



EUROPEAN COMMISSION

Brussels, 25.7.2012  
C(2012) 5014 final

**Subject: State aid SA.33733 (2012/N) – Spain**  
**Restructuring of UNNIM Banc SAU**

Sir,

**1. PROCEDURE**

- (1) On 26 March 2010 Spain informed the Commission that the *Fondo de Reestructuración Ordenada Bancaria ('the FROB')*<sup>1</sup> had decided to subscribe EUR 380 million of convertible preference shares in UNNIM, a saving bank which resulted from the merger between Caixa d'Estalvis Manlleu, Caixa d'Estalvis Sabadell and Caixa d'Estalvis Terrasa.
- (2) On 30 March 2010, the Commission services – based on the information provided by the Bank of Spain and the FROB - sent a letter to the Spanish authorities taking note that the Bank of Spain in its assessment on the solvency and capital adequacy of those merging saving banks had concluded that those banks were fundamentally sound and their integration plan was viable.
- (3) On 18 February 2011, Spain adopted a reinforced framework<sup>2</sup> for its entire banking sector, which inter alia, obliged all credit institution to meet higher solvency levels by 30 September 2011. As a result of the new legislation, the Bank of Spain informed UNNIM on 10 March 2011 that the latter required EUR

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<sup>1</sup> The FROB was established in 2009, in the context of the financial crisis, to provide public support for the consolidation of the Spanish banking sector by, inter alia, strengthening the capital buffers of credit institutions. The FROB has an initial funding capacity of EUR 9 billion, of which EUR 6.75 billion is contributed by the State Budget and the rest (EUR 2.25 billion) is contributed by the Deposit Guarantee Funds.

<sup>2</sup> See Royal Decree Law of 2/2011 of 18 February 2011.

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568 million of additional capital in order to meet the 10% solvency ratio<sup>3</sup> (known as "*capital principal*")<sup>4</sup>.

- (4) On 27 May 2011, the Spanish authorities submitted a first draft recapitalisation plan for UNNIM based on the new solvency framework approved by the Spanish authorities in February 2011. The plan presented various alternatives for the intended recapitalisation of UNNIM.
- (5) On 24 June 2011, the Commission services provided their feedback on the first draft recapitalisation plan presented by the Spanish authorities.
- (6) On 14 July 2011, UNNIM Banc S.A.U (thereafter UNNIM banc) was set up in order to carry out the banking activity as from 1 October 2011. The creation of a commercial bank was a precondition for receiving public support under the Royal Decree Law 2/2011. On 28 July 2011, UNNIM's general extraordinary meeting decided to transfer all banking activities (i.e. "*negocio financiero*") from UNNIM to UNNIM Banc. As a result of the transfer, UNNIM Banc is bound by all of UNNIM's commitments and obligations pursuant to the recapitalisation in 2010.
- (7) On 23 September 2011 Spain notified the Commission that the convertible preference shares subscribed by the FROB in 2010 had been converted into ordinary shares, which pursuant to the conditions of the Spanish recapitalisation scheme triggers a notification obligation. In addition, Spain notified the Commission that the FROB had decided to inject additional capital into UNNIM Banc so that the latter would respect the new minimum solvency ratio set by the new Spanish banking legislation in February 2011. On 30 September 2011, the Spanish authorities submitted to the Commission a draft recapitalisation plan for UNNIM. Pursuant to that recapitalisation plan, UNNIM requested EUR 568 million from the FROB<sup>5</sup> in the form of ordinary shares to be subscribed in UNNIM Banc. In parallel, the initial subscription of preference shares, and the conversion reclassified by the FROB as restructuring aid.
- (8) By decision of 30 September 2011<sup>6</sup>, the Commission approved the proposed rescue measures for UNNIM Banc for a period of six months, pending the notification of a restructuring plan ("**the Rescue Decision**").

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<sup>3</sup> According to article 1 of Royal Decree-Law 2/2011 of 18 February 2011 on the strengthening of the Spanish financial system, the so-called "core capital ratio" is to be required on a **consolidated basis**.

<sup>4</sup> On 12 April 2011 the credit rating agency Fitch downgraded UNNIM's credit rating to BB+ from BBB- (below investment grade).

<sup>5</sup> The FROB was established, in the context of the financial crisis, to provide public support for the consolidation of the Spanish banking sector by, inter alia, strengthening the capital buffers of credit institutions. The Commission adopted on 28 January 2010 a decision not to raise objections on FROB as a recapitalisation scheme for fundamentally sound institutions (case N 28/2010, OJ C57 of 09.03.2010, p. 2). However, the present case is not covered by that decision, since it involves actions taken by the FROB outside of the recapitalisation scheme in respect of a non-fundamentally sound institution.

<sup>6</sup> SA 33 095, C(2011) 7061 final, Recapitalisation of UNNIM Banc, September 2011.

- (9) Shortly thereafter, the Spanish authorities initiated a competitive tender process to restructure UNNIM Banc through its disposal to a private actor, in the same manner as had been done for other Spanish banks, namely CCM, CajaSur and Banco CAM.
- (10) On February 2012, four bidders – Banco Bilbao Vizcaya Argentaria, S.A (hereafter BBVA), Ibercaja, Banco Popular and Santander - completed the tender process. All of them offered a EUR 1 price and requested additional aid measures. The winner of the bid was BBVA.
- (11) On 7 March 2012, the takeover of UNNIM by BBVA was finalised through a sale agreement (*contracto de compraventa* ; hereafter "**the Disposal**") and a protocol detailing the aid measures to be granted to BBVA (*Protocolo de medidas de apoyo financiero para la reestructuración de UNNIM Banc SA*, hereafter "the protocol").
- (12) Under the terms of the sale contract, the shares of UNNIM Banc will be entirely transferred to a banking entity 100%-owned by BBVA. That entity will later be merged into BBVA (which currently has a EUR 598 billion balance sheet).
- (13) On 26 March 2012, the Spanish authorities submitted the final version of the restructuring plan detailing the integration of UNNIM Banc in BBVA.
- (14) On 2 April 2012, that plan was formally notified to the Commission.
- (15) Following a request for information from the Commission, the plan was updated on 25 May, 22 June and 2 July 2012.
- (16) Spain has accepted exceptionally that the decision be adopted in English, for reasons of urgency.

## **2. DESCRIPTION OF THE CONTEXT OF THE RESTRUCTURING AID MEASURES**

### **2.1. THE BENEFICIARY**

- (17) UNNIM was a Spanish savings bank ("*caja de ahorros*"). Cajas de ahorros are credit institutions. They have no shareholders, but instead are governed by their members. Their legal form is a private charity named *Obra Benéfico-Social* ("**OBS**")<sup>7</sup> that holds a banking license and is entitled to provide banking services as commercial or cooperative banks do. The fraction of the profits exceeding the allocation to prudential reserves is attributed to the charity and subsequently used to fund the social activities carried out by each caja.
- (18) UNNIM Banc is a commercial bank which operates predominantly in the region of Catalonia. As of 31 December 2011, the bank had 572 branches and 3081 employees. According to the Spanish authorities, at a national level as of December 2011 its market share in deposits and credit was around 1.4% whilst in Catalonia it had a market share in deposits of 5.7%.

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<sup>7</sup> OBS are charity institutions funded by the "Cajas de Ahorros". Each Caja de Ahorros has an OBS, and each receives part of the Caja de Ahorros' profits that are not used to build up reserves.

(19) UNNIM Banc's main figures are:

	<b>31.12.2011</b>	
Total assets	29 288	million €
Loans to customers	16 774	million €
Retail deposits	21 689	million €
Employees	3 081	
Number of branches	572	

## **2.2. THE EVENTS TRIGGERING THE AID MEASURES**

- (20) The regulatory framework adopted on 18 February 2011 by the Spanish authorities requires banks to reach 10% of "capital principal" over their risk weighted assets by 30 September 2011. As a result of the new legislation, the UNNIM was required to increase its regulatory capital by EUR 568 million in order to meet the new threshold.
- (21) On 12 April 2011 the credit rating agency Fitch downgraded UNNIM's credit rating to BB+ from BBB- (non-investment grade). According to Fitch *"the rating actions reflect the need for the caja to increase its core capital from a low base in the short term in the light of stricter regulatory core capital standards of 10%"*.
- (22) Subsequently the bank failed the 2011 EU-wide stress test exercise<sup>8</sup> run by the European Banking Authority (EBA), showing a core tier 1 ratio of 4.5% in terms of risk weighted assets (thereafter RWA) as of 31 December 2010<sup>9</sup>.
- (23) UNNIM Banc presented material weaknesses that threatened its solvency and future viability. In particular, it showed: a) significant liquidity constraints, b) increased assets impairments, c) low quality of assets, d) a decrease in profitability, e) low efficiency levels, and f) a lack of trust in its future as a stand-alone institution.
- (24) As a result, the net equity of UNNIM Banc turned negative.

