EUROPEAN COMMISSION

Brussels, 18.7.2012
C (2012) 5046 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.35062 (2012/NN) – Portugal
Recapitalisation of Caixa Geral de Depósitos, S.A.

Sir,

1 PROCEDURE

(1) On 28 June 2012, the Portuguese Republic (hereinafter "Portugal") notified recapitalisation measures to Caixa Geral de Depósitos, S.A (hereinafter "CGD" or "the bank").

(2) Portugal subscribed to the recapitalisation measures on 29 June 2012 without waiting for the Commission decision in this case.

(3) Portugal exceptionally accepts that for reasons of urgency the decision will be adopted in the English language.

Paulo PORTAS
S. Ex.ª o Ministro dos Negócios Estrangeiros
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2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(4) CGD is a banking group fully owned by Portugal and holds total net assets amounting to EUR 120.6 billion as per 31 December 2011 and a total net loan book amounting to EUR 78.2 billion as per 31 December 2011. The bank's activities comprise, inter alia, nationwide and international commercial banking (notably, in Spain, Lusophone Africa[1] and Brazil), investment banking, asset management, specialised credit business, and insurance activities.

(5) In 2011, the CGD group had a leading position in most of the business areas it operated in the domestic Portuguese market (in particular, loans and advances to customers, customer deposits, insurance, property leasing, and wealth-management)[2].

(6) Under the Economic and Financial Assistance Plan agreed upon between Portugal, the European Commission, the European Central Bank and the International Monetary Fund, CGD was asked to submit a Funding and Capital Plan (hereinafter "FCP") for the period 2011-2015 which was to be subject to quarterly review. The first version of the FCP was submitted on 26 July 2011 and has been subject to revisions. The latest version of the FCP submitted to Banco de Portugal (hereinafter "BdP") is marked as "third revision" and dated 18 May 2012 (hereinafter "the FCP of May 2012").

(7) As regards liquidity, CGD has experienced increased difficulties in accessing the wholesale markets since the beginning of the sovereign crisis, in common with all other Portuguese banks. The difficulties started in the medium- and long-term capital markets but have progressively extended to the short-term money markets.

(8) As a result, CGD had to reduce its reliance on wholesale funding and activated its contingent liquidity plan in the first quarter of 2010, subsequently trying to a) find alternative sources of funding, mainly through collateralized funding; b) increase its own pool of eligible collateral that would be acceptable for the ECB; c) sell non-strategic assets; and d) present its own credit credentials to investors and counterparties. Considering the market situation, CGD currently claims to have a stable liquidity position.

(9) As regards solvency, the Core Tier 1 (hereinafter "CT1") ratio of CGD, calculated in line with Basel II rules, was equal to 9.48% as at 31 December 2011. The FCP sets the objective to achieve, inter alia, a 10% CT1 ratio by 31 December 2012 under Basel II rules, in line with the requirements of the Memorandum of Understanding ("the MOU") signed between the Portuguese Government, on the one hand, and the International Monetary Fund, the European Commission and the European Central Bank, on the other hand. Following a recommendation EBA/REC/2011/1 on the on the creation and supervisory oversight of temporary capital buffers to restore market confidence of the European Banking Authority (hereinafter "EBA"), the FCP was

[1] Angola, Cape Verde, Guinea-Bissau, Mozambique and São Tomé and Príncipe.

[2] For further details see Annual Report 2011, page 194, available at: https://www.cgd.pt/English/Financial-Information/Quarterly-Information/2011/Documents/Annual-Report-CGD-2011.pdf

updated regarding the level of capital to be held from 30 June 2012 onwards, in order to fulfil capital needs calculated based on the amount of sovereign debt held by the bank (the so-called sovereign buffer) and capital need resulting from a stress test exercise conducted by EBA (hereinafter "the EBA requirements").

(10) According to the FCP of May 2012, CGD identified a need to increase its capital by EUR 1.650 billion. CGD had previously identified capital requirements of EUR 1.834 billion and had informed the market accordingly on 8 December 2011. That latter amount was revised downwards in the FCP of May 2012.

(11) As regards profitability, CGD's situation in the financial years 2012 and 2013 will be adversely affected by the recession of the Portuguese economy. In particular that situation puts a pressure on the net interest income and it requires a provisioning for expected losses in the loan portfolio. The FCP of May 2012 hence projects losses of EUR […][*] million (net income) for 2012 and a […] of EUR […] million for 2013.

