EUROPEAN COMMISSION

Brussels, 21.01.2013
C(2013) 333 final

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

Subject: State aid SA.34662 (2013/N) – Portugal
Recapitalisation of Banif – Banco Internacional do Funchal, S.A. – rescue aid

Sir,

1 PROCEDURE

(1) Over the course of 2012, in the context of the European financial stabilisation mechanism established for Portugal on 11 May 2010[1], the Portuguese authorities entered into a dialogue with the Commission on the problems that Banif – Banco Internacional do Funchal, S.A. ("Banif" or "the bank") was facing.

(2) On 9 November 2012 Banif submitted a draft restructuring plan to the Commission.

(3) On 11 January 2013, the Portuguese Republic ("Portugal") notified urgent recapitalisation measures for Banif to the Commission.

1 See Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, p. 1.

S. Ex.ª o Ministro dos Negócios Estrangeiros
Paulo PORTAS
Largo do Rilvas
P – 1399-030 - Lisboa

(4) Several meetings and phone calls between Portugal, the bank and the European Commission have taken place between September 2012 and January 2013.

(5) Portugal exceptionally accepts that for reasons of urgency this decision is adopted in the English language.

2 DESCRIPTION

2.1 The beneficiary

(6) Banif was incorporated in 1988 as a successor of the loss-making Caixa Economica do Funchal (Madeira). By 1991, it held 20 branches in Madeira and 11 in mainland Portugal.

(7) Banif grew into a multifaceted bank and insurance conglomerate with 680 points of sale worldwide through an aggressive expansion and acquisition policy first on mainland Portugal, but also on the Azores (1996) and abroad [Cayman Islands (1993), Venezuela (1995), South Africa (1995), Brazil (1996, Banco Primus 1999, EconoFinance 2001, Indusval 2002), Canada (1996), United States (1996), Bermuda (1996), Italy (2000), United Kingdom (2005), Cape Verde (2007), Malta (2008), and Spain (2010].

(8) Banif's share is listed on the Lisbon Stock Exchange (Euronext Lisbon) in the B Compartment (Mid Cap). Its daily trade volume is around 2,000,000 shares, representing a market capitalisation just below 150,000 EUR[2]. The known shareholders of the bank are Rentipar Financeira (54%), Auto-Industrial (13%), Vestiban Gestao e Investimentos (5%) and Joaquim Ferreira Amorim (2%).

(9) Banif is currently the eighth-largest commercial bank in Portugal when measured by book asset value[3]. The retail banking unit, which is the major business contributor for the whole of the Banif Financial Group's positioning, holds average market shares of about 4% (3.8% in loans and 4% in deposits) in the domestic market. Banif had a net loan book/deposits ratio of 125.5% as per 31 December 2011.

(10) In a Fitch Ratings' decision of 21 December 2012, Banif's Viability Rating has been downgraded to "c" from "cc", while its long-term credit rating of BB was affirmed (with a negative outlook). By the same token, Moody's downgraded Banif's standalone credit assessment to E/caa2 and its debt rating to B1/Not Prime, both with negative outlook[4].

---

[2] Bloomberg data, based on average Q4 (2012) Euronext Lisbon figures for BANIF PT and BNF PT; By comparison, BES PT (Banco Espirito Santo) had an average daily volume of around 20,000,000 EUR over the same period.

[3] Asset Book Value per 31.12.2011 was 15.823 Billion EUR.

[4] "Moody's takes actions on three Portuguese banks : BCP, Banif and CGD", Bloomberg 4 December 2012 15:43.

2.2 The problems leading to the capital needs

(11) Banif's overall financial situation was affected both by the deterioration of the Portuguese economic situation as of 2009, with decreasing economic output, increasing unemployment levels and record high levels of corporate insolvencies and defaults leading to record levels of risk costs; and by serious deficiencies in both price setting and risk management, leading to exceptionally high levels of fundamental credit risk, with an extremely weak capital position, and ultimately to breaches in prudential capital requirements[5].

(12) In figures, the bank's net income was reduced from EUR 33 million in 2010 to a negative result of EUR -161 million in 2011, driven by three key factors: (i) record levels of credit portfolio impairments (342 million EUR); (ii) significant increase in funding costs (EUR 633 million); and (iii) accelerated deleveraging driven by funding pressure and new regulatory requirements (EUR 317 million). Over the first three quarters of 2012, the bank indicated a negative net result of EUR -254 million.