## **2.3. THE RESCUE AID MEASURES IN FAVOR OF UNNIM AND UNNIM BANC**

### **2.3.1. The aid measures granted to UNNIM before 2011**

- (25) On 26 March 2010, the FROB informed the Commission that it had decided to subscribe for EUR 380 million of preference shares issued by UNNIM. Based on data as of 31 December 2009 the amount of aid was 1.93% of the risk weighted assets ("**RWA**") of UNNIM. This measure was carried under the

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<sup>8</sup> It should be noted that the bank had also failed the 2010 EU wide stress test exercise run by the Committee of European Banking Supervisors showing a tier 1 capital of 4.5% which was below the threshold established for the exercise (6% of tier 1 capital) .

<sup>9</sup> The threshold established by the EBA for passing the stress test was set at 5% RWA of core Tier1 capital. Under the EBA definition of core tier 1, the generic provisions and the convertibles preference shares were not taken into account. Had they been taken into consideration, the core tier 1 ratio would have been 6.2%.

Spanish recapitalisation scheme approved by Commission decision of 28 January 2010<sup>10</sup>.

- (26) According to UNNIM's viability plan, it committed to reimburse the preference shares in line with the following "amortisation plan": 1) EUR 70 million in 2011; 2) EUR 70 million in 2012; 3) EUR 140 million in 2013; 4) EUR 100 million in 2014.
- (27) On 30 March 2010 the Commission services sent a letter to the Spanish authorities taking note that the Bank of Spain in its assessment of the solvency and capital adequacy of the saving banks which were merging to form UNNIM had concluded that those banks were fundamentally sound and their integration plan was viable.
- (28) Finally, during the period 2008-2009, UNNIM issued debts guaranteed by the Spanish Treasury for EUR 1 225 million under the Spanish debt guarantee scheme for credit institutions<sup>11</sup>.

### **2.3.2. The additional aid measures to strengthen the capital position of UNNIM Banc**

- (29) UNNIM Banc presented material weaknesses that threaten its solvency and future viability, due to its heavy exposure to the domestic real estate sector and the difficulty to raise funds in financial markets.
- (30) One of the main reasons of UNNIM Banc's failure was its low quality of its assets, with its loan portfolio presenting very high default rates<sup>12</sup> and a high concentration of investment in the real estate development sector<sup>13</sup>.
- (31) Since UNNIM has not been able to repay on schedule the funds of the EUR 380 million subscribed in 2010 and thus breached the commitments in the viability plan, pursuant to article 9 of the Royal Decree Law 9/2009 of 26 June 2009, the FROB decided to convert its UNNIM convertible preference shares into UNNIM Banc ordinary shares. That conversion was notified to the Commission by Spain - in accordance with Decision SA. N28/2010 - in order to allow the Commission to assess the situation of the beneficiary bank<sup>14</sup> and subsequently approved.

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<sup>10</sup> See N 28/2010, Commission decision C(2010) 504 final, OJ C 57/2010 of 09.03.2010,

<sup>11</sup> The scheme was approved by the European Commission on 23 December 2008 in State aid case NN 54B/2008, OJ C 122/2009 of 29.05.2009.

<sup>12</sup> 11,4 % of loans in the whole credit portfolio for the third quarter 2011 were non performing and up to 14.7% of loans as of the end of 2011 were substandard.

<sup>13</sup> With EUR 5.139 billion, RED loans made up 69,8% of the pool of asset under EPA as of October 31, 2011.

<sup>14</sup> Paragraph 24 of Decision N28/2010 states "*The conversion of the FROB securities into ordinary shares (or its equivalent item), will be notified by the FROB to the Commission, including information regarding the situation of the Beneficiary at the time of the conversion and the FROB'S intentions as regards the ordinary shares (or equivalent items) subscribed for in the Beneficiary*".

- (32) Additionally, UNNIM Banc had not been able to meet the new regulatory capital requirements established by the Bank of Spain in February 2011. The bank therefore needed a second recapitalisation, in order to meet the required solvency ratio of 10% of RWAs.
- (33) To that end, the FROB injected in UNNIM Banc EUR 568 million of additional equity. That new capital injection represented 3.4% of the bank's RWA as of December 2010.
- (34) Following that second capital injection, the overall amount (EUR 948 million) of the capital measures granted by the FROB in 2010-2011 amounts to 6.16% of the RWA of December 2011 (pre-APS). As a result, FROB controls 100% of UNNIM Banc's capital.
- (35) The FROB will be redeemed by the national deposit guarantee fund (*Fondo de garantía de depósitos de entidades de crédito*, hereafter "DGF") of the full amount of the capital injected into UNNIM Banc upon the sale of the UNNIM shares to BBVA and at the latest by 30 June 2013.

### **2.3.3. Main features of the FROB**

- (36) The FROB was established, in the context of the financial crisis by Royal Decree-Law 9/2009 of 26 June, *sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito* to provide public support in the form of capital resources for the consolidation of the Spanish banking sector and to manage the orderly restructuring of non-viable credit institutions. The beneficiaries of the FROB are both fundamentally and non-fundamentally sound credit institutions established in Spain. UNNIM Banc falls into the second category.
- (37) The FROB has legal personality and full public and private capacity to implement its objectives. The FROB has been capitalised in two steps with EUR 15 billion, of which EUR 12.75 billion has been contributed directly by the State Budget and EUR 2.25 billion by the DGF. In addition, the FROB is guaranteed by Spain up to EUR 27 billion. To increase its intervention means, the FROB may resort to leverage. However, outside funding may not exceed three times its capital allocation and six times upon formal authorisation of the Finance Minister.
- (38) As regard governance, FROB is chaired by the Bank of Spain and representatives of the Spanish treasury and the DGF are seating on its Board.

### **2.3.4. Main features of the DGF**

- (39) The current DGF was created by Royal Decree Law 16/2011, of 14 October. The DGF has a separate legal personality and full capacity to act in pursuance of its objectives under private law and is not subject to the rules governing public institutions. It covers commercial banks, cooperative banks and *cajas de*

*ahorros*, Membership of a fund is mandatory for all Spanish banking entities in accordance with Directive 94/19/EC on deposit guarantee schemes<sup>15</sup>.

- (40) The managing board of the DGF comprises twelve members. Six are appointed by the Bank of Spain, two by the associations of commercial banks, two by the associations of cooperative banks and two by the associations of *cajas de ahorros*.
- (41) In accordance with its governing regime, the DGF guarantees the amounts deposited in credit institutions but it can also initiate all pre-emptive actions deemed necessary to prevent the guarantee on deposits from being triggered. Pre-emptive actions are only admissible when guarantees are likely to be triggered. The DGF must take into account the financial cost of any pre-emptive measure relative to the cost of the reimbursing depositors before any such measure is agreed by the Board. Any decision to recapitalise an entity must be adopted by qualified majority (two-thirds of the board members)<sup>16</sup>.
- (42) The DGF's financing is mainly based on member credit institutions' periodic contributions to the DGF, which are legally determined and based on potential needs of the DGF to fulfil its statutory goals. Until 1994, Bank of Spain also contributed to the DGF. Bank of Spain may also contribute to the DGF under exceptional circumstances, which are determined by law<sup>17</sup>.
- (43) According to the preamble of the Royal Decree 16/2011 one of the goals of the DGF is to guarantee financial stability.

### **3. DESCRIPTION OF THE RESTRUCTURING MEASURES IN FAVOUR OF UNNIM BANC**

- (44) To address the situation of UNNIM Banc while minimizing the burden on State resources, the Spanish authorities considered two alternative options: (i) an orderly winding down of UNNIM Banc and (ii) a sale of UNNIM Banc through an open tender.

#### **3.1. THE ALTERNATIVE TO A SALE : THE ORDERLY WINDING-DOWN SCENARIOS**

- (45) The Spanish authorities have run various liquidation scenarios to evaluate the cost of an orderly winding-down of UNNIM Banc.
- (46) The initial winding up scenario was developed under the assumption of the sale of all the assets, rights and liabilities in parts. The main assumption used for that initial scenario rests on the sale of loans portfolio and real estate assets to private investors, using a table of discounted values for each asset class with a three- to five-year time horizon. Under that initial scenario, the initial cost of liquidation was estimated at approximately EUR 4 862 million.

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<sup>15</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, OJ L 135 of 31.05.1994, p. 0005-0014.