2.2 The recapitalisation measures

(12) The recapitalisation measures consist of a subscription of ordinary shares issued by CGD (hereinafter "the capital increase") and a subscription of convertible instruments issued by CGD which are eligible for solvency purposes under the EBA requirements as CT1 (hereinafter "Hybrid Securities").

(13) The capital increase is carried out by Portugal as CGD's only shareholder who subscribes newly-issued ordinary shares in the amount of EUR 750 million, in accordance with the rules for the issuance of ordinary shares provided for in the Portuguese Companies' Code[3].

(14) Portugal furthermore subscribes to an amount of EUR 900 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[4]. The net proceeds of the Hybrid Securities issue are used to ensure compliance of CGD's CT1 ratio with prudential requirements.

(15) The Hybrid Securities constitute direct, unsecured, undated and subordinated securities of CGD and rank pari passu without any preference among them. 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 CGD as a consequence of exercising a buyback option (see recital (22)).

[*] Parts of this text have been deleted so as not to divulge confidential information; they are indicated by a series of dots between square brackets or a range providing for a non-confidential approximation of the figure.

[3] See Código das Sociedades Comerciais, Secção II, Artigo 87 – 93.

[4] See Commission decision on the New Recapitalisation Scheme for Credit Institutions in Portugal SA.34055 (2011/N) of 30.05.2012, *not yet published*.

(16) The rights and claims in relation to the Hybrid Securities, in respect of interest, principal or otherwise, of Portugal:

- are subordinated to the claims of the creditors of CGD, in particular depositors or other unsubordinated creditors of CGD and subordinated creditors, except those creditors whose claims rank or are expressed to rank pari passu with the claims of the holder of the Hybrid Securities;

- rank pari passu with the rights and claims of holders of other junior capital subordinated issues/hybrid instruments qualifying as CT1 capital;

- have priority over the ordinary shareholders of CGD and other holders of instruments ranking pari passu with ordinary shares.

(17) In the event of a winding-up of CGD Portugal may claim, on a subordinated basis, an amount equal to the principal amount of the Hybrid Securities plus accrued interest.

(18) In the event of conversion of the Hybrid Securities to ordinary shares (see recital (24)) Portugal will be a shareholder of the CGD and its claim will rank pari passu with the rights and claims attaching to CGD’s ordinary shares.

(19) A coupon is payable on the Hybrid Securities at an initial effective annual rate of 8.5% paid on a semi-annual basis. The first payment is to be made on 29 December 2012.

(20) The coupon on the Hybrid Securities will increase in accordance with the time elapsed since the issue date leading to a 9.2% average rate over the foreseen investment period, in the following manner:

- second year: coupon rate of the first year + 25 basis points;

- third year: coupon rate of the second year + 25 basis points;

- fourth year: coupon rate of the third year + 50 basis points;

- fifth year: coupon rate of the fourth year + 50 basis points

(21) While the Hybrid Securities are outstanding, CGD may not distribute dividends. According to the terms of the instrument, any distributable profits should rather be used to pay the coupon and buy back Hybrid Securities.

(22) Further, CGD has been given a buyback option for the Hybrid Securities, allowing the bank to partially or fully buy back the Hybrid Securities at its own initiative at any time, at their principal amount, in cash, together with accrued interest, subject to the prior written approval of BdP, provided that a) the Hybrid Securities can be replaced by regulatory capital of equal or better quality, or b) that CGD has demonstrated to the satisfaction of BdP that its own funds would, following the buy back, exceed, by a margin that BdP considers to be adequate, the minimum CT1 ratio or other prudential requirements associated with the amount of own funds in force at that date.

(23) The terms and conditions of the Hybrid Securities furthermore provide for an Alternative Coupon Payment Mechanism[5]: Where payment in cash would result in non-compliance with or, in the opinion of BdP, may put at risk the fulfilment of the minimum capital requirements, in particular CT1 capital, the coupon payment may be replaced, to the extent necessary, with payment in kind through new ordinary shares of CGD.

(24) Portugal has the right to convert the Hybrid Securities into ordinary shares of CGD at the conversion rate defined by the Minister of Finance in accordance with all applicable legal requirements, including the EU State aid rules as provided for in the Treaty on the Functioning of the European Union ('TFEU'), in the Commission Communications and, where relevant, in the Commission Decision concerning the New Capitalisation Scheme for Credit Institutions in Portugal[6], if, according to BdP's assessment, CGD would become non-viable without conversion, or CGD would require additional capital without which it would no longer be viable.

