



EUROPEAN COMMISSION

Brussels, 12.03.2014
C(2014) 1658 final

<p>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 [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	---------------------------------------------------------------------------------------------

**Subject: State aid SA.36249 (2014/N-3) – Spain
Amendment of the Restructuring of CEISS through integration with Unicaja Banco**

Sir,

1 PROCEDURE

- (1) By decision of 20 December 2012 ("**the December 2012 Decision**")¹, the Commission approved a restructuring plan for Banco CEISS ("**Banco CEISS**") based on the concept of a stand-alone restructuring.
- (2) By decision of 13 May 2013 ("**the May 2013 Decision**")², the Commission approved a new restructuring plan for Banco CEISS on the basis of a takeover of that bank by Unicaja Banco ("**Unicaja**"). The new restructuring plan approved in the May 2013 Decision rested on, *inter alia*, the authorisation by the Commission of a EUR 200 million guarantee ("**the existing guarantee**") in relation to assets transferred to an Asset Management Company ("**AMC**"). The implementation of the new restructuring plan was conditional upon the acceptance by the hybrid and subordinated debt instrument holders of Banco CEISS of Unicaja's takeover offer so that Unicaja would obtain a minimum of 75% of the share capital of Banco CEISS.

¹ OJ C 96, 4.4.2013, p. 1.
² OJ C 256, 5.9.2013, p. 5.

Excmo. Sr. D. José Manuel García-Margallo y Marfil
Ministro de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

- (3) On 17 October 2013, the Spanish authorities informed the Commission that they intended to set up an *ad hoc* arbitration measure for those retail holders of hybrid and subordinated securities in Banco CEISS who accepted the Unicaja offer and were ready to exchange their securities for Unicaja shares (“**the arbitration measure**”). That measure was approved by the *Fondo de Reestructuración Ordenada Bancaria* (“**the FROB**”)³ on 26 November 2013. In its decision, the FROB stated that the arbitration measure would only be activated if the Unicaja offer was successful.
- (4) On 18 October 2013, the Spanish authorities informed the Commission that in their preliminary estimation the capital deficit for Banco CEISS (vs. the 9% Common Equity Tier 1 level) would amount to EUR [...] million on a stand-alone basis by 31 December 2013. On that same date, they also provided the Commission with an assessment of likely capital needs if Banco CEISS were to continue as a stand-alone entity.
- (5) On 12 January 2014, the Spanish authorities informed the Commission that the minimum acceptance of 75% was unlikely to be attained and therefore one of the conditions for Unicaja to acquire Banco CEISS would not be fulfilled.
- (6) On 13 January 2014, the Spanish authorities informed the Commission of their plan to implement a new measure to cover litigation costs stemming from those holders of securities of Banco CEISS who did not accept Unicaja's offer. Furthermore, Spain proposed to modify the existing guarantee in order to cover the costs of the arbitration measure described in recital (3), a measure that will only be activated in the event of the successful completion of Unicaja's offer. As a result of those measures Unicaja dropped the requirement to obtain 75% of the share capital of Banco CEISS as a precondition for the takeover and lowered the minimum threshold to 58% of the sum of the share capital of Banco CEISS and the overall value of the preference shares and subordinated debt of Banco CEISS.
- (7) On 4 February 2014, the acceptance period of Unicaja's takeover offer for Banco CEISS expired. The offer was accepted at a level of 99.2% among institutional shareholders and of 43.6% among the retail holders of hybrid instruments issued by Banco CEISS. There was thus a final acceptance rate of 60.6% of the total capital instruments of Banco CEISS, which is below the initial minimum threshold of 75% established by Unicaja in its public offer and recorded in the May 2013 Decision but above the new 58% threshold. Banco CEISS cannot receive an improved takeover offer from another institution, because the Spanish legislation on takeover bids allows improved offers to be made only up to five working days before the closing of the acceptance period of an initial offer.
- (8) On 25 February 2014 Spain formally notified the modification of the existing guarantee and the new measure.
- (9) Spain exceptionally accepts for reasons of urgency that the present decision be adopted in the English language.

³ After the enactment of Law 9/2012, which repealed and replaced the Royal Decree Law 24/2012, the FROB has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit institutions. For that purpose, it may provide public support to distressed institutions. The FROB funds are contributed by the State Budget. Additionally, the FROB may obtain other funding (via issuance of securities, loans, credits or other debt transactions) up to the limit annually established in the State Budget. It has been described in detail in the December 2012 Decision.

* Confidential information.

2 FACTS

2.1 Description of Banco CEISS and Unicaja Banco

- (10) Banco CEISS is a commercial bank created within the framework of Royal Decree Law 2/2011. Pursuant to that legislation Caja CEISS approved on 5 September 2011 and executed on 5 December 2011 the transfer of all of its banking business to a newly established banking entity, Banco CEISS. Banco CEISS operates mainly in the Spanish region of Castilla y León and the province of Caceres ("**the Core Regions**"). Banco CEISS has been described extensively in the May 2013 Decision.
- (11) Unicaja is a credit institution resulting from the merger of several savings banks (Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería and Málaga y Antequera). Unicaja Banco is the bank through which Unicaja performs its financial activity. It is present in 18 Spanish provinces, including the eight Andalusian provinces, as well as in Albacete, Alicante, Badajoz, Barcelona, Ciudad Real, Madrid, Murcia, Toledo, Valencia and Valladolid. It also has branches in the autonomous cities of Ceuta and Melilla, as well as in Brussels, Casablanca, Frankfurt and London.
- (12) From a supervisory point of view, Banco CEISS and Unicaja (together "**the Combined Entity**") will be supervised as a single group, as well as on an individual basis. As of 31 December 2013, the total risk weighted assets ("**RWA**") of the Combined Entity amounted to EUR 32.24 billion.

2.2 The aid approved before the May 2013 Decision

- (13) Since 2010, the Commission has approved several State aid measures for Caja CEISS and for Banco CEISS. Those measures consisted of: a) capital injections by the FROB totalling EUR 1 129 million⁴ of which EUR 604 million was in the form of contingent convertible bonds ("**CoCos**"); b) impaired assets transferred to the AMC; and c) State guarantees on senior unsecured debt worth EUR 3 193 million, of which EUR 1.47 billion remained outstanding as of 31 January 2014.

2.3 The May 2013 Decision and its implementation

2.3.1 Modification of the approved aid

- (14) The May 2013 Decision approved the proposal of the Spanish authorities that the capital injection would be carried out in the form of CoCos rather than in the originally approved form of ordinary shares. However, the May 2013 Decision did not alter the overall amount of capital to be injected by the FROB pursuant to the December 2012 Decision. The CoCos were to be automatically converted into ordinary shares if the takeover offer of Unicaja for Banco CEISS was unsuccessful.
- (15) The May 2013 Decision also approved a new guarantee issued by the FROB related to the assets transferred by Banco CEISS to the AMC, aiming at covering possible errors stemming from: a) the categorization, b) the perimeter or c) the accounting valuation of

⁴ Capital injections by the FROB in 2010: EUR 525 million in shares; capital injections by the FROB in 2013: EUR 604 in CoCos.

the assets transferred. That measure, described in this decision as the existing guarantee, could result in compensation by the FROB to Banco CEISS as a result of those adjustments in excess of EUR 40 million up to a maximum amount of compensation of EUR 200 million. The Spanish authorities have certified that the existing guarantee is still relevant as major risks related to the assets transferred by Banco CEISS could still materialise.

2.3.2 The approved restructuring

- (16) The restructuring plan approved in the May 2013 Decision (“**the Restructuring Plan**”) was based on the assumption of a successful takeover of Banco CEISS by Unicaja. It builds on the restructuring plan approved by the Commission in December 2012.
- (17) The Restructuring Plan states that Banco CEISS would refocus its business activities in the Core Regions and cut costs leading to a reduction of [30 – 40]% in branches and staff between 2012 and 2017. Furthermore, the balance sheet of Banco CEISS would be reduced by [10 – 20]% between 2012 and 2017, mainly due to a [0 – 10]% decrease in its loan portfolio. Consequently, its RWA were expected to fall by [30 – 40]% by the end of 2017 (compared to 2012). As regards its funding structure, Banco CEISS would improve its loan-to-deposit ratio, by reducing it to a maximum of [100 – 150]% by [...] and eliminate its over-reliance on Eurosystem funding.
- (18) Table 1 summarises the perimeter of the restructuring approved in the May 2013 Decision.