<sup>16</sup> See Article 10 of Royal Decree 2606/1996, 20 December sobre fondos de garantía de depósitos en entidades de crédito

<sup>17</sup> See Article 3.6 of Royal Decree 2606/1996, 20 December sobre fondos de garantía de depósitos en entidades de crédito

- (47) In addition, the Spanish authorities have run two alternative liquidation scenarios based on a good bank/bad bank split, and with the following common assumptions.
- i) the entire branch network would be sold at the start with the retail deposits and best quality assets;
  - ii) a run-down of the remaining assets over a period of 5 to 10 years, so as to minimize capital losses. The residual assets could be set in a balance sheet of a special purpose vehicle owned by the DGF;
  - iii) the subordinated debt would be subject to a haircut of 100%.
- (48) Under the first scenario, the entire branch network would be sold along with the retail deposits at a premium of 3.8%<sup>18</sup>, as well as with assets up to the amount of retail deposits along with a selection of the highest quality assets available in the UNNIM Banc's present balance sheet, i.e. certain debt securities, performing corporate loans and most mortgages to individuals. The average haircut assumed<sup>19</sup> on the book value of the loans would amount to 59.4%. The net present loss associated with that first scenario has been estimated at EUR 7 989 million.
- (49) Under the second scenario, no loans would be included within the scope of the sold activity and therefore cash would be provided along with the debt securities already included under the first scenario. The net present loss associated with that second scenario has been estimated at EUR 7 001 million.
- (50) Additionally, the Spanish authorities have indicated that liquidation is not a scenario they would envisage, especially in the current context, given the risk of negative spill-overs on confidence in the whole banking sector. The Spanish authorities point that there is little experience in Spain regarding the liquidation of significant banks.

### **3.2. THE SALE THROUGH AN OPEN AND COMPETITIVE TENDER PROCEDURE**

- (51) Alternatively, a restructuring of UNNIM Banc through its merging with another institution has been envisaged by the FROB from the date of its intervention in September 2011.
- (52) As in other cases involving takeover of (ex) cajas, the Spanish authorities organized the sale of UNNIM Banc through an open and competitive tender procedure (*proceso competitivo de licitacion*) organized in four phases with the assistance of the investment bank Nomura.

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<sup>18</sup> Retail deposits (EUR 12.48 billion out of a total EUR 19.7 billion of deposits from customers) are considered core, non-volatile deposits. EUR 7.23 billion are not considered as retail deposits since these contain certain covered bonds and repurchase agreements, which do not have an economic goodwill value.

<sup>19</sup> The sale value of the loans assumes the discount that a specialised investor would require to obtain a 13% Internal Rate of Return in a time period of 3 to 5 years, factoring expected loss assumptions and current market circumstances.



- (53) In the preparatory phase, Nomura took charge of identifying the potentially interested parties.
- (54) In the first phase (non-binding offers phase), potential interested parties were sent an letter (*carta de proceso*) inviting them to submit within four weeks an expression of interest (*indicaciones de interes*) on the basis of a descriptive brochure (*cuaderno descriptivo*). Six entities expressed such an interest (BBVA, Ibercaja, Banco Popular, Banco Santander, JC Flowers and Bankia). During that first phase, bids were screened on the basis of two main criteria: (i) financial and management capacity including prudential situation (solvency and financial profile), (ii) total price offered. All six bidders qualified for the next phase as selected buyers (*compradores seleccionados*).
- (55) In the second phase (binding offers phase), bidders were each sent on 17 January 2012 a *carta de proceso*. That letter opened the due diligence phase. The due diligence phase included : (i) access to ad hoc due diligence reports prepared by KPMG, (ii) access to a virtual data room, (iii) meeting with UNNIM Banc's management, FROB representatives and KPMG advisors, (iv) review UNNIM Banc's credit files. Four bidders (BBVA, Ibercaja, Banco Popular and Banco Santander) submitted binding offers.
- (56) In order to compare and rank bids which differed in structure, each bid was assessed and ranked by the FROB using an ad hoc ranking system (*puntuacion*). In that system, for each aid measure requested, the amount of aid was converted in points. The higher the number of points, the costlier the bid.
- (57) In the final phase (selection phase) the Spanish authorities selected BBVA as the winner of the bidding process and signed the sale contract (*contrato de compraventa*).
- (58) Since the net equity of UNNIM Banc was negative and the appetite of investors thus limited, the Spanish authorities included State aid measures in the sale package to facilitate the transaction. The following aid measures were offered: a) deferment of price paid in case of a positive price offered, b) an asset protection scheme ("APS") against losses on certain a portfolio of identified assets of UNNIM Banc (mainly related to real estate) totalling EUR 7 359 million, c) additional capital by UNNIM Banc to meet solvency requirements and, d) liquidity measures.
- (59) Bidders were thus invited to specify in their binding bid (*oferta vinculante*) not only the price they were ready to pay but the measures they needed and for each of them, the amount of aid they were requesting from the Spanish authorities.
- (60) All four bidders submitted offers with a EUR 1 price and additional aid measures. All bids were thus equivalent for Spain to a negative total price.

### **3.3. THE ASSET PROTECTION SCHEME LINKED TO THE SALE TO BBVA**

- (61) While all three other bidders submitted offers including two or three aid measures, BBVA requested only asset guarantees through an asset protection scheme (APS). The conditions of that aid measure are set in a "protocol of financial support measures" (*Protocolo de medidas de apoyo financiero para la reestructuracion de UNNIM Banc SA*, hereafter "the protocol") dated 7 March 2012.

- (62) Through the APS, the DGF covers over a ten-year period as of 31 October 2011 a credit portfolio of EUR 7 359,7 million, representing 22% of UNNIM Banc's total assets. Table 2 provides an outline of its structure.

**Table 2: APS covered portfolio<sup>20</sup>**

Datos en €m	Dinerario dispuesto	Disponible	Avales	Exposición	Provisiones
<i>Cartera de crédito a nivel individual</i>					
Finalidad promoción y/o construcción inmobiliaria	4.704,9	362,9	71,6	5.139,4	396,8
<i>Activos Inmobiliarios a nivel individual</i>					
Adjudicados y resto de Activos no corrientes disponibles para la venta				597,9	63,4
Existencias				90,4	14,9
Inversiones inmobiliarias				433,7	105,0
<b>Subtotal</b>				<b>1.122,0</b>	<b>183,3</b>
Participaciones en empresas con finalidad promoción-construcción (M1)				1.098,4	750,3
<b>Subtotal</b>				<b>1.098,4</b>	<b>750,3</b>
<b>Total</b>				<b>7.359,7</b>	<b>1.330,3</b>
Total activos garantizados por el EPA				7.359,7	
Umbral de primera pérdida				1.330,3	
<b>Máxima pérdida del FGD por el EPA ((Activos garantizados - Umbral) * 80%)</b>				<b>4.823,5</b>	
<b>Pérdida esperada de la cartera cubierta por el EPA (informe KPMG)</b>				<b>[...]</b>	
<b>Pérdida esperada atribuida al FGD por el EPA ((Pérdida esperada - Umbral) * 80%)</b>				<b>[...]</b>	

- (63) Spain appointed experts who estimated the expected losses on the portfolio covered by the APS to EUR [...]\*
- (64) The APS granted to BBVA offers an excess loss protection. The first tranche corresponds to the loan loss provisions already taken by UNNIM Banc (EUR 1 330,3 million - see table 2).
- (65) The second tranche of EUR 6 029 million will be covered to a level of 80% by the DGF (EUR 4 823,6 million) over a ten-year period with retroactive effect as of 31 October 2011. The remaining 20% will be covered by BBVA/UNNIM.
- (66) BBVA will pay a 0,01% annual fee calculated on the basis of the outstanding amount of the APS-protected portfolio.

#### 4. THE RESTRUCTURING PLAN OF UNNIM BANC

- (67) The restructuring plan prepared by the Spanish authorities with BBVA was submitted to the Commission on 26 March 2012 and includes the following measures:

<sup>20</sup> Source: Restructuring Plan submitted by the Spanish authorities on 26 March 2012  
\* Secret business

#### **4.1. The transfer of UNNIM Banc's assets and liabilities to BBVA**

- (68) UNNIM Banc undertook under the Sale Agreement dated 7 March 2012, to transfer all its shares ("**the Business**") to an entity to be itself later merged with BBVA.

#### **4.2. Discontinuation of UNNIM's Obra Benefico-Social**

- (69) Following the FROB's capital injections totalling EUR 948 million during the rescue phase, UNNIM lost all its equity in UNNIM Banc, which became entirely controlled by the FROB. Pursuant to Spanish law, UNNIM, legally a savings bank, will need to convert into a special foundation whose main goal will be to manage the OBS of UNNIM. As a foundation, UNNIM's resources will be substantially lowered. It will not hold a banking license and thus will not be allowed to carry out any banking activity.
- (70) Furthermore, upon completion of the disposal, UNNIM Banc will be dissolved and its link with UNNIM's OBS will also cease to exist. As a commercial bank, UNNIM Banc has no legal obligation to establish a separate OBS or to finance UNNIM's OBS. However, BBVA may wish to be involved in projects financed by the OBS in line with the former's commercial strategy.