(25) Following the recapitalisation measures, as at 30 June 2012, the estimated CT1 ratio was to be 11.8%, when calculated in line with CRD II rules[7], and 9.64%, when calculated in line with the EBA requirements.

3 POSITION OF THE PORTUGUESE AUTHORITIES

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

(27) 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 CGD to meet the required levels of CT1 capital.

(28) Portugal acknowledges that the subscription of Hybrid Securities constitutes State aid, in view of the fact that the terms of their subscription were aligned with those provided for in the New Recapitalisation Scheme which approves a State aid scheme[8].

(29) Portugal considers the capital increase to be State aid in particular in view of the current market circumstances and the fact that the capital increase is being carried out simultaneously with the subscription of the Hybrid Securities.

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5 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.

6 See note 4.

7 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.

8 See recital 25 of the decision on the New Recapitalisation Scheme for Credit Institutions in Portugal SA. 34055 (2011/N) of 30.05.2012, *not yet published*.

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

(31) Portugal submits that the behavioural restrictions shall be equivalent to those applying to banks that are recapitalised under the New Recapitalisation Scheme for credit institutions in Portugal, and committed to the application of:

- a dividend ban;
- a ban on buying back third-party hybrid instruments and subordinated debt without the consent of the Finance Minister and the Commission;
- a ban on coupon and interest payments on hybrid instruments and subordinated debt which are not held by Portugal and where there is no legal obligation to proceed with such payment;
- a ban on aggressive commercial strategies; and
- a ban on the acquisition of equity stakes in other companies (unless previously authorised by the Commission, the Finance Minister and BdP).

(32) Portugal furthermore committed to submit to the Commission a comprehensive restructuring plan for CGD in line with the Restructuring Communication[9] within six months of implementation of the measures.

4 ASSESSMENT

4.1 Existence of State Aid

(33) 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.

(34) 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.

(35) The Commission agrees with the assessment of Portugal that the subscription of Hybrid Securities gives rise to an advantage to the bank, in view of the fact that the terms of their subscription were aligned with those provided for in the New Recapitalisation Scheme.

[9] 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.

(36) As regards the capital increase, the Commission notes Portugal's observation that current market circumstances do not prevent private investors from investing in Portuguese banks, as evidenced by the capital increase of Banco Espírito Santo, which was fully subscribed by private investors. Nevertheless, in the prevailing market circumstances, raising private capital from private investors is difficult to achieve within a short time-frame. Projecting the value of return on such investments is a challenging task, as can for example be seen in the fluctuations of banks' share prices and their depressed values as compared to their book value. Moreover, raising private capital from private investors nevertheless requires at least a preliminary assessment for the value of or a return on the investment.

(37) The Commission notes that BdP in its letter dated 4 June 2012 states that, on the basis of the projections presented to BdP, CGD will have the capacity – through generated profits and adopted deleveraging measures – to remunerate the capital and to reimburse the Hybrid Securities.

(38) However, on the basis of the information contained in the notification, the Commission considers the capital increase provided to CGD to constitute State aid for the following reasons:

- A market economy investor would attempt to maximise the return on its assets in accordance in its interests in light of the prevailing circumstances, even in the case of an investment in an undertaking in which it already had a shareholding[10]. To that end, a market economy investor would rely on the results of a detailed analysis of the share investment carried out with due diligence and considering alternative scenarios, for instance of attracting other private investors, before it made an irrevocable decision to invest[11]. In that respect, the role of the State as a public authority aiming to ensure financial stability has to be distinguished from that of a private investor merely seeking an adequate return taking into consideration the risks involved. In the present case, the decision to grant the recapitalisation measures was apparently made at the latest on 4 June 2012, when the Minister of Finance announced its commitment to inject CT1 in the amount of EUR 1.65 million into CGD[12]. Portugal has not submitted any preliminary assessment for the value of or return on the investment drawn up prior to that date that would further support its decision to provide capital to CGD.

- A market economy investor could accept low profitability and even losses in the first years but only if it is compensated in the ex-ante business plan by above average profits at a later stage so that the overall return on the investment (aligned to present value by taking into account an appropriate discount factor) is

[10] See Joined Cases T-228/99 and T-233/99 *WestLB and the Land of Nordrhein-Westfalen* v *Commission*, [2003] ECR II-435, paragraph 314.