(13) According to rating agencies, the main drivers of those losses are risky investments and activities in the real estate sector, often including large exposures. In addition, the volatility and uncertainty in the Eurozone markets resulted in the shutdown of the capital markets for Portuguese institutions, forcing banks to resort to European Central Bank ("ECB") funding while facing fierce competition for deposits, which significantly increased average funding costs. Banif, in a weaker position than its competitors, is particularly suffering from those effects.

(14) In November 2012, it became clear that Banif was in breach of regulatory capital requirements, with a Core Tier 1 ("CT 1") ratio of [2-4]% (or, taking into account necessary deductions for circular capital in the amount of EUR […] million, as low as […]%), which would have entailed the bank's failure in the absence of a significant State recapitalisation.

(15) In addition, like other Portuguese banks Banif was subject to the requirement set out in the Memorandum of Understanding entered into between Portugal, the EU and the IMF which imposes a CT 1 ratio of 10% when calculated in line with CRD II rules[6] by 31 December 2012.

2.3 Guiding principles of the restructuring process launched

(16) Banif has commenced a restructuring process, where its business model (as outlined by the draft restructuring plan[7]) is supported by three pillars:

---

5 Also mentioned in the Notification's supporting documentation, paragraph 3.6.

6 Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management Text with EEA relevance, OJ L 302, 17.11.2009 p. 97.

7 "Banif_restructuring plan_v09 11_Draft", submitted to the Commission on 9 November 2012 20:07.

(17) First, the bank plans to rely on its strong historical ties with Madeira and the Azores islands (its origins), where it benefits from high brand awareness/recognition and from local economies of scale. Tied to that presence, there is the business associated to the prosperous emigrant community currently spread along the Atlantic axis (North/South America and South Africa). The island and emigrant franchise is an important source of funding for the group, accounting for 40% of deposits in 2011.

(18) Second, Banif intends to focus more strongly on the Portuguese small and medium-sized enterprise segment, which corresponded to nearly 50% of its total credit portfolio in 2011. According to the bank, that segment had relatively higher net interest margins after risk costs and lower average maturities.

(19) Third, Banif will rely on its consumer credit operation, mostly focused on the automobile segment, where it relies on a strong agent's network that has been built over time.

2.4 The recapitalisation measures

(20) The aid measures consist of:

(a) the issuance of 70.000.000.000 new shares of Banif at a price of EUR 0.01 each to be subscribed by Portugal, equalling a capital increase of EUR 700 million (referred to as "*special shares*"); and

(b) the subscription by Portugal of contingent convertible instruments ("Hybrid Securities" or "CoCos") in the amount of EUR 400 million issued by Banif. Those instruments are eligible for solvency purposes as CT 1 capital.

(21) The capital increase in the newly-issued special shares is carried out by Portugal (EUR 700 million) in accordance with the rules for the issuance of ordinary shares provided for in the Portuguese Companies' Code[8].

(22) The special shares issued to the State benefit from a preferential dividend as opposed to ordinary shareholders but – outside of a Material Breach[9] event – certain limitations in terms of voting rights apply.

(23) As regards the preferential dividend the following provisions apply:

- In case there are distributable profits generated during the financial year, the State is always entitled to receive under the special shares a remuneration calculated as if a 30% dividend pay-out was decided by the shareholders ("preferred dividend").

8 See Código das Sociedades Comerciais, Secção II, Artigo 87 – 93.

9 A "Material Breach" is (a) a material failure by Banif to execute structural targets which are essential in the Recapitalisation Plan (including, without limitation, the milestones qualified as essential in the Recapitalisation Plan), or (b) the breach of obligations by the bank, which either individually or together with any other breaches may put at serious risk the objectives of the special shares subscription by the State, including any failure to meet European Commission requirements.

- While the special shares are outstanding, Banif should in priority use any distributable profits (which would otherwise be available to distribute as dividends to shareholders) to pay a priority dividend in respect of any special shares, the buyback of any special shares or Hybrid Securities held by the State.