#### **4.3. UNNIM Banc's restructuring and integration into BBVA**

- (71) The restructuring plan presented by BBVA covers the period 2012-2015 and details the integration of the banking activities of UNNIM Banc into BBVA in two phases over 2013.
- (72) Phase one will focus on the technological integration of the UNNIM Banc's branch network to the BBVA's platform. Phase one is expected to last until 30 June 2013.
- (73) Subsequently, in phase two, UNNIM Banc will be integrated into BBVA Group and its network restructured. 332 branches will be closed during phase two over a period of six months ending on 30 June 2014. It is expected that 1218 employees will be made redundant out of a total of 3081 UNNIM Banc headcount as of 31 December 2011.
- (74) UNNIM Banc will cease to exist and its former branches will operate under [...] brand name and logo, including in its core region of Catalonia.
- (75) The branch network of the combined entity will be rationalized along two criteria: (i) geographical density and (ii) profitability (closure of branches whose gross margin is below EUR [...]). The density criteria will lead to the closure of 317 branches whereas the profitability criteria will trigger the closure of 15 branches.
- (76) Geographically, 291 closures (9 out of 10) will affect the core region of Catalonia whereas 41 will concern the rest of Spain.

- (77) According to data provided by Spain, in the core region of Catalonia, the 291 closures represent a reduction of approximately 30% of the pro forma network<sup>21</sup> of the combined entity regional network (1018 branches). 224 closures will concern the legacy UNNIM Banc network (531 branches as of 31 December 2012, closure ratio of 42,1%) whereas 67 will concern the BBVA Catalanian network (487 branches, closure ratio of 13,7 %).
- (78) In the rest of Spain, 41 branches will be closed. That figure includes all of the 39 branches which are part of the non-Catalonian network of UNNIM Banc (closure rate of 100%) and 2 BBVA branches. However, the closure mix between legacy UNNIM Banc branches and BBVA branches is likely to be adjusted by BBVA over the course of the restructuring period.

## **5. POSITION OF THE SPANISH AUTHORITIES**

### **5.1. POSITION OF THE SPANISH AUTHORITIES ON THE RESTRUCTURING PLAN**

- (79) Spain accepts that the measures in favour of UNNIM and UNNIM Banc constitute state aid.
- (80) Spain contends that the aid granted should be deemed compatible in so far as the State aid measures included in the Restructuring Plan are compatible with the provisions of the TFEU and comply with the requirements set out in the Restructuring Communication<sup>22</sup>. In particular, the Restructuring Plan:
- contains a thorough analysis of UNNIM Banc's financial situation and an explanation of the grounds for the FROB's intervention.
  - contains an analysis of the different restructuring options of UNNIM Banc and demonstrates that the sale to BBVA is the least costly solution. In particular, the winding-down option would be more expensive under all alternative scenarios considered. According to the Spanish authorities, the FROB conducted an open, competitive, transparent, objective and non-discriminatory tender procedure with the aim of offering equal opportunities to all parties potentially interested in acquiring UNNIM Banc ("the Tender Procedure"). The Tender Procedure, as described in recitals (51) to (60), guarantees greater efficiency in the use of public funds.
  - describes the process for selecting BBVA via the Tender Procedure in accordance with the point 20 of the Restructuring Communication and point

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<sup>21</sup> i.e resulting from the addition of the legacy network of UNNIM Banc and the Catalanian network of BBVA.

<sup>22</sup> Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

49 of the Banking Communication<sup>23</sup>. It also describes the criteria for selecting and evaluating the various bids submitted.

- complies with the burden-sharing principle, since the implementation of an open and competitive procedure ensures that the price obtained is (i) a market price, (ii) minimizes the amount of public support needed and (iii) does not entail aid to the buyer.
- provides for a process of restructuring and full integration of the Business so that its long-term viability can be warranted, as BBVA is one of the largest and most resilient financial institutions in the Spanish financial system.

## 5.2. COMMITMENTS OF THE SPANISH AUTHORITIES

- (81) The Spanish authorities have undertaken a number of commitments related to the implementation of the Restructuring Plan, in particular on safeguards relating to the management of the assets covered under the APS and the restructuring measures of UNNIM Banc. The commitments by the Spanish authorities have been presented in a document entitled: "*Term sheet of the Spanish authorities' commitments for the approval of UNNIM Banc's restructuring plan by the European Commission*" (hereinafter referred to as "**The Term Sheet**" attached to the present decision)<sup>24</sup>. Those commitments are summarised hereafter.
- (82) The Spanish authorities commit to reporting yearly on the evolution of the APS provided by the FROB as well as on the termination of UNNIM Banc as a legal entity. Those reports will start from the date of the present Decision until the date on which the protection offered by the APS is terminated.
- (83) In relation to the APS management, Spanish authorities commit to propose an appropriate incentive mechanism within BBVA for the work-out of the assets covered by the APS by 1<sup>st</sup> December 2012. The proposed mechanism will be reviewed by the Commission. The incentives will be designed in a way to ensure that, although 80% of the losses stemming from those assets are not borne by the new entity, they will be managed with the same diligence and care as the other assets of the bank.
- (84) The Spanish authorities commit to additional safeguards in the management of the APS. (i) First, the auditor of the APS will be appointed by the DGF and cannot be the auditing firm of BBVA or of UNNIM Banc. (ii) Second, on any transaction above EUR 3 million involving the disposal of assets under the APS, the DGF will be entitled to assign the pre-emptive right granted to it in clause 10.4 of the Protocol to any third party under the same terms and conditions of the proposed transaction to be completed between BBVA and a third party proposed by BBVA. The same entitlement to assign pre-emptive rights under

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<sup>23</sup> 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 of 25.10.2008, p. 8.

<sup>24</sup> See Annex 1

the same conditions will also extend to the members of the Comisión Mixta<sup>25</sup> of the DGF. (iii) In order to ensure that the APS assets are managed with the same degree of diligence as any other assets of BBVA, BBVA will define an incentive policy for the management and staff of a dedicated unit, so as to maximise the net present value of the APS Assets and, in particular, to ensure alignment of objectives and strategies. . That incentive policy shall be agreed by BBVA with the FGD and submitted for approval to the Commission by 1 December 2012. That incentive policy will be implemented and brought into practice during 2013.

- (85) The Spanish authorities commit in the name of BBVA to implement the following restructuring measures of the UNNIM Banc entity.
- (86) (i) Downsizing of the territorial footprint :
- Catalonia: 291 closures out of a total of 1018 branches. 224 former UNNIM Banc branches (out of a legacy network of 531) and 67 BBVA branches will be closed (out of an original network of 487).
  - In the rest of Spain, 41 branches will be closed 39 of which being part of the former UNNIM Banc network and 2 being BBVA branches. The closure mix between legacy UNNIM Banc branches and BBVA branches is likely to be adjusted by BBVA over the course of the restructuring period.
- (87) Those closures bring the total branch reduction in UNNIM Banc's network to 54,8% for Catalonia (28,6% for the combined entity) and 100% for the rest of Spain. The total branch network restructuring amounts to 58% of the legacy UNNIM Banc network.
- (88) (ii) Redundancies: a reduction of the UNNIM Banc headcount by 1218, representing 39,5% of the total UNNIM workforce as of 31 December 2011.
- (89) (iii) Downsizing of the legacy loan portfolio: the policy of BBVA, for its portfolio and for that of its acquired entity, UNNIM Banc, will be to progressively reduce the real estate risk relating to both credit and real estate assets. BBVA will apply a similar treatment to portfolios covered by the APS and to those not covered, seeking an overall reduction in exposure.
- (90) (iv) BBVA will manage UNNIM Banc's portfolio of subsidiaries exposed to the assets identified in the APS with the aim of reducing it in an orderly manner and, at the same time, maximizing the net present value of those subsidiaries.
- (91) (v) In addition, BBVA will not advertise to clients or investors the fact that it benefitted from public support in any way for the duration of the APS.

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<sup>25</sup> The Comisión Mixta consists of 5 members: 2 members appointed by DGF, 2 members appointed by BBVA and 1 member appointed by the APS auditor.

