S ability to engage in new retail mortgage business.

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

5.8.1. Limitation on new lending:

a) Contractually committed but not yet paid-out amounts to be limited to the strict minimum.

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

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

5.8.2. Management of existing assets: The branches will manage existing assets in a way that maximises 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 [200-300] billion.

5.8.4. Limitation on transactional products: Branches to be closed may provide transactional products (i.e., current accounts, transactions, cards, payments, etc.) to any existing customer (i.e. current accounts, transactions, cards, payments, etc.). For new depositors, basic transactional products (current and deposit accounts, cards, payments) can be provided until 3 months before the closing of each branch.

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

6.1. Key principles

6.1.1. By performing voluntary and mandatory subordinated liability exercises LIBERBANK will generate up to a maximum of [800-900]million Euros of Core Tier 1 capital (assuming a [90-100]% of acceptance among holders of preference shares and subordinated debt instruments in the voluntary exercise) and a minimum of [700-800] million Euros of Core Tier 1 capital (assuming a mandatory exercise), through the issuance of capital or capital like instruments and/or the retention of the profits generated as consequence of the exercises.

6.1.2. LIBERBANK will conduct a voluntary exercise on these kinds of instruments not later than [...].

6.1.3. In the event that the voluntary subordinated liability exercise does not achieve at least a [90-100]% of acceptance among holders of preference shares and subordinated debt instruments, 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.

6.1.4. A list of all outstanding preference shares and subordinated debt instruments affected by the burden sharing, is set out in Appendix II

6.2. Key principles for mandatory subordinated liability exercise

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 LIBERBANK 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.

6.3. Methodology for the conversion into capital in mandatory SLE

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, including coupon suspension, deferrals, etc.

6.3.2. The discount factors to be applied to the dcm will be: a) [10-20]% for preference shares and other instruments of the same rank, b) [10-20]% for perpetual subordinated instruments and c) [5-10]% for dated subordinated instruments.

6.3.3. Should coupon payments be discretionary or linked to the profitability of the LIBERBANK, it will be assumed, for the purpose of the npv calculation, that no coupon payment will take place for the years that LIBERBANK is not profit-making, according to the restructuring plan submitted by the Spanish authorities in the context of the Decision.

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

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

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

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

6.4.2. 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 1.5% 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

6.4.3. Conversion into core capital of LIBERBANK. The conversion rate to be applied will be the higher of: i) the amount resulting from the methodology for the conversion into core capital as described in clause 6.3 above and ii) the amount resulting from the calculation in point 6.4.1. above.

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

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

7. PUBLIC CAPITAL INJECTION

7.1. After the contribution of assets to the AMC and the implementation of the burden sharing measures described above, LIBERBANK will receive a capital injection of contingent convertible securities ("CoCos") in the amount of 124,000,000 Euros, to be subscribed by the FROB, in accordance with the terms and conditions set out in Appendix V.

7.2. LIBERBANK shall repay the CoCos in full within a maximum term of [...]from the date of the capital injection. While it is expected that the full repayment will occur during the [...] calendar year as from the date of the capital injection, Liberbank will make its best efforts to advance the repayment of the CoCos if the circumstances are appropriate.

7.3. If there is doubt on the capacity to repay the CoCos six months before the final date of repayment, the Monitoring Trustee can request remedial actions in order to free up capital.

8. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

8.1. Ban on acquisitions

LIBERBANK will not acquire any stake in any undertaking except (i) as permitted hereunder, (ii) in compliance with contractual obligations already assumed by LIBERBANK and/or (iii) as part of value added transactions executed in connection with existing subsidiaries / equity investments of LIBERBANK. This covers both undertakings which have the legal form of a company and packages 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.

LIBERBANK 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 LIBERBANK at 30 July 2012 and that the cumulative purchase prices paid by LIBERBANK for all such acquisitions over the whole restructuring period is less than [0-5]% of the balance sheet size of LIBERBANK at the before mentioned date.

8.2. Ban on Coupon

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

8.3. Advertising

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

8.4. Remuneration of bodies, employees and essential agents

The Spanish Government undertakes to ensure that LIBERBANK 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). 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 RDL 24/2012 of August 31st, on restructuring and resolution of banks. Therefore, it will oversee that the restructuring process is very demanding, seeking that severance pays approach to the legal minimum, but with some flexibility to avoid delaying the process; it will also assess, if appropriate, to propose general and personnel expenses reductions in the Group if: the actual net margin at the end of each year is [20-30]% below the projected target; or the actual pre-provision profit at the end of each year is [20-30]% below the projected target; and always when losses are reported in the income statements at the end of each year or the entity do not comply with minimum solvency regulatory requirements on the same date. The former will apply to LIBERBANK consolidated financial statements.

8.5. **DIVIDEND BAN**

Until the CoCos have been repurchased in full from the FROB, LIBERBANK will not pay out dividends unless previously authorised by the Commission.