Table 1: Restructuring measures approved by the May 2013 Decision

	Situation as of 31/12/2012	RP target 31/12/[...]	RP 2012-[...] % reduction
Balance sheet size (EUR mn)	[30.000 – 40.000]	[30.000 – 40.000]	-[10 – 20]%
Loan book size (EUR mn)	[15.000 – 25.000]	[10.000 – 20.000]	-[0 – 10]%
Maximum LTD ratio		[100 – 150] %]	
Branches	[800 – 900]	[500 – 600]	-[30 – 40]%
FTE	[4.000 – 5.000]	[3.000 – 4.000]	-[30 – 40]%

- (19) The Restructuring Plan also included the transfer of a number of Banco CEISS's assets to the AMC. Furthermore, Banco CEISS would abandon real estate development (“**RED**”), large corporates and capital market activities. Moreover, the Restructuring Plan provided a commitment to divest Banco CEISS' portfolio of unlisted subsidiaries.
- (20) In addition, Banco CEISS would adhere to an acquisition ban until the end of the Restructuring Period. Spain also committed that the Combined Entity, namely Unicaja and Banco CEISS, would avoid engaging in aggressive commercial practices in the Core Regions and would not use the aid measures or any advantages arising therefrom for advertising purposes throughout the restructuring period. Finally, Banco CEISS agreed to a dividend distribution limited to a maximum of [...] % of its annual distributable profits.

2.3.3 Burden-sharing implemented by Banco CEISS

- (21) In accordance with the Memorandum of Understanding between Spain and the European Commission and with Spanish Law 9/2012 ("**the Burden-Sharing Framework**"), before a bank could benefit from State aid, it had to conduct burden-sharing exercises on: a) existing shareholders, b) holders of preference shares and c) subordinated (both perpetual and dated) debt holders, so as to, *inter alia*, maximise the loss-absorption capacity of the aided bank. Banco CEISS was subject to those obligations.

Burden-sharing imposed on the original shareholders of Banco CEISS

- (22) The absorption of accounting losses of Banco CEISS as of 31 December 2012, followed by the conversion of the FROB preference shares into new shares and the new additional capital injection also by the FROB in the form of CoCos (EUR 604 million) to meet regulatory solvency minima (9% of *capital principal* as required by the above mentioned Memorandum of Understanding), meant that the original shareholders (the founding savings banks) were asked to bear losses in proportion to their stakes (100%) in the bank and to do so prior to any new capital injection under the MoU. As a result, all original shareholders in Banco CEISS were fully wiped out as of 16 April 2013.

The subordinated liability exercise in Banco CEISS

- (23) After the burden-sharing imposed on the original shareholders of Banco CEISS, in view of the significant losses posted by Banco CEISS for 2012, holders of preference shares and perpetual/dated subordinated debt instruments were asked to bear losses and contribute significantly to the recapitalisation of Banco CEISS that took place on 15 July 2013. They did so in the following way:
- First, those securities were bought back by Banco CEISS at their net present value, calculated in accordance with the methodology set out in the Term Sheet annexed to the December 2012 Decision, which implied deep discounts from their nominal value. That action generated immediate capital gains for Banco CEISS of EUR [...] million net of tax effects, which significantly reduced its capital needs.
 - Second, the proceeds from that buy-back were automatically reinvested in Banco CEISS in the form of ordinary shares and necessarily convertible instruments. The conversion of those securities into capital instruments further reduced the capital needs of Banco CEISS by EUR [...] million.
- (24) The final results of that subordinated liability exercise ("**the SLE**") imposed on Banco CEISS are shown in Table 2.

Table 2: SLE in Banco CEISS

[...]

2.4 Description of the new measures

2.4.1 Modification of the scope of the existing guarantee

- (25) Spain seeks to extend the scope of the existing guarantee described in recital (15), to cover potential claims of mis-selling of securities by Banco CEISS resulting from the arbitration measure set out by the FROB for the holders of hybrid and subordinated debt instruments who accept Unicaja's offer to acquire Banco CEISS. Under the terms of that guarantee, there will be no excess amount to be covered by Banco CEISS.

2.4.2 The litigation measure

- (26) Under an additional measure ("**litigation measure**") litigation costs arising from legal proceedings initiated by investors not accepting Unicaja's offer shall be distributed as follows:
1. 29% of the final cost for Banco CEISS;
 2. 71% of the final cost for the FROB up to a maximum of EUR 241 million, net of the proceeds which may result from the compensation mechanism described in recital (27) which the FROB may also decide to apply to that end.
- (27) The FROB will receive, in consideration for assuming a portion of the litigation cost, a corresponding proportion of the hybrid and subordinated debt instruments ("**the Securities**") to be bought back from the successful litigants. The value of the Securities will be set in accordance with the independent assessment carried out by Oliver Wyman on August 2013, which concluded that 100% of Banco CEISS had an equity value of EUR 334 million. The value of the Securities will be paid to the FROB pursuant to a compensation mechanism agreed with Banco CEISS as described in more detail in section 8.3 of the attached Term Sheet.
- (28) In summary, Spain aims to grant an additional measure that consists of providing a new guarantee issued by the FROB up to a maximum amount of EUR 241 million to cover possible litigation costs associated with investors who have not accepted Unicaja's offer and who may decide to claim before the Spanish courts that the securities they held in Banco CEISS were originally mis-sold.

2.4.3 The additional restructuring of Banco CEISS

- (29) As a result of the new measures, the Spanish authorities have presented the Commission with a new restructuring plan ("**the New Restructuring Plan**") and a modified term sheet ("**the Modified Term Sheet**"), which is annexed to this Decision, including a set of new commitments.
- (30) The New Restructuring Plan is very similar to the Restructuring Plan in that it stipulates that Banco CEISS refocuses its banking business on the Core Regions, confirms the assets transferred to the AMC and discontinues RED, large corporates and capital market activities. Furthermore, the acquisition ban and the ban on aggressive commercial activities are also part of the New Restructuring Plan.

- (31) The New Restructuring Plan includes restructuring measures on top of those included in the Restructuring Plan approved by the May 2013 Decision. Those measures are: a) an additional [10 – 20]% reduction in Banco CEISS' balance sheet; b) an additional [0 – 10]% reduction in loan book size; c) an additional reduction in the loan-to-deposit ratio to [100 – 150]%; d) an additional closure of [...] branches in the Core Region; and e) an additional [0 – 5]% reduction in full-time equivalent employees ("FTEs"). As a result of this additional restructuring, Banco CEISS' balance sheet should be reduced by [20 – 30]% between 2012 and [...], mainly due to a decrease by [10 – 20]% in the loan portfolio. Furthermore, new cost cutting efforts should lead to a reduction of [30 – 40]% in branches and [30 – 40]% in staff between 2012 and [...].
- (32) Table 3 compares the additional restructuring efforts of the New Restructuring Plan with the Restructuring Plan approved in the May 2013 Decision.

Table 3: Additional restructuring measures vs. previous ones

	Situation as of 31/12/2012	RP target 31/12/[...]	RP 2012-[...] % reduction	Additional effort/ previous RP	New RP target 31/12/[...]	New RP 2012-[...] % reduction
Balance sheet size *	[30.000 – 40.000]	[30.000 – 40.000]	-[10 – 20]%	-[10 – 20]%	[20.000 – 30.000]	-[20 – 30]%
Loan book size *	[15.000 – 25.000]	[10.000 – 20.000]	-[0 – 10]%	-[0 – 10]%	[10.000 – 20.000]	-[10 – 20]%
Maximum LTD ratio		[100 – 150]%		-[...] b.p. - [...]	[100 – 150]%	
Branches	[800 – 900]	[500 – 600]	-[30 – 40]%	branches	[500 – 600]	-[30 – 40]%
FTE	[4.000 – 5.000]	[3.000 – 4.000]	-[30 – 40]%	[0 – 5]%	[3.000 – 4.000]	-[30 – 40]%

*: EUR million.

- (33) The New Restructuring Plan reiterates the commitment for Banco CEISS to divest its existing portfolio of unlisted subsidiaries by [...] but adds a commitment to divest its portfolio of listed companies by the same date.
- (34) The calendar for the full repayment of the CoCos issued by Banco CEISS to the FROB is brought forward by one year, resulting in a maximum term of four years from the date of their issuance compared with the five year-period included in the Restructuring Plan. In addition, under the New Restructuring Plan Banco CEISS will be subject to a full coupon and dividend ban.
- (35) Banco CEISS will also restrict the total (variable and fixed) remuneration to staff, including Board members and senior management, to a maximum of 15 times Spain's national average salary or 10 times the average salary of employees in Banco CEISS. Restrictions on remuneration will apply until the end of the restructuring period or until Banco CEISS has repaid the State aid, whichever occurs earlier. Moreover, any employees dismissed will not, in principle, receive severance payments in excess of what is required by law or contract.
- (36) The New Restructuring Plan does not contain additional burden-sharing measures given that Banco CEISS already carried out an extensive mandatory SLE as described in more detail in section 2.3.3 of this Decision.