## 6. ASSESSMENT OF THE AID

### 6.1. EXISTENCE OF AID AND POTENTIAL BENEFICIARIES

#### 6.1.1. Existence of aid

- (92) Article 107(1) TFEU lays down that 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 or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (93) In the Rescue Decision the Commission found that the two measures which had been notified to it by Spain (the conversion of convertible preference shares from the first capital injection of EUR 380 million into ordinary shares and EUR 568 million in the form of capital injections) in favour of UNNIM Banc and UNNIM constitute State aid pursuant to Article 107(1) TFEU. As for the preceding decision by the FROB to subscribe for EUR 380 million of preference shares issued by UNNIM, it was carried under the Spanish recapitalisation scheme approved by Commission decision of 28 January 2010<sup>26</sup>. At recital 33 of its decision approving that scheme, the Commission concluded that recapitalisations made under that scheme constituted State aid.
- (94) In the present decision, it is therefore necessary to ascertain if State aid is present only for the remaining measure, the APS measure.
- (95) In addition, the Commission notes that UNNIM has been granted guarantees on liabilities under the Spanish Guarantee scheme approved in a decision from 29 May 2009<sup>27</sup>. In that decision, the Commission concluded that guarantees granted under that scheme constituted State aid.

#### *The assets protection scheme*

- (96) The APS is a second-loss measure with the first-loss tranche made up with the existing provisions of UNNIM Banc, while the DGF covers 80% of the losses in the second tranche.
- (97) As regard the involvement of State resources, under the Commission's decisional practice<sup>28</sup>, all the financial means by which the public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector, fall under Article 107(1) TFEU, provided that they constantly remain under public control and are therefore available to the competent national authorities.
- (98) The contributions of the private members of the DGF are mandatory and determined by law up to a predetermined level.

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<sup>26</sup> See N 28/2010, Commission decision C(2010) 504 final, OJ C 57/2010 of 09.03.2010,

<sup>27</sup> OJ C 122/2009 of 29.05.2009

<sup>28</sup> See Case NN 61/2009 Rescue and restructuring of Caja Castilla-La Mancha, OJ C 289, 26.10.10, p. 1.

- (99) As regards imputability of the measure provided by the DGF, the Commission notes that the State plays a decisive role in the DGF and in practical terms has control both over the decisions and resources of the DGF since: (i) half of the members of the board are members of the Bank of Spain and are appointed by it, (ii) contributions to the DGF are mandatory and determined by law and (iii) the Bank of Spain can decide to stop contributions to the DGF.
- (100) As regard selectivity and presence of advantage, the Commission notes that the APS clearly provides a selective advantage to the business which is to be continued as it will be sheltered from 80% of the losses exceeding the first tranche, and therefore provides it with a capital relief. In view of the fact that (i) the assets covered are highly impaired and therefore the drawing probability of the guarantee is sizeable and (ii) remuneration is purely symbolic, no market investor would be willing nor able to offer the same level of guarantee.
- (101) As regard distortions of competition, the Commission judges that the measure distorts competition since it enables the business to survive within another legal entity while it would have disappeared without public support.
- (102) The Commission considers that any advantage from State resources would have the potential to affect intra-Union trade within the meaning of Article 107(1) TFEU, since the banking sector, both in Spain and in the core region of Catalonia, one of the richest in the country, is largely open to competition at the EU level: a significant number of financial institutions from other Member States operate on the Catalonian and the Spanish retail, SMEs and corporate market.

### *Conclusion*

- (103) The Commission therefore considers that the APS constitutes State aid within the meaning of Article 107(1) TFEU. It has already concluded that the other recapitalisations and the conversion of the preference shares constitute State aid.

### **6.1.2. Potential beneficiaries**

- (104) Three parties could potentially benefit from the aid measures described above: 1) the purchaser of the business, BBVA; 2) UNNIM Banc; 3) the business itself (the economic activities transferred to the buyer).
- (105) With regard to BBVA, the Commission needs to assess whether the aid measures granted benefits it as the purchaser of the business. According to point 49 of the Banking Communication, in order to ensure that no aid is granted to the buyer of a financial institution sold by the State, it is important that certain requirements are met, and in particular that i) the sale process is open, transparent, non-discriminatory and unconditional, ii) the sale takes place on market terms, and iii) the State maximises the sale price for the assets and liabilities involved.
- (106) On the basis of the information provided by Spain as detailed in section 3.2, the Commission considers that the Tender Procedure was open and non-



discriminatory and resulted in the best bid winning the tender. No other participant made an offer requesting less public support. Therefore the fact that BBVA did not offer a positive price for UNNIM Banc does not preclude that the sale price reflects market value since the net equity of UNNIM Banc was clearly negative. The Commission has, therefore, no reason to believe that the offer made and the price paid did not reflect the market price. Consequently, the Commission concludes that BBVA has not received aid.

- (107) With regard to UNNIM Banc, the Commission notes that UNNIM Banc as a legal person will disappear and its economic activity will be transferred to BBVA. Therefore, UNNIM Banc has been beneficiary of the rescue aid measures granted until 2011 but not of the restructuring aid granted from that date.
- (108) As regards the business, the Commission notes that it comprises all of UNNIM Banc's banking activities. After the Disposal, some of UNNIM Banc's branches will continue to operate under BBVA Group, while UNNIM Banc will cease to exist as legal entity. The business will thus be allowed to continue providing the same range of banking and financial services to its customers as UNNIM Banc did before the Disposal. The business will thus clearly continue to carry out an economic activity within the combined entity.
- (109) The Commission therefore considers that the beneficiary of the restructuring measures constituting State aid within the meaning of Article 107(1) TFEU is the business that will be carried on.

## **6.2. THE AMOUNT OF AID**

- (110) As a result of the rescue measures implemented by the FROB in September 2011, UNNIM Banc received State aid in the form of two capital injections for EUR 948 million, which represents approximately 6.15% of UNNIM Banc's RWA. Those capital injections have been subsequently reclassified as restructuring aid. The DGF will repay to the FROB the full amount of the capital injected into UNNIM Banc upon the sale of the UNNIM shares to BBVA and at the latest by 30 June 2013.
- (111) In addition, as a result of the Restructuring Plan, the business will receive a specific restructuring aid measure in the form of the APS.
- (112) Under the terms of the APS, the DGF has committed to pay to the business 80% of the losses on the second tranche of assets covered in a portfolio in excess of EUR 1 330,3 million. DGF's maximum commitment therefore amounts to EUR 4 823,6 million.
- (113) The Spanish authorities estimate expected losses on the covered portfolio at EUR [...] million, as calculated by their independent experts.
- (114) Under the granular approach taken by the Commission's experts, the expected losses for every asset in the APS pool has been computed separately, taking into account the type of collateral securing the loan, where it is located, and all the

other characteristics that may be relevant. The covered portfolio is of a low quality, as it is made up mostly of loans to real estate developers (70% of the total exposure) secured on property under development or undeveloped land. Those assets are subject to significant price volatility. The covered portfolio is also made up of repossessed real estate (tangible assets). As a result, the market value ("MV") and the real economic value ("REV") of the covered portfolio are very low, with an estimated MV of around 33.1% of the nominal value and a REV of 47.6% (43.8% in a stressed scenario). As regards the total expected losses, they will reach approximately EUR 3 858 million for the base case scenario and EUR 4 140 million for the stressed scenario (or 52.4% of nominal in the base case scenario and 56.2% in the stressed scenario).

- (115) In any case, the expected losses will significantly exceed the fraction covered by the business (first tranche of EUR 1 330 million) which means that the DGF will thus cover an important part of the unexpected losses and of the expected losses.
- (116) Consequently, the aid granted through the APS comprises both a guarantee element, covering the unexpected losses, and an element akin to a capital injection covering the amount of expected losses covered by the DGF. The capital injection element of the aid amounts to EUR 2 248 million<sup>29</sup>.
- (117) In addition, the APS will provide the business with a RWA relief of up to EUR 2 987 million (or a capital relief equivalent up to circa EUR 239 million). Therefore the capital injection element of the APS amounts to the expected losses covered by the DGF (EUR 2 248 million) and the capital relief (circa EUR 239 million), totalling between EUR 2 022 million under a base case and EUR 2 487 million under a stress case<sup>30</sup>.
- (118) Furthermore, the DGF is providing a guarantee on the unexpected losses of the APS portfolio, which should be taken into account when determining the amount of the aid granted through the APS. That guarantee should be appropriately remunerated to account for the RWA relief effect of the measure, as it has effects which are equivalent to a recapitalisation measure. The appropriate level of remuneration for the guarantee has therefore to be calculated by reference to the regulatory capital relief provided by the guarantee itself. According to the Commission's experts, the average cost of capital for Spanish retail banks can be estimated at 16%<sup>31</sup>. Based on that average cost of capital, the Commission considers that the appropriate total remuneration fee of the APS should amount to between EUR 163 million (or 0.63% per annum) and EUR 382 million (or 0.79% per annum)<sup>32</sup>. Therefore the proposed remuneration

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<sup>29</sup> 80% of the difference between the EL under stress case (EUR 4 140 million) and the first tranche level (EUR 1 330 million).