[11] See Case C-124/10 P *Commission* v *EDF* [2012] ECR I-0000, judgment of 5 June 2012, at paragraphs 82-86 and 105 and the case-law referred therein.

[12] Available at: http://www.portugal.gov.pt/pt/os-ministerios/ministerio-das-financas/documentos-oficiais/20120604-mef-recapitalizacao-banca.aspx

sufficient[13]. In the present case, the information submitted only indicates that in the best case – i.e. in the event that projected future profits and losses materialise as assumed in the FCP of May 2012 – the State as a shareholder would achieve over the whole projected period (2012-2015) only a small positive return on the capital investment into CGD. Even in the end year of projections the bank was not projected to generate a return on equity that would exceed […] %. That level of return on investment is below the levels currently asked for the provision of equity to banks[14].

- In addition, the Commission notes that the capital increase was granted at the same time and in the same context[15] as the Hybrid securities. As it was found that the latter constitute aid, that qualification has pollution effect on the aid character of the capital increase.

(39) The capital increase provided by Portugal hence allows CGD to secure capital on more favourable terms than would otherwise be possible in the light of the prevailing conditions in the financial markets. As such, that measure also gives rise to an advantage to the bank.

(40) For both the capital increase and the subscription of the Hybrid Securities, the advantage conferred by each measure is selective since it only benefits CGD.

(41) The Commission finds that the recapitalisation measures are both likely to affect trade between Member States. They give CGD an economic advantage, strengthening its position compared to that of its competitors in Portugal and other Member States. They must, therefore, be regarded as distorting competition and affecting trade between Member States. CGD competes, for example, on the Portuguese savings markets with competitors which are subsidiaries and branches of foreign banks. In addition, the Commission considers that the banking sector operates internationally.

Conclusion

(42) On the basis of the foregoing, the Commission considers that Portugal's subscription of new shares in the amount of EUR 750 million and of Hybrid Securities in the amount of EUR 900 million, both issued by CGD, fulfil the conditions laid down in Article 107(1) TFEU and hence qualify as State aid to the benefit of CGD.

13 In Joined Cases T-129/95, T-2/96 and T-97/96, *Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH* v *Commission*, [1999] ECR II-17, paragraphs 116-121, the Court of First Instance stated that even in the private sector a parent company may, for a limited period, take the losses of its subsidiary, but only if there is a reasonable likelihood that the assisted undertaking will become profitable again. A private investor could not afford to inject private capital after years of continuous losses if it was more costly than winding up the company.

14 The cost of equity was estimated by an external advisor to range […].

15 Both measures were announced by Portugal in the same press release, granting aid to the Portuguese banks. See note 12.

4.2 Compatibility of the aid

(43) As regards compatibility with the internal market of the aid provided to CGD, 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

(44) 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*".

(45) 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")[16]. Furthermore, the Commission has acknowledged in its recent approval of the Portuguese Guarantee Scheme[17] 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[18].

(46) In view of the current situation of the Portuguese economy 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.

(47) Given the systemic importance of CGD - it is a leading bank in Portugal - and the significance of its lending activities for the Portuguese economy, 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.

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16 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.

17 See Commission decision on the extension of the Portuguese Guarantee Scheme SA.34958 (2012/N) of 27.06.2012, not yet published.

18 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

4.2.2 Compatibility assessment

(48) 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[19]:

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

(49) Both measures, namely the subscription of new ordinary shares in the amount of EUR 750 million as well as the subscription of Hybrid Securities in the amount of EUR 900 million, are suitable means to strengthen CGD's capital basis by EUR 1.650 billion so as to meet the EBA requirements.

b. Necessity – limitation of the aid to the minimum

(50) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. The aid provided to CGD is limited to the minimum necessary as the amount of capital that shall be injected was derived from the calculation of specific needs such as the achievement of a CT1 ratio of 10% and the creation of a sovereign buffer that was required by the EBA. In particular, as at 30 June 2012, the estimated CT1 ratio was to be 9.64%, when calculated in line with the EBA requirements, which is only 0.64% above the capital ratio required by the EBA. Such buffer appears to be adequate in view of the changing nature of the risk weighted assets and the credit risk management in a country in recession. The Commission notes that Portugal's subscription of new shares and of Hybrid Securities is part of the measures that are addressed in the MOU.

(51) The Commission notes that Portugal provides the required capital in its capacity as 100% shareholder of CGD.

[19] 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.