3 POSITION OF THE SPANISH AUTHORITIES

- (37) The Spanish authorities state that the arbitration and litigation measures do not constitute State aid to Banco CEISS. According to them, the beneficiaries of both proposed measures are those retail investors in Banco CEISS who may originally have been mis-sold securities in Banco CEISS. Additionally, as the FROB provides the possibility of an arbitration procedure for all State-owned banks, the arbitration measure cannot be seen as State aid to Banco CEISS. Consequently, neither of the two measures should be considered State aid to Banco CEISS.
- (38) In addition, the Spanish authorities argue that the FROB is acting in line with the market economy investor principle ("**MEIP**") in trying to protect an investment via CoCos of EUR 604 million with an interest remuneration of EUR 246 million by means of two measures whose maximum cost would be less than half of that. According to the Spanish authorities, the measures follow an economic rationale and minimise the costs the FROB will have to incur.
- (39) In any case, if the Commission were to conclude that the arbitration measure and the litigation measure contain State aid, the Spanish authorities argue that they would not in any event be aid to Unicaja. Only Banco CEISS is and will remain liable for the mis-selling practices and consequently the proposed measures cannot be aid to Unicaja.
- (40) The Spanish authorities also state that the regulatory capital deficit of Banco CEISS makes that bank unable to deal with the mis-selling risks so that the FROB is required to cover those risks irrespective of whether the merger goes through. If there is no takeover by Unicaja, Banco CEISS will have to be nationalised and the FROB will have to shoulder mandatory arbitration costs and cover litigation costs, as well as having to foot further recapitalisation costs for Banco CEISS. Thus the losses for the Spanish tax payer would be less if the FROB were to assume the extra cost of the arbitration and litigation measures. Since those measures are therefore required for Banco CEISS in any conceivable scenario, Unicaja cannot be considered as a recipient of aid.
- (41) In addition, the Spanish authorities claim that there is no use in coining the term "Combined Entity" to identify an aid recipient, as that term lacks substantive meaning given that there is no plan for a merger of the two entities. Instead, such a term would simply describe a set composed of two banking institutions (Unicaja and Banco CEISS).
- (42) Finally, the Spanish authorities underline that the Commission should take the same approach as it did in the May 2013 decision. It should decide that, as it was then clearly stated in recital 67 of the May 2013 Decision, the sole recipient of State aid was Banco CEISS, that the takeover operation was conducted at market terms, and therefore that aid to Unicaja could be excluded. Banco CEISS is now worth significantly less than at the time of the May 2013 Decision, even with the new litigation measure. Unicaja's offer is therefore more generous now than it appeared at the time of the May 2013 Decision. In fact, the takeover offer prospectus includes two reports from independent experts that assess the value of Unicaja's offer as representing a 46% average premium over the market value of the hybrid and subordinated instruments of Banco CEISS. Consequently, there are currently even stronger reasons to certify that the operation is conducted on market conditions and that aid to Unicaja can be excluded.

- (43) In fact, the FROB is acting in a similar manner to the way in which a private creditor would behave in executing its best strategy to minimise the eventual losses of its outstanding exposure (CoCos) as well as to minimise the risk of further costs which it would incur otherwise, since the two additional measures enable the takeover of Banco CEISS to go ahead. That operation minimizes the cost of resolution for the State and therefore Unicaja, as an acquirer, cannot be classified as a State aid recipient. By making the takeover of Banco CEISS by Unicaja possible, the new measures also maximise the selling price and minimize public support.
- (44) To underline that argumentation, the Spanish authorities have provided a two-page analysis ("**the MEIP analysis**") on what would happen if the takeover of Banco CEISS by Unicaja were not to occur. In that event, Banco CEISS would be undercapitalised by an amount of EUR [...] million and the CoCos currently owned by the FROB would be converted into ordinary shares. Banco CEISS would thus be nationalised, and the FROB would then bear additional costs for the sale of Banco CEISS, estimated in a conservative scenario at over EUR [...] billion. By contrast, the cost of the two additional measures amount to a much lower amount for the FROB. Thus the FROB has an interest in granting the two additional measures in its capacity as a private investor.

4 ASSESSMENT

4.1 Existence of State aid

4.1.1 The measures

- (45) Spain has notified two measures.
- (46) The first one is the amendment of the existing guarantee linked to the AMC asset transfer, extending it to cover potential claims of mis-selling resulting from an arbitration measure put in place by the FROB with the aim of compensating holders of hybrid and subordinated debt instruments who have accepted the takeover offer of Unicaja.
- (47) The second measure, the litigation measure, relates to litigation costs arising from legal proceedings possibly initiated by investors not accepting the offer of Unicaja. Under that measure, the total compensation from the FROB will cover up to EUR 241 million net resulting from litigation costs associated with investors who have not accepted the Unicaja offer who may decide to claim before the Spanish courts that the securities they held in Banco CEISS were originally mis-sold.
- (48) Table 4 provides an overview of the aid measures previously approved by the Commission and the two new additional measures notified by the Spanish authorities.

Table 4: Overview of the aid measures

Measure	Description	Amount (€billion)	Approved by the Commission	% RWA
A	State Guarantees on senior unsecured debt	3.193 ⁵	2009 - 2012, final approval 20.12.2012	Not applicable
B	FROB I: convertible preference shares in Caja CEISS	0.525	30.03.2010	1.82% ⁶
C	FROB I: conversion of preference shares into ordinary shares of Banco CEISS	0.525	20.12.2012	RWA impact already accounted for in Measure B
D	Recapitalisation Measure by the FROB in the form of CoCos in Banco CEISS	0.604	13.05.2013	2.6% ⁷
E	Transfer of impaired assets to the AMC	0.696	13.05.2013	3.0% ⁸
F	Second loss guarantee linked to the asset transfer to the AMC + First loss guarantee linked to arbitration costs from arbitration procedure carried out by the FROB	Maximum 0.200	Re-approved by this Decision; scope extended to also cover the cost of the Review Mechanism.	0.62% ⁹
G	Guarantee linked to litigation costs stemming from investors not having accepted the offer from Unicaja	Maximum 0.241	Approved by this Decision	0.75% ¹⁰

⁵ Currently, the outstanding State guaranteed debt amounts to EUR 1.47 billion.

⁶ RWA of Banco CEISS as of 31 December 2009.

⁷ RWA of Banco CEISS as of 31 December 2011.

⁸ RWA of Banco CEISS as of 31 December 2011.

⁹ RWA of the Combined Entity as of 31 December 2013.

¹⁰ RWA of the Combined Entity as of 31 December 2013.

4.1.2 State aid definition and elements

- (49) The Commission has to assess whether the measures constitute State aid and who the beneficiary is. Article 107(1) TFEU qualifies as State aid "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". It has to be assessed therefore, whether the two measures constitute State aid in line with that provision. For that reason, the following has to be examined: the imputability of each of the measures to the State and its financing through State resources, the presence of an advantage and the selectivity of each measure, and the measures' potential effect on competition and trade within the EU.

4.1.3 State resources

- (50) The intervening authority, the FROB, has been created by Spanish law and has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit institutions. For that purpose, it may provide public support to distressed institutions. Its actions are therefore directly attributable to the State. It should be recalled that the Commission has already clarified in the May 2013 Decision that the activities of the FROB are directly attributable to the State.
- (51) The FROB funds are contributed by the State Budget and thus financed with State resources.
- (52) The Commission finds that both the new funds required for implementing the new measure and the funds which are put at increased risk of being paid out by virtue of the extension of the existing guarantee are State resources within the meaning of Article 107(1) TFEU.

4.1.4 Advantage

- (53) The Spanish authorities claim that the measures do not constitute an advantage for Banco CEISS or the Combined Entity for two reasons: i) because the FROB is acting in line with the MEIP and ii) because the real beneficiaries of the measures are the retail holders of hybrid and subordinated securities in Banco CEISS and not Banco CEISS or the Combined Entity.
- (54) As regards the first claim, the Commission first recalls that the FROB has granted in the past a number of State aid measures to Banco CEISS¹¹. In that context, the Spanish authorities claim that the arbitration measure and the litigation measure would be justified from a market investor's point of view as they protect the FROB's existing interventions (in particular the injection of capital in the form of CoCos).
- (55) In that regard, the General Court has found¹² that it is not permissible to take into account an earlier measure not granted on market terms (such as the granting of the

¹¹ See Table 4 for a list of those measures.

¹² See Joined Cases T-268/08 and T-281/08 *Land Burgenland and Republic of Austria v Commission* [2012] ECR II-0000, confirmed by judgment of the Court of Justice in Joined Cases C-214/12 P, C-215/12 P and C-223/12 P *Land Burgenland v Commission* [2013] ECR I-0000.