<sup>30</sup> Using the base case as a baseline, the market-value decline and the loss given default hypotheses are stressed by an additional 10% to compute a stressed scenario.

<sup>31</sup> The weighted average cost of capital estimated by the Commission's experts is higher in this case (16%) than in the previous Banco CAM's case (14%) since the risk premium of Spanish banks has increased.

<sup>32</sup> It is calculated as 16% (cost of capital) of the APS capital relief over 10 years. Taking a conservative approach and accounting for the whole capital relief element of the APS (EUR 239 million) gives an appropriate remuneration of EUR 382 million. When calculating the capital

of 0.01% per annum of the outstanding covered amount seems purely symbolic compared to the fee which would be payable for a "plain" recapitalisation having the same capital effect. The difference between the appropriate remuneration fee of the APS and the proposed remuneration therefore increases the volume of aid granted by means of the APS measure.

(119) Under the APS, the business will only cover a small portion of the expected losses<sup>33</sup>. In consequence, it benefits from an aid amount of up to EUR 2 487 million from the capital injection element (under stress case) and up to EUR 382 million from the guarantee element of the APS using a conservative approach. Overall, the aid amount of the APS is comprised within a range of between EUR 2 643 million (under a base case) and EUR 2 869 million (under stress case).

**Table 4: Aid amount linked to the APS (under a conservative approach)**

Element of Aid	Amount (up to, EUR, mn)
Recapitalisation element (DGF covering the EL part)	2 487
Guarantee element (DGF covering the unexpected losses part)	382
<b>Total</b>	<b>2 869</b>

*Conclusion as regards the aid amount*

(120) The Commission therefore considers that under a stress scenario, the total aid amount granted to the business that is to continue lies up to EUR 3 817 million, which represents up to 24.8 % of UNNIM Banc's RWA.

**Table 5: Summary of State aid measures and amount in favour of the business**

Nr	Type of measure	Amount (EUR, mn)
A	First recapitalisation	380
B	Second recapitalisation	568
C	Assets Protection Scheme	Up to 2 869
Total		Up to 3 817
Approved guarantees under GDD <sup>34</sup>		1 225 (guaranteed amount)

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relief on the unexpected losses part of the APS only, the appropriate remuneration amounts to EUR 163 million.

<sup>33</sup> The first tranche of EUR 1.33 billion plus EUR 1.20 billion (20% of the second tranche), which equals to EUR 2.53 billion.

<sup>34</sup> See NN54b/2008, 23 December 2008, OJ C 122/2009 of 29.05.2009, re-introduced and extended by SA 34 904, decision of 29 June 2012, C (2012) 4450 final, not yet published.

### **6.3. LEGALITY OF THE AID**

(121) The Commission notes that Spain notified the intended aid measures to the Commission for its approval prior to putting it into effect and thus complied with its obligations under Article 108(3) TFEU.

## **7. COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET**

### **7.1. LEGAL BASIS FOR THE COMPATIBILITY ASSESSMENT**

(122) According to Article 107(3)(b) TFEU, State aid may be deemed by the Commission 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 current 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. It has been confirmed in the Banking Communication, the Recapitalisation Communication<sup>35</sup>, the Impaired Asset Communication<sup>36</sup> and the Restructuring Communication. 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<sup>37</sup>. Therefore, the legal basis for the assessment of such measures should be Article 107(3)(b) TFEU.

### **7.2. COMPATIBILITY OF THE RECAPITALISATIONS MEASURES**

(123) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. That requirement implies that the capital injection must be of the minimum amount necessary to reach the objective. The capital injections into UNNIM Banc performed during the rescue phase were necessary to reach the minimum solvency ratio. They can therefore be deemed limited to the minimum necessary.

(124) As regards the remuneration, the DGF will not receive any fixed remuneration on its capital injection given that the aid is granted through ordinary shares whose remuneration is based on distributable profits.

(125) In its Recapitalisation Communication<sup>38</sup>, the Commission has accepted that a distressed bank may pay a lower remuneration than normally necessary each time such a discount is required to ensure financial stability and is accompanied by the presentation of a thorough and far-reaching restructuring plan, including a change in management and corporate governance where appropriate.

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<sup>35</sup> 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.

<sup>36</sup> Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.3.2009, p 1. .

<sup>37</sup> See i.a. Commission Decision of 28.01.2008 in State aid case N 28/2010, *Recapitalisation measures in favour of the banking sector in Spain*, OJ C 57, 9.3.2010, p. 2.

<sup>38</sup> See Point 15 of the Communication.

(126) In the case of UNNIM Banc, the Commission notes that Spain has submitted a far-reaching restructuring plan including the change of ownership, the dissolution of UNNIM Banc and its disappearance as a stand-alone entity. Therefore, the Commission considers that in the absence of remuneration for the two recapitalisation measures can be accepted.

### **7.3. COMPATIBILITY OF THE APS UNDER THE IMPAIRED ASSETS COMMUNICATION**

(127) The specific conditions applying to asset relief measures are laid down in the Impaired Assets Communication. Pursuant to section 5.2 of the Impaired Assets Communication, an asset relief measure should ensure ex-ante transparency and should provide for adequate burden-sharing followed by the correct valuation of the eligible assets and the correct remuneration of the State.

(128) Regarding transparency and ex-ante disclosure requirement, the Commission considers that full ex-ante disclosure of the assets covered under the APS39 has been achieved. The Spanish authorities have granted access to information on the covered asset pool to its own advisers, and to the Commission's external experts. Furthermore, the valuation process performed by the Spanish authorities and its own expert has been appropriately disclosed.

(129) Regarding burden-sharing, the Impaired Assets Communication requires that banks ought to bear the losses associated with impaired assets to the largest extent possible. In particular, in the case of a guarantee measure, it would be achieved by ensuring that the first-loss piece is sufficiently large to cover all expected losses of the portfolio.

(130) The Commission notes that the first tranche of the APS (1 330 million) stands significantly below the level of expected losses, irrespective of the methodology used. As a result, the guarantee of the DGF covers not only unexpected losses but also a sizeable fraction of expected losses which is not in line with the Impaired Assets Communication. As a consequence, as explained in recital (116), that measure should be considered not as a standard guarantee but as akin to a capital injection. It is indeed conceptually similar, at least in part, to a transfer of assets above their real economic value.

(131) The capital injection element of the APS estimated between EUR 2 022 (base case) to 2 248 million (stress case) should therefore be subject to a claw-back as in some previous cases<sup>40</sup>.

(132) However, the institution of a claw back clause is in practice incompatible with the sale of UNNIM Banc to a third party through a formalised tender procedure since the bidders would have compensated in advance the potential cost of the claw back in demanding additional support measures in their offers.

(133) The capital injection element of the APS can thus be deemed compatible only if it is accompanied by an in-depth and far-reaching restructuring of the entity.

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<sup>39</sup> See Table 2

<sup>40</sup> See Commission Decision of 15 December 2009 in case C 17/2009 LBBW, OJ L 188, 21.07.2010

(134) Regarding the remuneration of the impaired asset measure, the Commission notes that the remuneration on the APS (0.01% per annum) is purely symbolic and does not compensate for the capital relief effect generated. It therefore is not in line with the Impaired Assets Communication.

(135) However, the level of remuneration also has to be assessed within the specific context of the offer presented by BBVA to take over UNNIM Banc, which was the result of an open, transparent and competitive process. The Commission therefore considers that the offer of BBVA and the resulting State aid measures requested take account of conditions regarding the remuneration of the APS.

### *Conclusion*

(136) The Commission concludes that the APS measure assessed above is not fully in line with the Impaired Assets Communication as it covers a significant fraction of the expected losses of the portfolio which should be borne by the beneficiary of the scheme and not by the Member State. Covering expected losses can be considered compatible only if it is accompanied by an in-depth and far reaching restructuring of the entity.

(137) Furthermore, the APS measure has not been remunerated adequately. However, the Commission notes that it is possible to accept a lower level of remuneration if it is compensated for by a thorough and far-reaching restructuring. In the case of UNNIM Banc, the Commission notes that Spain has submitted a far-reaching restructuring plan including the change of ownership, the dissolution of UNNIM Banc and its disappearance as a stand-alone entity.

## **7.4. COMPATIBILITY UNDER THE RESTRUCTURING COMMUNICATION**

(138) As regards compatibility of the restructuring aid with the internal market, the Commission has to assess whether they are in line with the conditions set out in the Restructuring Communication.

(139) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:

- (i) lead to a restoration of the viability of the bank and/or its orderly liquidation;
- (ii) include sufficient own contribution by the former shareholders and capital holders of the bank (burden-sharing);
- (iii) contain sufficient measures limiting the distortions of competition.