(24) As regards the voting rights, of the 70,000,000,000 shares subscribed to by the State, only 44,511,019,900 will have full voting rights. This derives from the restriction of Article 4/9 of the Law no. 4/2012 of 11 January 2012, according to which Portugal can exercise full voting rights only on the shares which exceed half the capital the recapitalised institution has prior to the recapitalisation. Therefore, the first 25,488,980,100 shares have limited voting rights. These limited voting rights are subject to Article 4/8 of Law no. 4/2012 of 11 January 2012 according to which the State may exercise its full voting rights in cases of decisions concerning the amendment of articles of association, merger and demerger, transformation, dissolution or other matters for which the law requires a qualified majority. As a result of the above Law, Portugal will hold a participation of 99.19% of the capital, with a share in terms of full voting rights of [<100]%.[10]

(25) When a Material Breach occurs, the special shares held by the State shall notably be awarded the following rights:

- The State may exercise all voting rights inherent to the special shares (as if they were ordinary shares);

- The State may appoint or increase, in proportion to the voting rights exercised under the preceding bullet point, the number of its representing members on the management body, which can have executive powers, and supervision bodies of Banif.

(26) The State may freely dispose, in whole or in part, of its shareholding in Banif, regardless of the statutory pre-emptive rights referred to in Article 8 (3) of Law 63 A/2008.

(27) The special shares are direct, unsecured and undated securities of Banif and rank pari passu without preference among the ordinary shares.

(28) Banif has the option to, subject to the approval of the Bank of Portugal ("BdP"), buy back the special shares at the sale price.

(29) Further, the existing shareholders of Banif are granted a pre-emptive right to buy back the special shares at the sale price.

(30) Portugal furthermore subscribes to an amount of EUR 400 million of Hybrid Securities. The terms of their subscription are closely aligned with the terms concerning the New Recapitalisation Scheme approved by the European Commission on 30 May 2012, save for a slight increase in the initial effective interest rate to 9.5%

[10] […].

(against 8.5% under the scheme)[11]. The net proceeds of the Hybrid Securities and the special (voting and non-voting) shares are to be used to ensure that Banif's CT 1 ratio complies with prudential capital requirements.

(31) The Hybrid Securities constitute direct, unsecured, undated and subordinated securities of Banif and rank pari passu without any preference among themselves. They are fully issued, paid-in and are subscribed at par. Unless previously redeemed or converted, the Hybrid Securities are perpetual without a maturity date. They can only be held by Portugal or acquired by Banif as a consequence of exercising a buyback option.

(32) In the event of conversion of the Hybrid Securities to shares with full voting rights as ordinary shares and a preferential dividend, Portugal will be a shareholder of Banif and its claim will rank pari passu with the rights and claims attaching to other Banif's shares.

(33) A coupon is payable on the Hybrid Securities at an initial effective annual rate of 9.5%, when paid on a semi-annual basis. The first payment is to be made in July 2013. The coupon on the Hybrid Securities will increase by 0.25% in the second year.

(34) The Hybrid Securities are expected to be repaid as follows :

- EUR 150 million by 30 June 2013;
- An additional EUR 125 million by 31 December 2013;
- The final EUR 125 million by 31 December 2014;

unless they have been converted into shares; or on earlier dates, if parts thereof are no longer required for regulatory capital purposes.

(35) While the Hybrid Securities are outstanding, Banif shall not distribute dividends to shareholders other than the State. According to the terms of the Hybrid Securities, any distributable profits should rather be used to pay any priority dividend in respect of any special shares held by Portugal and the buyback of Hybrid Securities or special shares.

(36) Further, Banif has been given a buyback option for the Hybrid Securities, allowing the bank to partially or fully buyback the Hybrid Securities at its own initiative at any time, at their principal amount together with accrued but unpaid interest, subject to the prior written approval of the BdP, provided that a) the Hybrid Securities have been or will be replaced by regulatory capital of equal or better quality, or b) that Banif has demonstrated to the satisfaction of BdP that its own funds would, following the buyback, exceed, by a margin that BdP considers to be adequate, the minimum CT 1 ratio or other prudential requirements associated with the amount of own funds in force at that date.