CoCos in the present case) when assessing whether a new, additional, measure is in line with the MEIP. Given that the initial injection of CoCos into Banco CEISS was not made on market terms, the Commission therefore does not accept that the FROB would act as a market investor by taking account of costs arising for it as a result of that previous provision of State aid in the form of a capital injection. As such, the application of the MEIP in the present case must disregard costs for the FROB resulting from a previous grant of State aid such as the CoCos.

- (56) Still in the context of the first claim, in the MEIP analysis provided by Spain the thrust of the analysis is that while the arbitration and litigation measures will constitute a cost to the FROB, that cost is lower than the costs the FROB would have to incur in the alternative scenario of no takeover of Banco CEISS by Unicaja. In that alternative scenario the FROB would have to further recapitalise Banco CEISS, pay in any event arbitration and litigation costs, and potentially sell Banco CEISS at a loss in the future.
- (57) However, in the application of the MEIP only commercial activities undertaken by the Member State can be taken into account, to the exclusion of public functions¹³. In the present case, there is a clear public policy motive involved for the Spanish authorities to grant the two measures. When calculating the overall return on their investment, the Spanish authorities include the litigation costs the FROB would have to bear, as well as the costs of a further recapitalisation of Banco CEISS, among the costs which they ascribe to the alternative scenario of no takeover by Unicaja. For both items, however, the FROB would only have to intervene because it is a public authority in charge of bank resolution and the maintenance of financial stability. A private investor would not include those items in its calculation of the overall return of its investment as it would have neither the obligation nor the incentive to act in the same way. As a result, the application of the MEIP in the present case must also disregard prospective costs for the FROB arising out of any future measures that it would take as a result of its obligations as a public authority.
- (58) In addition to those two limitations on the application of the MEIP in the present case, where restructuring aid has already been provided to a firm in difficulty, later financial support from the public authorities can normally not be examined in isolation under the MEIP. The status of such subsequent measures as market economy transactions is inescapably tarnished by the State aid context which surrounds them and the resulting contamination. In the present case the new measures occurred soon after the Spanish State provided a series of aid measures to Banco CEISS, with goal of strengthening the bank's capital base and facilitating its sales process¹⁴.
- (59) In any event, in order for a market economic investor analysis to be applied, it should be established on the basis of objective and verifiable evidence that the measure implemented is to be ascribed to the State acting as a private investor, including based on economic valuations comparable to those which a rational market economy operator

¹³ Joined Cases C-278/92 to C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 22.

¹⁴ It is only with the greatest of difficulties that the MEIP test can be applied to an additional measure in favour of a State aid beneficiary which is in restructuring. The Court of First Instance (as it then was) acknowledged as much in Case T-11/95 *BP Chemicals v Commission* [1998] ECR II-3235 at paragraphs 170 and 179; it did not accept that a capital increase by ENI into EniChem in 1994 would meet the MEIP in light of two previous capital increases in 1992 and 1993 which were State aid. It stressed at paragraph 178 that the third transaction was taken soon after the previous two investments which were both State aid and was part of an on-going programme to restore the beneficiary's capital base.

would have carried out before making the investments in order to determine its future profitability¹⁵.

- (60) In order to show that the MEIP was respected, Spain provided the MEIP analysis to the Commission. However, the MEIP analysis is not a sufficient analysis, either in depth or content, of the kind which would be undertaken by a private investor when making an investment decision of that magnitude.
- (61) On the one hand, the thrust of the MEIP analysis is that, while the arbitration and litigation measures will constitute a cost to the FROB, the latter cost is lower than the costs the FROB would have to incur in the alternative scenario of no takeover of Banco CEISS by Unicaja. However, those alternative higher costs would arise on the assumption that the FROB would have to further recapitalise Banco CEISS, would pay in any event arbitration and litigation costs, and would potentially sell Banco CEISS at a loss in the future. As already explained, those costs would not feature in the analysis of the economic rationality of the measures that would be undertaken by a private operator.
- (62) On the other hand, a private market investor would assess whether new money it made available in the form of new measures might risk being lost as well. However, the MEIP analysis does take account of that risk. While Unicaja is a sound bank, there is no guarantee that Unicaja will in any case come to the rescue of Banco CEISS if Banco CEISS were to show persistent problems, even after the completion of the takeover. In fact, precisely because there is no full merger, Unicaja implicitly retains the option of abandoning Banco CEISS if the Banco CEISS franchise continues deteriorating. That possibility would be taken into account by a private investor but it does not feature at all in the MEIP analysis provided by the Spanish authorities.
- (63) For each of those reasons (inclusion of costs which would not be relevant for a private operator and absence of an adequate *ex ante* evaluation of the likely return to the State for the two measures), the Member State has not shown that the measures are in line with the behaviour of a private operator guided only by considerations of profit-maximisation. As a result, the Commission does not agree with Spain that the two additional measures were granted by FROB on the basis of the MEIP.
- (64) The Commission will now turn to the second claim, by which the Spanish authorities contend the measures would benefit only retail investors as well as providing an economic benefit to the FROB (and therefore the authorities themselves). The Spanish authorities argue in the further alternative that Banco CEISS would be the only aid beneficiary, and not the Combined Entity.
- (65) The Commission notes that in the absence of the two measures Banco CEISS would have to assume the burden of compensating those investors in Banco CEISS who do not accept the takeover offer of Unicaja and litigate against Banco CEISS by claiming that they have been mis-sold the original securities which have been subject to the burden-sharing which occurred in Banco CEISS. The Commission therefore does not accept that only retail investors and the FROB receive an advantage from the measures.
- (66) The arbitration and litigation measures therefore grant an advantage to Banco CEISS by relieving it of an expense which should properly be covered by its budget. It is obvious

¹⁵

Case C-124/10 P *Commission v EDF* [2012] ECR I-0000, paragraphs 82 to 84.

that Banco CEISS obtains a clear advantage when the FROB assumes the burden of compensating investors who would otherwise look to have their claims satisfied by Banco CEISS in the event that they can show they were mis-sold securities.

- (67) Moreover, that advantage will also accrue to the Combined Entity if the takeover is successful as the Combined Entity would otherwise have to shoulder those costs.
- (68) Arbitration is a mechanism by which an investor may be reimbursed if it suspects it has been a victim of mis-selling. If the arbitration measure were not put in place, many investors might have litigated before the Spanish courts. Any funds to be paid to such investors if they were successful would be a financial burden for Banco CEISS and for the Combined Entity. The litigation measure and the arbitration measure are complementary to some degree and both relieve Banco CEISS and the Combined Entity from a burden they would have otherwise to incur.
- (69) Unicaja has publicly stated that it will only proceed with the takeover of Banco CEISS if the arbitration and litigation measures are granted. Both measures are therefore a condition required by Unicaja to complete the transaction. That condition provides further evidence that both measures not only relieve Banco CEISS from costs that would ordinarily form part of its budget, but also relieves the Combined Entity of a burden. Therefore, the Commission sees the Combined Entity as well as Banco CEISS as beneficiaries of both measures.
- (70) The Spanish authorities submit that if the Commission finds that there is an advantage granted to Banco CEISS, it should take the same approach as it did in the May 2013 Decision by identifying Banco CEISS as the only aid beneficiary.
- (71) The Commission cannot accept that request. It is true that the May 2013 decision approved the existing guarantee as not involving aid to the buyer because the measure which was put in place to facilitate the sale of Banco CEISS (effectively at a negative price) was provided through a market process. It should be recalled that at that moment in time all buyers could bid for Banco CEISS. That is no longer the case in the present situation: after the bid from Unicaja was approved by the Spanish market regulator, other potential buyers are prevented from bidding for Banco CEISS until that bid expires. In consequence, Banco CEISS is exclusively tied to Unicaja for now and no other bidder can enter the takeover process. Given those changed circumstances, the Commission cannot be bound to reach the same conclusion as in the May 2013 Decision.
- (72) In consequence, both Banco CEISS and the Combined Entity will be relieved of costs that would ordinarily be a burden on their budgets due to the implementation of two measures. Given that the takeover process will go ahead if those measures are granted, both Banco CEISS and the Combined Entity are beneficiaries of the two measures.
- (73) The Spanish authorities have also claimed that there are budgetary savings for the State in granting the measures. They contrast the provision of the two measures with a situation in which the takeover would not go through and Banco CEISS would remain stand alone, or a new sales process would have to be initiated. However, even if that claim were correct, the mere fact that granting a measure is less costly from a budgetary

point of view when compared to not granting it does not signify that the funds involved in that measures cannot be aid to a beneficiary¹⁶.

- (74) For those reasons, the Commission concludes that the two measures confer an advantage and that the beneficiaries of both are Banco CEISS and the Combined Entity.