### **7.4.1. The restoration of viability/wind-up in an orderly fashion**

(140) Points 9 and 10 of the Restructuring Communication indicate that the Member State should provide a comprehensive and detailed restructuring plan which

should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should, furthermore, also identify the causes of the difficulties faced by a financial institution and provide a business model that restores the bank's long-term viability.

(141) In the present case the Commission observes that the Spanish authorities have chosen to sell the Business via an open tender procedure and to dissolve UNNIM Banc as a legal person. The Commission, therefore, has to assess whether a) the integration into BBVA will enable to restore the long-term viability of the business to be continued, and b) UNNIM Banc will be wound down in an orderly fashion.

*a) Restoration of the long-term viability within the BBVA Group*

(142) According to point 17 of the Restructuring Communication, the sale of a financial institution to a viable third party with financial means sufficient to absorb the entity and the capacity to restore confidence can help to restore its long-term viability. The Commission considers the requirements in the Restructuring Communication to be met by BBVA group.

(143) BBVA is a banking group incorporated in Bilbao with 7457 branches, 110 645 employees and a total balance sheet of EUR 597,7 billion with a consolidated net profit of EUR 3 004 million as of 31 December 2011.

**Table 6: BBVA's main figures (as of 31/12/2011)**

31/12/2011		BBVA
Profitability	ROA	0,61
	ROE	8,0
Solvency	BIS ratio	12,9
	Tier 1	10,3
	Core capital	10,3
Efficiency	Efficiency ratio	48,4

(144) First, the Commission notes that the business of UNNIM Banc is absorbed by a much larger group. In terms of total assets, the ratio exceeds 1:20. As a consequence, the impact of UNNIM Banc on BBVA's accounts and prudential position will be limited<sup>41</sup>.

(145) Second, as regards viability, BBVA complies, as from the date of the Disposal, with legal solvency requirement and that its own resources are adequate.

(146) Third, BBVA is a national and European leader in terms of size, since it is the second-largest financial institution in Spain and the seventh in the OECD area.

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<sup>41</sup> See Table 7.

- (147) Fourth, the management of BBVA is considered in retail banking as a benchmark in Spain. It has the highest efficiency ratio among its peers as well as the highest level of credit & deposit ratio.
- (148) Fifth, BBVA has an established, long-standing, consistent and favourable track record in buying external retail banking entities and through successful integration, extracting foreseen synergies<sup>42</sup>.

**Table 7: Main figures of the combined entity (proforma)**

<b>Main figures as of 31.12.2011 (EUR million)</b>	<b>BBVA-UNNIM</b>	<b>Main ratios 2012e (%)</b>	<b>BBVA</b>	<b>BBVA- UNNIM</b>
Total Assets	627	Solvency		
Loans to clients	378 084	TIER I	10,0%	9,9%
Deposits	303 862	TIER II	12,6%	12,5%
Core capital	34 161	Core Capital	10,0%	9,8%

- (149) The Commission thus believes that, on the basis of the information provided by the Spanish authorities, BBVA has the know-how required to own and manage the business in compliance with regulatory and prudential requirements. The Commission therefore considers BBVA - after the intended restructuring - to be viable.
- (150) Sixth, the Commission notes that the Restructuring Plan is based on reasonably credible underlying macroeconomic assumptions. In particular, the Restructuring Plan will allow BBVA to comply with the relevant regulatory requirements even in stress scenarios with a protracted global and national recession in line with point 13 of the Restructuring Communication. The Commission considers that the Restructuring Plan demonstrates how BBVA will show adequate profitability, allowing it to cover all its costs including depreciation and financial charges.
- (151) Seventh, as regards the very large concentration of UNNIM Banc's loan portfolio exposure to RED in its Core region, which was one of the main reasons for its failure and could therefore weigh on its return to viability, the Commission notes positively BBVA's commitment<sup>43</sup> to progressively reduce the real estate risk relating to both credit and real estate assets.
- (152) Eighth, the Commission notes that BBVA has committed to manage UNNIM Banc's portfolio of subsidiaries exposed to assets identified in the APS with the aim of reducing that portfolio in an orderly manner and maximizing the net present value of those subsidiaries.

<sup>42</sup> The creation of the BBVA group in 1999 results itself from a merger that led inter alia to the integration of its different retail bases: BBV, Argentaria, Banca Catalana, Banco del Comercio and Banco de Alicante. Integration of external entities is therefore part of its corporate culture. This fact is widely recognized by market actors and analysts.

<sup>43</sup> See Section B ii & iii of the Term Sheet



- (153) Furthermore, BBVA expects to extract a profit from the UNNIM Banc legacy business from the date of the Disposal onwards, as stated in the Restructuring Plan:

<i>EUR million</i>	<i>2012 E</i>	<i>2013 E</i>	<i>2014 E</i>	<i>2015 E</i>
Net income <sup>44</sup>	[...]	[...]	[...]	[...]

- (154) Even so, the Commission notes that the liquidity profile submitted by BBVA still exhibits a significant reliance on ECB refinancing facilities for the next four years. However, the Commission notes that such a reliance applies to most Spanish banking institutions and is less marked than for its peers.
- (155) On the basis of the above, the Commission considers that the integration into BBVA is adequately ensuring the long-term viability of the UNNIM legacy business.

*b) Orderly liquidation of UNNIM Banc*

- (156) In the wake of the transfer of the entirety of the banking activities of UNNIM Banc into BBVA, UNNIM Banc will disappear as a legal entity.
- (157) The Commission notes that the Spanish authorities will report on the termination of UNNIM Banc as a legal entity, as set out in recital (82).
- (158) The Commission notes that the restructuring plan foresees the severing of the legal and financial links between the business and the OBS. In order to further pursue the tasks of the OBS, UNNIM Banc will be converted into a non-profit foundation which will not be a saving bank nor be granted any banking license.
- (159) On that basis, the Commission considers that the conditions of an orderly winding down of UNNIM Banc are met.

**7.4.2. Limitation of the aid to the minimum necessary**

- (160) The Restructuring Communication provides that an appropriate contribution by the beneficiary is necessary in order to limit the aid to minimum and to adequately address distortions of competition and moral hazard. To that end, both the restructuring costs and the aid amount should be limited and a significant own contribution is necessary.
- (161) Point 23 of the Restructuring Communication provides that restructuring aid should be limited to the amount necessary to cover the costs which are necessary for the restoration of viability.

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<sup>44</sup> Calculated on an accumulated basis since FY 2012.

- (162) The Restructuring Communication further provides that, in order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved by absorbing losses with available capital and by paying an adequate remuneration for State interventions.
- (163) In the present case, aid can be deemed limited to the minimum necessary only if (i) the sale option chosen by Spain was effectively the least costly option in terms of public resources; (ii) the level of restructuring aid granted has been effectively kept to the minimum necessary.

*Comparison between a sale and an orderly liquidation*

- (164) The Commission notes that the FROB effectively worked out liquidation scenarios built on different assumptions as described in section 3.1. In that context, the Commission notes that the Spanish authorities estimated the cost of liquidation to lie in a range of between EUR 4.862 billion and EUR 7.989. In the good bank/bad bank scenario, the assumption of an average haircut of 59.4% on the loans (see recital (48) ) is probably at the higher end of the possible range. However, even taking a significantly more optimistic average haircut of 27.5% on the loans, the overall cost of liquidation would amount to EUR 5 billion, which remains higher than the restructuring aid involved (up to EUR 4.088 billion).
- (165) The cost for the State to sell UNNIM Banc remains therefore always lower than the costs arising from an orderly liquidation.
- (166) In view of the above, the Commission concludes the restructuring option, i.e. the sale to BBVA, despite the State aid measures involved, remains more cost-efficient for the State than an orderly winding down scenario and thus contributes to limiting the aid amount to the minimum.

*Aid limited to minimum in the restructuring of UNNIM Banc*

- (167) The Commission first notes that the sale to BBVA is the result of an open tender procedure which the Commission considers as a proper way to gauge market interest and to determine the selling price.
- (168) Second, the Commission notes that several bidders expressed their interest in the first phase and that the majority of them submitted a binding offer.
- (169) Third, the Commission notes that Spain put into place a rating system of the offers and that the system revealed that BBVA was by far the best bidder. BBVA bid was [...] more favourable than the next best bid and [...] more favourable than the other bids.
- (170) The Commission therefore concludes that BBVA bid adequately reflects the market price for the business.

- (171) In addition, in order to ensure that the APS Assets are managed with the same degree of diligence as any other assets of BBVA and thus to limit to the greatest extent possible the scope for triggering the guarantee provided by the DGF, BBVA on behalf of Spain have committed to a number of safeguards<sup>45</sup>. Those safeguards will ensure that BBVA should be induced to maximise the net present value of the APS Assets, and thereby minimising the losses to be borne by the DGF.
- (172) The Commission thus concludes that the amount of aid can be deemed limited to the minimum necessary.