During the two years following its admission to official listing, LIBERBANK will not pay out dividends unless the core Tier 1 of the entity is higher than the applicable minimum capital requirement under European and Spanish law (including pillar 1 and 2) plus a capital buffer of 100 basis points.

8.6. **BAN ON COMMERCIAL AGGRESSIVE PRACTICES**:

LIBERBANK shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Period.

8.7. **LISTING OF LIBERBANK**

8.7.1. Spain shall present a credible timeline in order to allow LIBERBANK to eventually become publicly traded no later than [...].

8.7.2. Spain shall make LIBERBANK a listed company within the restructuring period.

9. MONITORING TRUSTEE

9.1. Spain is to ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored by an independent, sufficiently qualified monitoring trustee (who is obliged to maintain confidentiality).

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

9.3. Spain and LIBERBANK 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 LIBERBANK for explanations and clarifications. Spain and

LIBERBANK 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 to be divested

[…]

Appendix II.- List of hybrid capital issues

ISIN	Origin	Type	Retail/ Instit.	Due date	Nominal outstanding (€)
Retail					
KYG1825G1082	C.Cantabria	Preferentes perpetuas	[…]		30.000.000
ES0182834004	C.Cantabria		[…]		55.000.000
ES0182834020	C.Cantabria		[…]		30.000.000
ES0182834046	C.Cantabria		[…]		63.000.000
ES0214825012	CCM	Subordinada perpetua	[…]		6.010.000
ES0214825020	CCM		[…]		3.606.000
ES0214842017	CCM		[…]		9.015.000
ES0214842025	CCM		[…]		3.005.000
ES0214975015	C.Cantabria	Subordinada vencimiento	[…]	30/03/2014	45.000.000
ES0214826010	Cajastur		[…]	16/06/2019	200.000.000
ES0214987028	C.Extremadura		[…]	15/11/2017	33.483.000
ES0214987044	C.Extremadura		[…]	21/10/2019	35.000.000
ES0214987069	C.Extremadura		[…]	01/04/2020	35.000.000
Institucionales			[…]		
ES0215424161	CCM	Subordinada perpetua	[…]		68.200.000
ES0214975023	C. Cantabria	Subordinada vencimiento	[…]	13/12/2015	46.000.000
ES0214987077	C.Extremadura		[…]	25/04/2021	49.930.000
ES0215424120	CCM		[…]	20/12/2014	39.200.000
ES0215424138	CCM		[…]	12/12/2017	114.200.000

Appendix III.- Monitoring trustee

(A) Appointment of the monitoring trustee

(i) Spain undertakes to ensure that LIBERBANK appoints a Monitoring Trustee to carry out the duties of a monitoring trustee "Trustee" as set out in paragraph C (x) of this Appendix. The mandate applies to the entire duration of the Restructuring Plan; i.e. until 31 December, 2017. At the end of the mandate, the Trustee must submit a final report.

(ii) The Trustee must be independent of LIBERBANK. 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 LIBERBANK in a way that must not impede the independent and effective fulfilment of its mandate.

(iii) Spain undertakes to ensure that LIBERBANK 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, LIBERBANK 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, LIBERBANK 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 LIBERBANK 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 LIBERBANK 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 LIBERBANK' 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 LIBERBANK, issue orders or instructions to the Trustee in order to ensure compliance with the Commitments. LIBERBANK 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 LIBERBANK' 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 LIBERBANK 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 LIBERBANK'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 LIBERBANK that it considers necessary to ensure that LIBERBANK 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 LIBERBANK within thirty days after the end of each six-month period. The Commission, Spain and LIBERBANK 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 LIBERBANK. If the draft report or the final report contains any information that may not be disclosed to LIBERBANK, only a non-confidential version of the draft report or the final report is to be sent to LIBERBANK. Under no circumstances is the Trustee to submit any version of the report to Spain and/or LIBERBANK 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 LIBERBANK, thus enabling the Commission to assess whether LIBERBANK 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 LIBERBANK is failing to comply with these obligations, sending a non-confidential version to LIBERBANK at the same time.

(D) Duties and obligations of LIBERBANK

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

LIBERBANK’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 LIBERBANK to replace it, or

(b) LIBERBANK, with the approval of the Commission, can replace the Trustee.

(xiv) If the Trustee is removed in accordance with paragraph E(xiii), it may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee is to be appointed in accordance with the procedure referred to in paragraphs A(i) to A(vi).

(xv) Besides removal in accordance with paragraph E(xiii), the Trustee is to cease its activities only after the Commission has discharged it from its duties. This discharge is to take place when all the obligations with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it is subsequently found that the relevant remedies have not been fully and properly implemented.

Appendix IV.- Regions with Liberbank's presence after reduction of branches according the restructuring plan

[…]