[11] See Commission decision on the New Recapitalisation Scheme for Credit Institutions in Portugal SA.34055 (2011/N) of 30.05.2012, OJ C 249, 18.8.2012

(37) The terms and conditions of the Hybrid Securities furthermore provide for an alternative coupon satisfaction mechanism[12] ("ACSM"): in case Banif does not pay the coupon, the coupon payment may be replaced, to the extent necessary, with payment in kind through new ordinary shares (with full voting rights) of Banif.

(38) The Hybrid Securities and special shares which do not confer full voting rights are subject to the following mandatory conversion mechanism:

- if the full EUR 450 million of private capital is not raised by 30 June 2013, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation) and all the special shares will be afforded full voting rights;
- if the full EUR 450 million of private capital is raised by 30 June 2013, but the CoCos are not repaid in cash to the amount of at least EUR 150 million by 30 June 2013, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation);
- if, by 30 June 2013, the full EUR 450 million of private capital is raised and the CoCos are repaid in cash to the amount of at least EUR 150 million, but the outstanding CoCos are not repaid in cash to the amount of at least EUR 125 million by 31 December 2013, then all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation);
- if the full EUR 450 million of private capital is raised by 30 June 2013 and the CoCos are repaid in cash to the amount of at least EUR 150 million by 30 June 2013 and to the amount of at least EUR 125 million by 31 December 2013, but the outstanding CoCos are not repaid in cash by 31 December 2014, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation).

(39) Following the recapitalisation measures, as of 22 January 2013, the Banif's estimated CT1 ratio is expected to be around 10.5%, when calculated in line with CRD II rules.

---

[12] See point 13 of the Communication from the Commission 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.

3 POSITION OF THE PORTUGUESE AUTHORITIES

(40) Portugal notified the recapitalisation measures for Banif as compatible State aid on the basis of Article 107(3)(b) TFEU as they are necessary in order to remedy a serious disturbance in the Portuguese economy.

(41) Portugal submits that a serious disturbance in the Portuguese economy still persists, and that the measures contribute to the restoration of financial stability in Portugal by enabling Banif to meet the required levels of CT1 capital.

(42) Portugal submits that the terms of the recapitalisation measures are in line with all requirements laid down in the Commission guidelines on bank recapitalisations.

(43) To that end, Portugal submits a number of commitments with regard to the terms and conditions of the recapitalisation instruments as well as with regard to behavioural limitations on Banif (see the Annex to the present Decision). Portugal furthermore committed to submit to the Commission an updated comprehensive restructuring plan for Banif in line with the Restructuring Communication[13] no later than 31 March 2013, which will provide for a significant balance sheet reduction relative to the balance sheet at 31 December 2012 by undertaking a deep transformation of the group to focus on core profitable activities and areas with a focus on Madeira and the Azores.

4 ASSESSMENT

4.1 Existence of State Aid

(44) The Commission first assesses whether the recapitalisation measures constitute State aid within the meaning of Article 107(1) TFEU. According to that provision, 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.

(45) The Commission observes that the subscription of both newly issued shares as well as of Hybrid Securities is directly financed through State resources and concludes that resulting payments to the bank involve State resources within the meaning of Article 107(1) TFEU.

(46) The aid measures benefit a single undertaking and are therefore selective. They are granted under conditions which would not be available to Banif on the markets, which is not disputed by Portugal. In the prevailing market circumstances, it would not be possible for Banif to raise the amounts granted by the State within the timing and at the conditions accepted by the State. The measures give thus an advantage to the bank.

[13] Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C195, 19.8.2009, p. 9.

(47) Given that Banif is an undertaking active in the financial sector, which is open to intense international competition, any advantage from State resources to Banif distorts competition and affects trade between Member States.

(48) Portugal accepts that the measures constitute State aid.

(49) On the basis of the foregoing, the Commission considers that Portugal's subscription of new shares in the amount of EUR 700 million and of Hybrid Securities in the amount of EUR 400 million, both issued by Banif, fulfil the conditions laid down in Article 107(1) TFEU and hence qualify as State aid to the benefit of Banif.

4.2 Compatibility of the aid

(50) As regards compatibility with the internal market of the aid provided to Banif, the Commission must first determine 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 Portugal. Subsequently, the Commission, applying that legal basis, has to assess whether the measures proposed are compatible with the internal market.