(52) The Commission furthermore notes that the capital requirements of CGD have been adjusted downwards, as CGD had informed the market in December 2011 that it would seek a higher capital increase.

(53) In line with the Commission's decisional practice, Portugal provided a commitment to 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 of the State aid to the extent possible, also ensures that the aid is limited to the minimum.

(54) As regards the capital injection through the subscription of the Hybrid Securities, the average annual remuneration rate of 9.2% over the foreseen investment period, starting at an initial 8.5% for first year and increasing over time with step-ups, encourages CGD to exit from the State intervention and is in line with the guidelines of the Commission and the ECB[20]. Furthermore, an alternative coupon satisfaction mechanism applies to the Hybrid Securities pursuant to which unpaid interest will be paid in the form of conversion into new ordinary shares.

(55) As regards the right to convert the Hybrid Securities into ordinary shares of CGD if the bank becomes non-viable or requires additional capital, the Commission notes that it appears more an obligation for the Portuguese State than a valuable entitlement. The Commission therefore reminds Portugal that any provision of additional capital must be preceded by notification and the Commission's approval.

(56) As regards the capital increase, the comparatively low expected return on that investment as foreseen in the FCP of May 2012 needs to be taken into account in the context of CGD'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.

c. Proportionality – measures limiting negative spill-over effects

(57) Portugal has committed to ensure the application of all the behavioural safeguard measures that would have been applicable if CGD had been recapitalised under the Portuguese Recapitalisation Scheme[21].

(58) Portugal has in particular committed that CGD will suspend all dividend and coupon payments on outstanding hybrid instruments, unless those payments stem from a legal obligation and it will not purchase or call the same instruments.

(59) Therefore, taking into consideration the capital needs that CGD 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

[20] ECB Governing Council recommendations on the pricing of recapitalisations of 20 November 2008.

[21] See recital 39 of Commission decision on the new recapitalisation scheme for credit institutions in Portugal SA.34055 (2012/N) of 30.05.2012, not yet published

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 CGD can be approved.

Conclusion

(60) The Commission, thus, concludes that (i) the subscription of ordinary shares issued by CGD in the amount of EUR 750 million as well as the subscription of Hybrid Securities in the amount of EUR 900 million are adequate means to address CGD'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

(61) The 2010 Prolongation Communication[22] from December 2010 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.

(62) There is therefore a need for a submission of a restructuring plan under the Restructuring Communication in light of the 2010 Prolongation Communication. In that context, the Commission recalls that such a plan might also need to foresee deep restructuring measures, depending on the size and the amount of the aid granted, or an orderly bank winding up if a bank cannot return to viability.

(63) The Commission takes note of the commitment of Portugal to submit a restructuring plan for CGD in line with the Restructuring Communication within a six-month period of the implementation of the recapitalisation measures, that is by 29 December 2012 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.

CONCLUSION

(64) The Commission concludes that the measures notified (the subscription of ordinary shares issued by CGD in the amount of EUR 750 million as well as the subscription of Hybrid Securities in the amount of EUR 900 million in favour of CGD) constitute State aid pursuant to Article 107(1) TFEU.

(65) The Commission finds that those rescue measures in favour of CGD 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 by 29 December 2012 or, if Portugal submits a restructuring plan by that date, until the Commission has adopted a final decision on the restructuring plan.

(66) The Commission recalls that Portugal has committed to submit a restructuring plan in line with the Restructuring Communication, within six months of the implementation of the measure, that is by 29 December 2012 at the latest.

5 DECISION

The Commission regrets that Portugal put the recapitalisation measures into effect, in breach of Article 108(3) TFEU.

However, it has decided, on the basis of the foregoing assessment, that the notified measures in the form of the subscription of ordinary shares issued by CGD in the amount of EUR 750 million as well as the subscription of Hybrid Securities in the amount of EUR 900 million in favour of CGD constitute State aid pursuant to Article 107(1) TFEU.

The Commission has accordingly decided that the aid measures are temporarily compatible with the internal market as rescue aid for reasons of financial stability on the basis of Article 107(3)(b) TFEU. The measures are accordingly approved by 29 December 2012 or, if Portugal submits a restructuring plan by that date, until the Commission has adopted a final decision on the restructuring plan.

The Commission recalls that Portugal has committed to submit a restructuring plan within six months of subscription of the measures that is by 29 December 2012, in line with the Restructuring Communication.

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

Portugal is requested to forward a copy of this letter to the recipient of the aid, Caixa Geral de Depósitos, S.A., 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