#### *Burden-sharing*

- (173) As regards the contribution of UNNIM Banc to the financing of the restructuring costs, the Commission observes that the stakeholders of that credit institution have suffered significant losses.
- (174) The Commission notes that the FROB, upon its intervention, appointed interim administrators to supervise the management of UNNIM/ UNNIM Banc.
- (175) Furthermore, upon completion of the disposal, UNNIM Banc will be dissolved and its link and obligations towards UNNIM's OBS will also cease to exist. As a commercial bank, UNNIM Banc has no legal obligation to establish an OBS. Moreover, BBVA will have no legal obligation to finance UNNIM's OBS. UNNIM will be transformed into a special purpose foundation whose main goal will be to manage the OBS, which will have substantially less capital.

#### **7.4.3. Measures limiting distortions of competition**

- (176) The Restructuring Communication requires that the restructuring plan proposes measures limiting distortions of competition and ensuring a competitive banking sector. In that context, the plan should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.
- (177) Point 30 of the Restructuring Communication provides that the Commission has to take into account in its assessment the amount of aid and the conditions and circumstances under which that aid was granted and the effects of the position the financial institution will have on the market after the restructuring. On the basis of that analysis, the Commission should verify that potential distortions of competition arising from the aid are not disproportionate.
- (178) Point 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting distortions, the Commission has to take into account both the absolute and relative amount in relation to the beneficiary's RWA. The Commission notes that the aid received amounts approximately to one-third of UNNIM Banc's RWA (excluding the State guarantee on liabilities).

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<sup>45</sup> See Section A of the Term Sheet

- (179) The Commission notes that the takeover of UNNIM Banc by BBVA results both in the total wiping out of former UNNIM Banc shareholders and in the disappearance of UNNIM Banc as a standalone entity. The Commission finds that the exit of a failed institution which engaged in excessive risk-taking is a clear indication that moral hazard is addressed. As a result, potential distortions of competition resulting from the State aid are likely to be greatly reduced.
- (180) In addition, the Commission notes that the sale of UNNIM Banc's business has been undertaken through an adequately open, transparent and non-discriminatory tender procedure that can be considered as a sufficient proxy for the establishment of a market price for the assets and liabilities taken over by the purchaser. Through that procedure, both domestic and non-domestic competitors have been given the opportunity to acquire the business.
- (181) As regards the business transferred to BBVA, it is necessary to assess whether contemplated measures to limit the distortion of competition are sufficient in light of the characteristics of the market on which the beneficiary will operate.
- (182) In that respect, the Commission considers that the distortions of competition due to the business' continued market presence are limited. UNNIM Banc is a regional operator with a very limited market presence on the national Spanish market. In December 2011 UNNIM Banc's market share in deposits at a national level represented 2.8%. Even in its core region, Catalonia, its market share in terms of deposits is limited to 5,7% and do not exceed 6,3 % in any Catalanian province. The order of magnitude remains the same irrespective of the metrics chosen (deposits, credit, territorial presence), since no market share exceeds 9,1 % in any province for any indicator.
- (183) The Commission notes that one of the main provisions of the restructuring plan is the downsizing of the territorial presence of combined entity in Catalonia. The Commission considers that the downsizing planned by the restructuring plan is adequate since 58 % of the legacy network of UNNIM Banc will be phased out. The Commission takes also note that the total number of former UNNIM Banc's employees will be reduced by 30 June 2014, by 1,218 from 3 081 (attrition rate of 39,5 %).
- (184) The Commission takes note of the fact that BBVA committed to refrain from making any use in its communication with clients and investors of the fact that it is being supported by the FROB in any way for the duration of the APS.
- (185) On the basis of the above elements, the Commission considers that the scale and nature of measures proposed in the Restructuring Plan are sufficient and adequate to address the distortions of competition created by the aid.

#### **7.4.4. Monitoring**

- (186) In order to ensure a proper implementation of the restructuring plan and of the commitments it contains, the Spanish authorities will submit regular reports on the compliance measures taken. The first report will be submitted to the Commission not later than six months after approval from the date of notification of the Decision and thereafter at six-monthly intervals. Spain commits that it will also report yearly as from the date of the Disposal on the evolution of the APS as well as on the occasion of the termination of UNNIM Banc as a legal entity. The Commission considers that those reports will allow it to monitor the execution of the APS, its impact on competition and the fulfilment of the commitments which have been made by the Spanish authorities.

### **8. CONCLUSION**

The Commission has accordingly decided to consider the aid measures implemented by Spain in the context of the restructuring of UNNIM Banc to be compatible with the internal market.

The Commission notes that for the sake of urgency, Spain exceptionally accepts the adoption of the Decision 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:

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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 Unnim Banc, S.A.U. restructuring plan by the European Commission ”**

As regards the restructuring plan of Unnim Banc, S.A.U. (“**Unnim Banc**”) submitted to the European Commission on [ ] [ ] 2012 and, thereafter, completed by additional information (the “**Restructuring Plan**”), Banco Bilbao Vizcaya Argentaria, S.A. (“**BBVA**”), having taken into account the specific organizational and financial characteristics of such Restructuring Plan and Unnim Banc’s footprint in its core regions of Catalonia, has agreed to make the following commitments to the European Commission, which are in turn assumed by the Spanish authorities:

#### **A) Asset Protection Scheme granted over certain assets of Unnim Banc**

The following commitments are made regarding the functioning of the Asset Protection Scheme (“*Protocolo de medidas de apoyo financiero para la reestructuración*”) granted on March 7, 2012, to Unnim Banc (the “**APS**”):

- i. Upon the entry into force of the APS, the auditor of the APS (as such term is defined as “*Auditor del EPA*” in clause 8 of the APS) shall be appointed by the Fondo de Garantía de Depósitos de Entidades de Crédito (“**FGD**”). The appointed auditing firm can be neither the auditing firm responsible for the annual accounts of BBVA nor of Unnim Banc. Except as otherwise expressly specified herein, the terms of clause 8 of the APS will remain unaltered.
- ii. Pursuant to the terms and conditions set forth in the APS, the FGD shall be entitled to assign the pre-emptive right granted to it in clause 10.4 of the APS to any third party under the same terms and conditions of the proposed transaction to be completed between BBVA and a third party proposed by BBVA.
- iii. In order to ensure that the APS assets, as such term is defined as “*Activos Garantizados*” in the APS (“**the APS Assets**”), are managed with the same degree of diligence as any other assets of BBVA as foreseen in the APS, BBVA shall define an incentive policy for its personnel responsible for managing the APS Assets, so as to maximise the net present value of the APS Assets. This incentive policy shall be agreed by BBVA with the FGD and submitted for approval to the Commission by December 1, 2012. Such incentive policy will be implemented and brought into practice along 2013.

#### **B) Restructuring of the activity transferred to BBVA**

- i. By June 30, 2014, BBVA-Unnim Banc (the “**Combined Entity**”) shall close the following number of branches and carry out the following number of redundancies:

- For branches located in the region of Catalonia: at least 291 closures of the total number of branches of the Combined Entity on December 31, 2011. Furthermore, the Combined Entity's branches in the region Catalonia will not exceed 727 as of June 30, 2014.

- For branches located in the rest of Spain: at least 41 closures, as a result of this transaction, of the total number of branches located in the rest of Spain of the Combined Entity on December 31, 2011.

- For employees based in the region of Catalonia: the Combined Entity shall carry out a total number of 1,198 redundancies of the total number of employees based in Catalonia of the Combined Entity on December 31, 2011. Furthermore, the number of the Combined Entity's employees based in the region Catalonia will not exceed 5,007 as of June 30, 2014.

- For employees based in the rest of Spain: at least 20 redundancies, as a result of this transaction, of the total number of employees based in the rest of Spain of the Combined Entity on December 31, 2011.

- ii. The policy of BBVA, for its portfolio and for that of its acquired entity, Unnim Banc, will be to progressively reduce the real estate risk relating to both credit and real estate assets. In this case, BBVA will apply a similar treatment to portfolios covered by the APS and to those not covered, seeking an overall reduction in exposure.
- iii. BBVA shall manage Unnim Banc portfolio of subsidiaries exposed to the Assets identified in the APS with the aim of reducing it in an orderly manner and, at the same time, maximizing the net present value of those subsidiaries.
- iv. The Combined Entity shall not use the circumstance of Unnim Banc being the beneficiary of the APS for commercial purposes.
- v. The Spanish Authorities will ensure that BBVA complies with the commitments listed in this document and will submit regular reports on the measures taken to comply with the commitments. The first report will be submitted to the European Commission not later than six months after the closing date of the acquisition of Unnim Banc by BBVA, and from that date and thereafter at six month intervals.

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