4.1.5. Selectivity

- (75) The arbitration and litigation measures will confer a selective economic advantage on Banco CEISS and the Combined Entity as they will relieve them from costs they would have otherwise to incur in contrast to other undertakings in a comparable factual and legal situation. The fact that an arbitration measure was also put in place to other Spanish banks controlled by the FROB does not eliminate the selective nature of the measures. No arbitration measure has been made available to other banks, Spanish or foreign, that are not controlled by the FROB and that have experienced similar issues with preference shares held by retail clients. Such banks are in a comparable factual and legal situation but have had to bear any costs relating to the mis-selling of preference shares out of their own resources, thereby weakening their solvency position. The measures are therefore selective. Moreover, the selectivity of the measures results from the absence of a similar advantage for undertakings outside the banking sector, given that even a measure which applies to the entirety of a sector is capable of being selective¹⁷.

4.1.6. Distortion of competition and effect on Union trade

- (76) The arbitration and litigation measures will distort competition as they will allow Banco CEISS and the Combined Entity to avoid costs that competitors in the same situation would have to shoulder directly.
- (77) The two measures are also likely to affect trade between Member States because Banco CEISS continues to compete on the Spanish retail market, the mortgage lending markets and the commercial lending markets. In all those markets, some of Banco CEISS' competitors are subsidiaries and branches of foreign banks.

4.1.7. Conclusion

- (78) On the basis of the foregoing, the Commission considers that the arbitration and litigation measures fulfil all the conditions laid down in Article 107(1) TFEU and that the measures constitute State aid to the benefit of Banco CEISS and the Combined Entity.

¹⁶ As the General Court pointed in Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale v Commission* [2003] ECR II-435, paragraph 315, the test for the presence of an advantage is not whether the transaction being undertaken is reasonable for the Member State but whether it occurs at normal market conditions.

¹⁷ See Case T-379/09 *Italy v Commission* [2012] ECR I-0000, paragraph 47.

4.1.8 Amount of aid

- (79) The arbitration measure constitutes State aid for up to a maximum of EUR 200 million. That amount was already considered in full for the purposes of the calculation of aid in the May 2013 decision, and does not need to be counted again in the present decision.
- (80) The litigation measure constitutes State aid for up to a maximum of EUR 241 million, equivalent to 0.75% of the RWA of the Combined Entity. That maximum exposure is the amount of aid that needs to be considered in this decision.

4.2 Compatibility of the aid with the internal market

4.2.1. Legal basis for the compatibility assessment

- (81) 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*”.
- (82) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. This has been successively detailed and developed in the six Crisis Communications¹⁸.
- (83) Despite signs of an economic recovery, the Commission considers that the conditions for the application of State aid measures in line with Article 107(3)(b) are fulfilled. To that effect, the Commission adopted on 10 July 2013 a new Communication that prolongs the application of the temporary State aid rules to support measures in favour of banks in the context of the financial crisis, which for instance introduces remuneration restrictions and increased burden-sharing for those aid measures which have been notified after 1 August 2013 (“**the 2013 Banking Communication**”)¹⁹.
- (84) Furthermore, the Commission notes that the Spanish banking sector was recently subject to an international support programme, originating from a Memorandum of Understanding signed in July 2012 with a view to strengthening the financial system in Spain. While that programme ended in January 2014 and although there has been an improvement in the state of parts of the Spanish financial sector, that sector remains fragile.

¹⁸ 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 (“2008 Banking Communication”), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (“Recapitalisation Communication”), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the Treatment of Impaired Assets in the Community Banking sector OJ C 72, 26.03.2009, p. 1; Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (“Restructuring Communication”), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (“2010 Prolongation Communication”), OJ C 329, 7.12.2010, p. 7; and Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (“2011 Prolongation Communication”), OJ C 356, 6.12.2011, p. 7.

¹⁹ Communication from the Commission from 10 July 2013, on the Application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

- (85) The Commission considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled.

4.2.2. Compatibility assessment

4.2.2.1 Compatibility with the Restructuring and the 2013 Banking Communication

- (86) According to the Restructuring Communication, for ensuring compatibility with the internal market under Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis must: (i) lead to a restoration of the viability of the bank, or to the orderly winding-up thereof; (ii) ensure that the aid is limited to the minimum necessary and include sufficient own contribution by the beneficiary (burden-sharing); and (iii) contain sufficient measures limiting the distortion of competition.

a. Restoration of viability

- (87) As explained in the Restructuring Communication, the Member State must provide a comprehensive restructuring plan demonstrating how the long-term viability of the entity will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.
- (88) The perimeters of the New Restructuring Plan of Banco CEISS as notified by the Spanish authorities to the Commission have not changed fundamentally when compared to the Restructuring Plan examined under the May 2013 Decision. What has changed is that there is additional downsizing of branches (a total reduction of [30 – 40]% in 2012- [...]) and reduction of staff (total decrease of [30 – 40]% in 2012- [...]) which will significantly improve the cost structure of Banco CEISS. Furthermore, the plan contains also a smaller balance sheet ([20 – 30]% reduction in 2012- [...]) and a lower loan portfolio ([10 – 20]% decrease in 2012- [...]) as well as a loan-to-deposit ratio (below [100 – 150]% from end- [...]) which improves the liquidity profile of Banco CEISS.
- (89) As in the Restructuring Plan underlying the May 2013 Decision, the New Restructuring Plan is based on the premise that Banco CEISS will be acquired by Unicaja. Unicaja is a solvent bank with an adequate capital base and access to funding at reasonable terms. Thus, the acquisition by Unicaja provides additional comfort in restoring the viability of Banco CEISS in that Banco CEISS would be able to rely on the expertise and best practices of Unicaja.
- (90) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. In that regard, the New Restructuring Plan adequately addresses the weaknesses of Banco CEISS.
- (91) In that respect, the May 2013 Decision already established that the restructuring plan submitted at the time remedied those weaknesses. The New Restructuring Plan contains the same elements. In that respect it can be recalled that the weaknesses are remedied, first, by the segregation of the assets and loans related to the RED sector and their transfer to the AMC. Those steps are an adequate response to the high concentration of

Banco CEISS' balance sheet on that sector and the level of non-performing assets, as evidenced by the stress test exercise performed in the context of the MoU. That transfer will allow Banco CEISS to refocus on its core activities, in particular the new production of loans to its clients in the Core Regions, such as residential mortgages and SME loans.

- (92) Second, Banco CEISS had a cost/income ratio of [70 – 80]% in 2011, one of the highest among its peers. Banco CEISS plans to reduce that ratio via a significant reduction of its branch network and headcount that will improve its cost structure, as described in recital (88).
- (93) Third, the New Restructuring Plan foresees a fundamental change to Banco CEISS's business profile as it intends to concentrate on its core competences and to wind down non-core activities and more risky activities. The Commission notes that the New Restructuring Plan foresees that Banco CEISS will virtually abandon lending to RED, large corporates as well as capital market activities. It has also transferred the RED loans and real estate foreclosed assets to the AMC, thus removing an important factor responsible for its problems stemming from the past. Those steps will allow Banco CEISS to focus on its strong client base amongst retail customers and SMEs. At the end of the Restructuring Period, Banco CEISS will be able to cover all its costs and provide an appropriate return on equity, taking into account an adequate cost of risk in view of its new risk profile.
- (94) Finally, the New Restructuring Plan provides information on the future funding profile of Banco CEISS. The New Restructuring Plan factors in conservative assumptions in terms of the evolution of deposits and of reliance on wholesale and central bank funding. At the end of the Restructuring Period, Banco CEISS will have an improved loan-to-deposit ratio and reliance on central bank funding will have been reduced [...]. Here too the takeover by Unicaja will benefit Banco CEISS.
- (95) The Restructuring Communication specifies further in point 14 that long-term viability requires that any State aid received is either redeemed over time, as anticipated at the time the aid is granted, or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated.
- (96) Although Banco CEISS is primarily responsible for the repayment of the CoCos, Banco CEISS will be backed by Unicaja. Therefore, if Banco CEISS cannot repay the CoCos within four years, Unicaja will step in. The solvency and financial position of both Banco CEISS and Unicaja (the Combined Entity) will thus be committed to the remuneration and repayment of those instruments in accordance with the terms and conditions established in the Modified Term Sheet.
- (97) As such, it can be established that the New Restructuring Plan of Banco CEISS and the related commitments provide sufficient evidence to conclude that the viability of Banco CEISS will be restored, in particular in the context of its takeover by Unicaja.
- (98) In addition, the takeover of Banco CEISS will also improve the viability of the Combined Entity due to the additional presence in the regions where Banco CEISS specialises and the expertise gained there. Moreover, the complementary nature of both entities in their respective regions of origin with virtually no overlap reinforces the position of the Combined Entity in the Spanish market.