4.2.1 Legal basis for the compatibility assessment

(51) Article 107(3)(b) TFEU provides that aid falling within the scope of Article 107(1) TFEU may be regarded as compatible with the internal market where it "*remedies a serious disturbance in the economy of a Member State*".

(52) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under Article 107(3)(b) TFEU. The Commission confirmed that view by adopting in December 2011 a Communication that prolongs the application of State aid rules to support measures in favour of banks in the context of the financial crisis ("the 2011 Prolongation Communication")[14]. Furthermore, the Commission has acknowledged in its recent approval of the Portuguese Recapitalisation Scheme[15] that there is a threat of serious disturbance in the Portuguese economy and that State support of banks is suitable to remedy that disturbance. In particular, the Commission notes that the Portuguese banking system is currently facing severe difficulties as a result of some of its banks being highly leveraged, with significantly high loan-to-deposit ratios and an increasing non-performing loan ratio derived from a highly indebted economy with weak growth prospects. The Commission furthermore notes that Portugal receives financial assistance from euro area Member States, part of which is earmarked for the support of Portuguese banks[16].

---

[14] Communication from the Commission from 1 December 2011, 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.

[15] See Commission decision on Recapitalisation scheme for credit institutions in Portugal - H1 2013 - SA. 35747 (2012/N) of 17.12.2012, *not yet published*.

[16] See press release 10191/11 of the Council of the European Union , 17.05.2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/122072.pdf.

(53) In view of the current situation of the Portuguese economy, with both Madeira and the Azores being particularly hard hit, and the widespread lack of banks' access to international and wholesale funding markets, the Commission considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled.

(54) Although Banif is only the eighth-largest bank of the country[17], it has a particularly high market share on Madeira and the Azores. Therefore, even though the bank is de facto only a small-sized financial undertaking, its local presence gives it some systemic importance. Given that fact, the Commission accepts that its failure to satisfy strengthened capital requirements intended to reassure markets about the bank's ability to withstand a range of shocks and still maintain adequate capital would have entailed serious consequences for the Portuguese economy. The aid must therefore be assessed under Article 107(3)(b) TFEU.

4.2.2 Compatibility assessment

(55) In line with 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[18]:

a. *Appropriateness*: The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the 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.

4.2.2.1 Compatibility with the Banking and Recapitalisation Communications

a. Appropriateness of the recapitalisation measures

(56) Both measures, namely the subscription of new special shares in the amount of EUR 700 million as well as the subscription of Hybrid Securities in the amount of EUR 400 million, are suitable means to re-establish Banif's capital basis in line with regulatory requirements.

---

17 Banif's EUR 15.8 Billion in assets compare to the EUR 98.6 Billion of Banco Espirito Santo (the third largest Portuguese bank) or the EUR 120.5 Billion of Caixa Geral de Depositos (the largest Portuguese Bank).

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

b. Necessity – limitation of the aid to the minimum

(57) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. The aid provided to Banif is limited to the minimum necessary as the amount of capital that shall be injected was derived from the calculation of specific needs namely the achievement of a CT 1 ratio in line with regulatory requirements.

(58) In line with the Commission's decisional practice, Portugal provided a commitment that Banif would not make any payments on hybrid instruments, unless those payments stem from a legal obligation, and not to buy back and/or call the same instruments without consulting the Commission. That commitment, which excludes the holders of hybrid capital and subordinated debt in the bank from the potential benefit directly from the State aid to the greatest extent possible, also helps to limit the aid to the minimum.

(59) As regards the capital injection through the subscription of the Hybrid Securities, material breach clauses[19], which if triggered would enable the State to exercise its full voting rights, encourage Banif to raise EUR 450 million of private capital by 30 June 2013 and to repay that part of the State intervention in three installments. Furthermore, an ACSM applies to the Hybrid Securities pursuant to which unpaid interest will be paid in the form of conversion into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share.

(60) The Hybrid Securities shall convert into shares of Banif with full voting rights if the bank becomes non-viable or is not able to repay the Hybrid Securities at the planned dates. The Commission notes the commitment made by Portugal enables the latter to take effective majority control in that case.

c. Proportionality – measures limiting negative spill-over effects

(61) Portugal has committed to ensure the application of all the behavioural safeguard measures that are pertinent under the Portuguese Recapitalisation Scheme[20]. In particular, Portugal commits to impose a ban on Banif acquiring any stake in any undertaking, to impose a dividend ban on Banif for the rescue period and to impose a ban on advertising referring to the State support on Banif and to prevent it from employing any aggressive commercial strategies, which would not take place without the State support.