(99) Finally, in terms of funding and liquidity, the Combined Entity will have a limited dependence on wholesale liquidity, a loan-to-deposit ratio below [100 - 150]% and a significant reserve of liquid assets.

b. Own contribution and burden-sharing

(100) Section 2.3.3 explained the degree of burden-sharing experienced by Banco CEISS. In essence, all existing shareholders prior to the SLE lost their equity stakes in Banco CEISS with no claim left over against the new Banco CEISS. Subsequently, through the SLE, capital generation at Banco CEISS was maximised. Furthermore, in contrast to other exercises conducted for other State-owned banks in Spain, no liquidity mechanism was provided by the Spanish Deposit Guarantee Fund, pursuant to which investors willing to sell the securities obtained through the SLE could use such a mechanism. There were therefore additional losses for the previous holders of the securities in Banco CEISS. In addition, holders of hybrid instruments have entirely assumed the negative economic value of Banco CEISS, as the FROB did not become a shareholder in Banco CEISS. In consequence, the amount of burden-sharing experienced by the capital holders of Banco CEISS can be considered as high.

(101) It is therefore possible to conclude that the burden-sharing exercise completed in Banco CEISS in 2012 was fully compliant with the burden-sharing requirements which have subsequently been laid down under the 2013 Banking Communication.

(102) In that context, point 45 of the 2013 Banking Communication clarifies that an exception to the requirements to burden-sharing can be made where implementing such measures would lead to disproportionate results. That exception can apply where the aid amount to be received is small in comparison to the bank's RWA and the capital shortfall has been reduced significantly in particular through capital raising measures.

(103) In the present case, the aid amount (0.75% of RWA) is relatively small for the Combined Entity in terms of RWA. Additionally, Banco CEISS undertook a very thorough liability management exercise (described in detail in section 2.3.3), designed to be 100% capital generating. Junior creditors of Banco CEISS have therefore already fully contributed to capital raising measures. Conversely, no capital needs have been identified for Unicaja, the other entity forming the Combined Entity, which on a solo basis is a well-capitalised bank that has not received any State aid to date. Finally, were the takeover of Banco CEISS by Unicaja not to take place, any alternative solution would probably be significantly more expensive for the Spanish authorities.

(104) Taking all those factors into considerations, the Commission considers that the burden-sharing that took place in the Combined Entity is adequate and sufficient and is in line with point 45 of the 2013 Banking Communication.

(105) Furthermore, strict executive and overall remuneration policies also help minimise the need to have recourse to State support and therefore the commitment to align those remuneration policies in Banco CEISS with point 38 of the 2013 Banking Communication is an important positive element.

(106) Given that the Combined Entity is the beneficiary of aid along with Banco CEISS, the Commission has to assess compatibility at the level of the Combined Entity as a whole. As regards restrictions on remuneration, the Commission takes note of the remuneration caps on Banco CEISS, the entity that will form part of the Combined Entity and was

granted State aid in the first place, and considers that those remuneration caps provide sufficient incentives for timely execution of the restructuring plan. In that respect, the litigation measure is related to the decision by Unicaja to acquire Banco CEISS and not to moral hazard issues (in relation to past missed opportunities to repair balance sheets and fill foreseeable capital gaps) which could have called for further remuneration restrictions beyond Banco CEISS. Therefore, the Commission considers that at the level of the Combined Entity, the conditions of points 37 and 38 of the Banking Communication are complied with.

- (107) As regards compliance with the acquisition ban with points 22 and 23 of the Restructuring Communication at the level of the Combined Entity as a whole, the same reasoning holds. In particular, the acquisition ban for Banco CEISS ensures timely execution of the restructuring plan and addresses sufficiently moral hazard issues. The Commission therefore considers that at the level of the Combined Entity, the conditions of points 22 and 23 of the Restructuring Communication are complied with.
- (108) The Commission notes also the commitment by Banco CEISS not to pay any dividends during the restructuring period and that all its final resources will be devoted to the accelerated repayment of the capital injected by the FROB. To that end, the Spanish authorities provided a new commitment to bring forward the calendar for the full repayment of the securities issued to the FROB one year.
- (109) Finally, the Commission notes positively that Banco CEISS commits to divest its entire portfolio of listed subsidiaries, in addition to the sale of its unlisted subsidiaries which has been already part of the Restructuring Plan. Those sales contribute to ensuring compliance with point 24 of the Restructuring Communication, which requires that banks should first use their own resources to finance restructuring, by, for instance, the sale of assets.
- (110) The new restructuring aid should be limited to covering those costs which are necessary for the restoration of viability. Acquisitions for instance can in principle not be financed through State aid. Against that background, the Commission takes positive note of the acquisition ban of Banco CEISS described in recital (20).
- (111) In conclusion, on the basis of the above elements the Commission concludes that the Spanish authorities propose sufficient measures to limit the aid to the strict minimum and provide for a significant own contribution to the restructuring costs.

c. Limiting distortion of competition

- (112) Finally, section 4 of the Restructuring Communication requires that the New Restructuring Plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where Banco CEISS and the Combined Entity operate post-restructuring.
- (113) The Commission accepts that in the current economic juncture State aid might be required, but at the same time, the Commission insists that State aid measures should not result in long-term damage to the level playing field in a market with fewer and bigger players. Therefore, State aid should not be used to the detriment of competitors which coped with the challenging economic environment without support from the State.

- (114) The nature and form of such measures depend on – *inter alia* - the amount of the aid. Furthermore, the Commission must also take into account Banco CEISS' own contribution and burden-sharing over the Restructuring Period as part of that analysis.
- (115) The Commission had already approved a number of aid measures to the benefit of Banco CEISS. Additional aid is now to be granted to Banco CEISS and to the Combined Entity. The newly granted aid amounts to 0.75% of the RWA of the Combined Entity or EUR 241 million.
- (116) Given the experience of the ongoing banking crisis, that aid amount can be considered to be relatively small, when compared to many other cases. However, it has to be taken into account that Banco CEISS has repeatedly received aid.
- (117) The Commission notes first the additional restructuring undertaken by Banco CEISS and the Combined Entity in the Core regions, which goes beyond what had been approved in the May 2013 restructuring plan in relation to the aid measures notified at that time. Those additional measures are: a) an additional [10 – 20]% reduction in the balance sheet; b) an additional [0 – 10]% reduction in loan book size; c) an additional [...] bp reduction in the loan-to-deposit ratio to [100 – 150]%; d) an additional closure of [...] more branches in the Core Region and e) an additional [0 – 5]% reduction in FTEs. Moreover, Banco CEISS has also committed to divest the portfolio of listed subsidiaries in addition to the sale of the unlisted subsidiaries by [...].
- (118) Second, banks must not invoke State support as a competitive advantage and therefore the Commission takes positive notice of the State aid advertisement ban.
- (119) Third, the acquisition ban of Banco CEISS also helps to avoid undue distortions of competition as it avoids that companies which have not received State aid when trying to buy acquisition targets are outbid by companies which strengthened their capital position via State aid.
- (120) Furthermore, the sale of Banco CEISS to another market player which has not been a State aid beneficiary constitutes a far-reaching restructuring and therefore a mitigation of potential distortions of competition²⁰. Through the proposed acquisition, potentially harmed competitors are given the possibility to take over the business of an aided competitor, which resembles the "counterfactual" situation that should have occurred in the absence of State aid, as a company in difficulty will normally often seek a potential buyer or, failing to do so, would be liquidated. As such, the sales/resolution process of Banco CEISS contributes significantly to limiting the distortions of competition resulting from the aid.
- (121) Finally, the degree of burden-sharing is an important criterion when assessing the measures required for addressing competition distortions in line with point 31 of the Restructuring Communication. In that respect, the Commission recalls the extensive burden-sharing measures to which Banco CEISS's capital holders had been subject to as explained in recital (100).

²⁰

Cf. Case C 10/2008, IKB Commission decision of 21 October 2008, OJ L 278, 23.10.2009, p. 32, recital 113; Cases NN 42/2008, NN 46/2008 and NN/53/A/2008, Fortis Banque & Fortis Banque Luxembourg, Commission decision of 3 December 2008, point 95; Case N 344/2009 and N 380/2009 Kaupthing Luxembourg Decision of 9 July 2009, point 79; and Case NN 19/2009 Dunfermline of 25 January 2010, points 126 and 130.

(122) The Commission concludes therefore that there are sufficient measures in place for ensuring that the distortive effects to competition are minimised.

4.3 Conclusion on the existence of aid and compatibility

(123) The Commission concludes that the notified measures, namely, the arbitration measure and the litigation measure, constitute State aid in favour of Banco CEISS and the Combined Entity pursuant to Article 107(1) TFEU.

(124) The Commission finds that the aid in favour of Banco CEISS and the Combined Entity is compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU, in light of the commitments of the Modified Term Sheet annexed to this Decision.

5 MONITORING

(125) Pursuant to section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that restructuring plans are being implemented properly.

(126) Accordingly, the New Restructuring Plan will need to be properly implemented throughout its duration. To ensure proper implementation, the Spanish authorities will ensure compliance with the commitments listed in the Modified Term Sheet annexed to this Decision.

(127) Moreover, the correct implementation of the New Restructuring Plan and the full and correct implementation of all commitments contained in the Modified Term Sheet will be continuously monitored by an independent, sufficiently qualified Monitoring Trustee.

6 CONCLUSION

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The Commission notes that Spain exceptionally accepts that the adoption of the Decision be in the English language

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
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 BY THE EUROPEAN COMMISSION OF THE RESTRUCTURING PLAN OF BANCO CEISS IN RELATION TO UNICAJA'S OFFER (CASE SA 36249(2014/N))

1. BACKGROUND

- 1.1 This document (“**the Term Sheet**”) sets out the terms (“**the Commitments**”) for the recapitalisation and restructuring of Banco CEISS (“**BANCO CEISS**” or “**the Bank**”), which the Kingdom of Spain and BANCO CEISS have committed to implement. It should be read in conjunction with the Termsheet attached to the Commission Decision from 13 May 2013 on the Restructuring of Banco CEISS through integration with Unicaja on case SA36249 (2013/N).²¹
- 1.2 Whenever appropriate, in response to a request from the Kingdom of Spain showing good cause, the Commission will make changes to the Term Sheet when justified on the merits to (i) grant an extension of the time period of the Commitments or (ii) waive, modify or substitute one or more of the aspects of the Commitments hereunder.

2. DEFINITIONS

- 2.1 “**SAREB**” or “**AMC**” (or Asset Management Company) is an independent commercial entity established by the Spanish Law 9/2012. The Spanish Government decision to set up the AMC was introduced on 31 August 2012, through the Royal Decree 24/2012 with a view to addressing in a comprehensive way the problem of the real estate exposure in the Spanish banking system. Assets were transferred from banks to the AMC to strengthen the banks' balance sheets and ensure that uncertainty over their real estate exposure is reduced.
- 2.2 “**Banco CEISS**” means Banco de Caja España de Inversiones, Salamanca y Soria, S.A.
- 2.3 “**Unicaja**” includes Unicaja – Monte de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga, Antequera y Jaén, a Spanish savings bank, and Unicaja Banco, a Spanish commercial bank to which all banking business, insurance, pension and asset management activities of Unicaja were contributed and as a consequence operates as its wholly-owned subsidiary.
- 2.4 “**The Combined Entity**” describes the group formed by Unicaja and Banco CEISS.
- 2.5 “**The Offer**” describes the offer made by Unicaja in relation to Banco CEISS according to the terms of the framework approved by the Boards of Unicaja Banco and Banco CEISS, and subjected to compliance with terms and conditions (see section 7).
- 2.6 “**Core Regions**” means the geographic regions where Banco CEISS developed its core banking activities and in which Banco CEISS will be primarily focused following this

²¹ Consequently, if there is any mentioning of "this termsheet" or "the Commitments" this should be read as also encompassing the commitments attached in the 13 May 2013 decision if still relevant. If provisions are conflicting, the termsheet attached to this 2014 decision prevails.

Restructuring Plan, which includes the Spanish region of Castilla y León and the province of Cáceres.

- 2.7** The "**Combined Entity in the Core Regions**" refers to the Combined Entity's activities in the Core Regions of Castilla y León and the province of Cáceres.
- 2.8** "**Compensation Mechanism**" is a mechanism designed to ensure that the FROB receives the economic value set out in the Independent Valuation ("the Economic Value of the Securities") of the Securities of CEISS it may acquire pursuant to section 8.3 hereunder.
- 2.9** "**Decision**" means the decision of 2014 of the European Commission on the Restructuring of Banco CEISS through the acquisition by Unicaja to which this Term Sheet forms integral part.
- 2.10** "**FTE**" means full time equivalent employee.
- 2.11** "**Loan-to-deposit ratio**" means a ratio calculated with the numerator equal to the net credit loan portfolio (chapter 5.2 of the Bank of Spain's public format balance sheet) and the denominator equal to the customer deposits and debt instruments sold to retail customers net of repo transactions and wholesale funding.
- 2.12** "**Monitoring Trustee**" is the person who will verify the adherence to the Commitments listed in the Term Sheet, as set out in Appendix V hereto.
- 2.13** "**RWA**" means risk weighted assets that shall be calculated on a consolidated basis in accordance with Circular 3/2008²² and with the IRB models approved by Bank of Spain as of 30 June 2012.
- 2.14** "**Remedial actions**" shall mean action(s) that will allow Banco CEISS to meet the target(s) identified in its Restructuring Plan. The remedial actions need to be submitted within one month by the Combined Entity to the Monitoring Trustee. The Monitoring Trustee will analyse the proposed remedial actions and will report to the Commission on their adequacy to meet the targets in the Restructuring Plan.
- 2.15** "**Restructuring Period**" is the time-period specified in clause 3.3 below. All Commitments in the Term Sheet apply throughout the Restructuring Period unless otherwise specified.
- 2.16** "**Restructuring Plan**" means the plan submitted to the European Commission in relation to the recapitalisation and restructuring of Banco CEISS, via the Kingdom of Spain, on February 2014.

²²

Circular 3/2008, de 22 de mayo, del Banco de España, a entidades de crédito, sobre determinación y control de los recursos propios mínimos.

- 2.17 "Review Mechanism"** means the mechanism approved by the FROB on the 26th November 2013 by which an independent expert shall review and determine the compensation to be paid, as the case may be, to the holders of hybrid instruments and subordinated obligations issued by Banco CEISS who have accepted the Unicaja Offer and therefore that have renounced to any eventual right to claim against Banco CEISS for the eventual mis-selling of those instruments.
- 2.18 "Service Locations"** means branches which carry out only transactions, necessary to manage their existing assets and liabilities but that will not engage in new operations nor generating new clients for the Combined Entity.
- 2.19 "Securities"** means the securities (shares or bonds) held in Banco CEISS by investors as result of FROB's SLE.
- 2.20 "Universal Succession"**: in the event there would be a merger of Unicaja Banco and Banco CEISS, the merged Entity would take over the rights and obligations of both entities.

3. GENERAL

- 3.1** Spain is to ensure that the Restructuring Plan of Banco CEISS submitted on February 2014, is correctly and fully implemented.
- 3.2** Spain is to ensure that the Commitments listed below are fully observed during the Restructuring Period.
- 3.3** The Restructuring Period will end on 24 April 2018. The Commitments apply during the Restructuring Period, unless otherwise provided.
- 3.4** The restructuring conditions, as established in section 5 shall apply to Banco CEISS or to the business condition of the Combined Entity in the Core Regions and not to Unicaja Banco or Unicaja.

4. ADJUSTMENTS TO THE CURRENT PERIMETER OF BANCO CEISS

The Restructuring Plan includes the transfer and/or contribution to SAREB (the AMC) of Banco CEISS real estate exposure at the cut-off date of 31 December 2012, falling within the following parameters:

- a) all the loans to developers exceeding a net book value of EUR 250000;
- b) the foreclosed real estate assets exceeding a net book value of EUR 100000 and
- c) the equity interests in controlled real estate companies (jointly, the "Real Estate Business").

This transfer of assets was carried out according to the contract formalized on 25th February 2013.

5. RESTRUCTURING OF THE COMBINED ENTITY IN THE CORE REGIONS

5.1 The Restructuring Plan for Banco CEISS consists in particular on the transfer of the majority of the real estate assets and exposures to SAREB (the AMC), the acquisition of Banco CEISS by Unicaja, as well as the restructuring of the continuing business of Banco CEISS according to what it is set below.

5.2 Loan book size

5.2.1 By 31 December [...], the size of the loan book of the Combined Entity in the Core Regions will not be higher than EUR [10 – 20] billion.

5.2.2 By 31 December [...], the size of the loan book of the Combined Entity in the Core Regions will not be higher than EUR [10 – 20] billion.

If the above loan book reduction targets are not met, the Combined Entity will not engage in new production in terms of loans to clients in the Core Regions until the targets defined above are not reached.

5.3 Balance sheet size

5.3.1 By 31 December [...], the balance sheet size of the Combined Entity in the Core Regions will not be higher than EUR [20 – 30] billion.

5.3.2 By 31 December [...], the balance sheet size of the Combined Entity in the Core Regions will not be higher than EUR [20 – 30] billion.