(62) As regards the capital increase, the comparatively low expected return on that investment as foreseen in the latest Funding and Capital Plan updates[21] needs to be

[19] See footnote 9.
[20] See footnote 18.
[21] Banif FCP, Banco de Portugal (Eurosystema), November 2012; Project Centauro, Working Document for Discussion, Citibank, November 2012; and the Banif Revised Recapitalization Plan, submitted to Banco the Portugal on 26 December 2012.

taken into account in the context of Banif's restructuring, since point 34 of the Restructuring Communication specifies that adequate remuneration of any State intervention is one of the most appropriate limitations of distortions of competition.

(63) The Commission notes positively that Banif's restructuring plan will provide for a significant balance sheet reduction by undertaking a deep transformation of the group to focus on core profitable activities and areas (with a focus on Madeira and the Azores). The magnitude of that restructuring is envisaged to be such that the balance sheet of the core bank will be reduced very significantly relative to the balance sheet of Banif as at 31 December 2012.

(64) Taking into consideration the capital needs that Banif is facing, combined with the need to maintain financial stability in Portugal, the Commission considers the measures to be sufficient to minimise the distortions of competition caused by the aid during the rescue period. That evaluation is, however, without prejudice to additional measures to address distortion of competition that may be needed to ensure that the restructuring plan of Banif can be approved.

Conclusion

(65) The Commission thus concludes that (i) the subscription of special shares issued by Banif in the amount of EUR 700 million as well as the subscription of Hybrid Securities in the amount of EUR 400 million are adequate means to address Banif's capital needs; (ii) the aid is limited to the minimum necessary; and (iii) the commitments given by Portugal ensure that the aid is proportionate.

4.2.2.2 Restructuring plan

(66) The 2010 Prolongation Communication[22] makes clear that all entities receiving aid in the form of recapitalisation measures, as in the present case, must undergo restructuring and that the relevant Member State must submit a restructuring plan to the Commission.

(67) Portugal therefore needs to submit a restructuring plan for Banif. In that context, the Commission considers that such a plan, in view of the relative size of the aid granted (EUR 1.1 billion, approximately 10% of the bank's Risk Weighted Assets) and the […] problems of the bank, needs to provide for a material overhaul of the bank's business model, implying deep restructuring measures, a considerable downsizing and a limited future geographical focus, or an orderly winding-up if the bank cannot return to viability.

(68) The Commission takes note of the commitment of Portugal to submit a restructuring plan for Banif in line with the Restructuring Communication by 31 March 2013 at the latest.

[22] See point 14 of the Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

5 CONCLUSION

(69) The Commission concludes that the measures notified (the subscription of shares issued by Banif in the amount of EUR 700 million as well as the subscription of Hybrid Securities in the amount of EUR 400 million in favour of Banif) constitute State aid pursuant to Article 107(1) TFEU.

(70) The Commission finds that those rescue measures in favour of Banif are temporarily compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU. The measures are accordingly approved until 31 March 2013 or, if Portugal submits a restructuring plan by that date, until the Commission has adopted a final decision on the restructuring plan.

6 DECISION

The Commission has decided that the aid measures are temporarily compatible with the internal market on the basis of Article 107(3)(b) TFEU. The measures are accordingly approved until 31 March 2013 or, if Portugal submits a restructuring plan by that date, until the Commission has adopted a final decision on the restructuring plan.

The Commission notes that Portugal exceptionally accepts for reasons of urgency the adoption of this decision in the English language.

Portugal is requested to forward a copy of this letter to the recipient of the aid, Banif, immediately.

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: Commitments by Portugal

Portugal commits:

- to impose a ban on advertising referring to the State support on Banif and to prevent it from employing any aggressive commercial strategies, which would not take place without the State support;

- to impose a dividend ban on Banif for the rescue period, i.e. until the Commission adopts a restructuring decision. The dividend ban does not apply to the State investment, unless such payments would trigger payments to other investors.

- to ensure that the measure entails pre-defined maximum limitations in the monetary remuneration (fixed and variable) policy for the members of the bodies and management of Banif;

- to ensure that Banif will not pay coupons on hybrid capital during the rescue period, i.e. until the Commission adopts a restructuring decision, where it has no legal obligation to proceed with such payment. Coupons on hybrid capital held by the State may be paid, unless such payments would trigger coupon payments to other investors that would otherwise not be obligatory;

- to impose a ban on Banif acquiring any stake in any undertaking. That prohibition covers both undertakings which have the legal form of a company and packages of assets which form a business. That ban will apply for the rescue period, i.e. until the Commission adopts a restructuring decision. Despite the ban, Banif may acquire stakes in undertakings provided that the purchase price paid for any acquisition is less than 0.01% of its balance sheet size at the date of the recapitalisation and that the cumulative purchase prices paid for all such acquisitions over the whole restructuring period is less than 0.025% of its balance sheet size at the date of the recapitalisation. The ban does not cover acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms.

- to submit a restructuring plan for Banif no later than 31 March 2013. Portugal undertakes that the restructuring plan to be submitted shall comply with the Commission's Restructuring Communication, i.e. restore viability, contain adequate burden-sharing measures and measures to limit distortions of competition. In particular, the Banif restructuring plan will provide for a significant balance sheet reduction relative to the balance sheet at 31 December 2012 by undertaking a deep transformation of the group to focus on core profitable activities and geographies (with a focus on Madeira and the Azores). The magnitude of this restructuring is envisaged to be such that the balance sheet of the core bank is reduced very significantly relative to the balance sheet of Banif as at 31 December 2012. The means to operationalize this restructuring and its implementation over time will be subject to a detailed verification exercise conducted during the preparation of the full restructuring plan.

- to ensure an appropriate remuneration of the State recapitalisation by complying with the following requirements:
  i. The subscription price of the State shares will be EUR 0.01 per share.
  ii. Where the State buys instruments other than shares, they will contain an "alternative coupon satisfaction mechanism" whereby coupons which cannot be paid out in cash shall be paid to the State in the form of ordinary shares.
  iii. The amount of ordinary shares to be issued due to the alternative coupon satisfaction mechanism will be based on a conversion price at a 5% discount to either (i) the 5-day VWAP pre-announcement of the coupon payment-in-kind or (ii) a price determined by two independent appraisers appointed by the Minister of Finance and this determined price to be confirmed by the Commission.
  iv. By end-June 2013, the bank shall raise private capital of EUR 450 million and the proceeds shall be used to repay CoCos to the amount of at least EUR 150 million. Failure to repay the €150m shall lead to conversion as described in (v) below. The private capital shall be raised in the form of ordinary shares. It must be genuinely private and constitute new funds to Banif group and bank, and shall not come from the State or State controlled or influenced entities or undertakings or from the beneficiary bank or the entities related thereto; for the avoidance of doubt, this can include the already committed funds from Companhia de Seguros Açoreana, S.A. of EUR 75 million and the proposed €50 million liability management exercise, if this is carried out in line with the Commission's established case practice in liability management exercises in particular as regards discount, price and premium.
  v. The instruments other than ordinary shares bought by the State shall mandatorily convert:
     - if the full EUR 450 million of private capital is not raised by end-June 2013, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation) and all the special shares will be afforded full voting rights;
     - if the full EUR 450 million of private capital is raised by end-June 2013, but the CoCos are not repaid in cash to the amount of at least EUR 150 million by end-June 2013, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation);
     - if, by end-June 2013, the full EUR 450 million of private capital is raised and the CoCos are repaid in cash to the amount of at least EUR 150 million, but the outstanding CoCos are not repaid in cash to the amount of at least EUR 125 million by end-2013, then all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01

per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation);

- if the full EUR 450 million of private capital is raised by end-June 2013 and the CoCos are repaid in cash to the amount of at least EUR 150 million by end-June 2013 and to the amount of at least EUR 125 million by end-2013, but the outstanding CoCos are not repaid in cash by end-2014, all the outstanding CoCos will be converted into shares with full voting rights as ordinary shares and a preferential dividend based on a conversion price of no higher than EUR 0.01 per share (or equivalent price taking into account any share consolidation; i.e. leading to the same result in terms of dilution and shareholder structure as without the share consolidation).