5.4 Loan-to-Deposit ratio

The Combined Entity in the Core Regions commits to achieve a Loan-to-Deposit ratio of [100 – 150]% in [...] and also in [...].

If the above targets regarding balance sheet size and Loan-to-Deposit ratio, in the Core Regions, are not met, the Combined Entity shall present remedial actions within a month from the request by the Monitoring Trustee to do so. The Monitoring Trustee will analyse the Remedial Actions proposed and will report to the Commission on their adequacy to meet the targets in the Restructuring Plan.

5.5 Reduction of Branches and FTEs

Spain and Banco CEISS commit that Banco CEISS will reduce the current structure from [800 – 900] to [500 – 600] branches and Service Locations before the end of [...] and to [500 – 600] before the end of [...]. They also commit to a reduction from [4.000 – 5.000] to [3.000 – 4.000] employees (FTE) before the end of [...] and to [3.000 – 4.000] FTE before the end of [...]. Accordingly, Banco CEISS presence in the Core Regions and Madrid will be limited to [500 – 600] commercial branches.

The calendar for the execution of these measures:

	June 2012	Dec.[...]	Dec. [...]	Dec. [...]	End of the Restructuring period
Branches	[800 – 900]	[600 – 700]	[500 – 600]	[500 – 600]	[500 – 600]
Branch reduction		-[100-200]	-[100-200]	-[0-100]	
FTEs	[4.000 – 5.000]	[3.000 – 4.000]	[3.000 – 4.000]	[3.000 – 4.000]	[3.000 – 4.000]
FTEs Reduction		-[700 – 800]	-[700 – 800]	-[100 – 200]	

5.5.1 Within one month after the appointment of the Monitoring Trustee, Banco CEISS shall identify those branches that it will close and inform the Monitoring Trustee accordingly.

5.6 Subsidiaries Portfolio Divestment

Banco CEISS commits to sell the portfolio of listed and unlisted companies set out in Appendix I and II by [...]. In particular, Banco CEISS will sell the portfolio under the following divestment calendar: it will at least divest in accumulative terms [0 – 40]% of the book value of subsidiaries and equity holdings in [...], [40 – 70]% in [...] and [70 – 100]% in [...].

5.7 Activities of the Combined Entity in the Core Regions

Banco CEISS shall operate as a commercial retail bank primarily focused on the regions in which it already has a presence. Consequently, Banco CEISS shall not engage in any new business during the Restructuring Period in the investment and corporate banking activities, including, among others, specialised lending related to residential real estate, commercial real estate and commodities, M&A advisory, equity underwriting, equity and debt trading, speculative derivatives, volatility book or positions in currencies (other than client and Banco CEISS' balance hedges).

5.8 Principles which apply to the branches to be closed

5.8.1 Limitation on new lending

- a) Contractually committed but not yet paid-out amounts to be limited to the strict minimum.
- b) No additional financing to existing customers which is not contractually committed except when it is strictly necessary to preserve the value of the loan collateral, or otherwise related to minimising capital losses and/or enhancing the expected recovery value of a loan.
- c) No additional financing to new customers which is not contractually committed except that if the balance of the loan exceeds the value of the property, the branch may facilitate the loan's redemption through selling off the property by way of providing additional finance to a vendor enabling the repayment of the outstanding balance, provided that the branch complies with "management of existing assets" paragraph below.

- 5.8.2 Management of existing assets: The branches will manage existing assets in a way that maximises NPV of the assets. Specifically, if a client cannot respect the terms of his loan, the branch will only restructure the lending terms (deferral or partial waiver of repayments, conversion of (part of) the claim in capital, etc.) if such a restructuring would lead to enhancing the present value of the loan. As regards mortgage loans this principle also applies. In particular, the branch will be allowed to restructure its mortgage assets via the following variations to the terms of existing mortgages: (a) a change of deal (e.g. by offering a new fixed rate); (b) transferring existing mortgages to new properties; (c) transferring equity (e.g. adding a borrower to the mortgage or removing one); or (d) as otherwise obliged by any law or regulations.
- 5.8.3 Limitation on new deposits: branches to be closed will not collect deposits from new customers. No limitation will apply until 3 months before the closing of each branch. Deposits of these branches to be closed in [...] will be capped to the level of EUR [0 – 5] billion.
- 5.8.4 Limitation on transactional products: Branches to be closed may provide transactional products (i.e. current accounts, transactions, cards, payments, etc.) to any existing customer (i.e. current accounts, transactions, cards, payments, etc.). For new depositors, basic transactional products (current and deposit accounts, cards, payments) can be provided until 3 months before the closing of each branch.

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

Key principles: By performing a mandatory subordinated liability exercise Banco CEISS committed to generate EUR 1.25 billion (net of tax effect) of common equity Tier-1 capital through the issuance of capital or capital equivalent instruments and/or the retention of the profits generated as consequence of the subordinated liability exercises according to the FROB's resolutions on 16th May 2013 and 15th July 2013.

7. UNICAJA'S EXCHANGE OFFER.

- 7.1** After the mandatory SLE, Unicaja Banco or Unicaja submitted a public exchange offer in favour of the current holders of Securities (shares and bonds) of Banco CEISS after the mandatory SLE in order to acquire up to 100% of these instruments of Banco CEISS, under the following terms and conditions, once the required authorizations, particularly, that of the CNMV, were received:
- i. Consideration:
- a) For the holders of shares of Banco CEISS shares of Unicaja Banco. Such holders account for approximately 30% of the total nominal value of the Securities of Banco CEISS;

- b) And for the retail holders of bonds of Banco CEISS, a mix of two types of instruments, computable as CT1, issued by Unicaja Banco: (i) CoCos (contingent convertible instruments) and (ii) necessarily convertible instruments. The overall value of all the instruments offered (in the event of the total conversion into shares upon the total acceptance of the offer) shall be set at the equivalent value in Unicaja Banco share capital of between 20% and 30% (according to the Joint Business Plan, the most probable scenario would amount to 25%). In the event of partial conversion, these percentages would be adjusted proportionally. This is without prejudice to the fact that the corresponding requirements should be met concerning the issue of an independent expert report together with any requirements of a mercantile or regulatory (CNMV) nature which may be requisite as a result of the public exchange offer, although in order to complete the transaction, in no event may the total value of the shares exchanged represent a percentage higher than that indicated at inception and in the future.
- ii. Conditions: acceptance of the offer enabling the Unicaja Group to obtain (i) a minimum of 75% of the share capital of Banco CEISS and (ii) a minimum of a 58% of the sum of the share capital of Banco CEISS and the overall value of the Securities (preference shares and subordinated debt) of Banco CEISS, resulting from the SLE.
- iii. The public exchange offer in favour of current holders of Securities of Banco CEISS (shares and bonds) has been made to each holder for the total of their securities in Banco CEISS. Therefore, the Offer is an acquisition offer on Banco CEISS, instead of an integration process with it.
- iv. Guarantee that as a result of the Offer in no event shall the FROB be a shareholder of Unicaja Banco.
- v. One of the conditions of the public exchange offer is that those that accept it shall waive any type of claim or the commencement of any proceedings, in or out of court, in the future against CEISS and/or Banco CEISS and/or against Unicaja Banco and/or Unicaja:
- a) As a result of the exchange offered by the latter,
 - b) As a result of the processing of actions relating to Subordinated Liability Exercises (SLE) carried out by FROB prior to the taking of control of Banco CEISS by Unicaja Banco or Unicaja,
 - c) And as a result of the potentially inadequate marketing/sale of the hybrid equity and debt instruments by Banco CEISS and/or CEISS.
- vi. The Offer is subject to the obtainment of any administrative authorisations and clearance that may be required on a national and international level, as appropriate (Ministry of Finance, Bank of Spain, National Anti-Trust Commission, National Securities Market Commission, Directorate General for Taxation, external auditors, among others, and the approval of the entities' governing bodies). Prior to the implementation of the Offer, the Restructuring Plan of Banco CEISS (rationalization of activities and functional restructuring of branch office networks and employees) will have a solid binding agreement and have to be approved by all competent parties (inter alia, Governing Bodies of Banco CEISS and if necessary Junta de Castilla y León and Ministerio de Empleo y Seguridad Social).

7.2 The amounts relating to the SLE of those hybrid holders that accept the Offer would be closed to any arbitration process (apart from the Review Mechanism) or any other procedure as set out in Section 7.1 v) above.

8. RELATED MECHANISMS.

8.1 If, as a consequence of errors in the categorization, in the perimeter or in the valuation of the assets transferred to SAREB, their transfer price was adjusted according to the rules included in clauses 7.6 to 7.10 of the agreement of transfer of assets signed on 25 February 2013, between SAREB of the one part and CEISS and its real estate subsidiaries of the other part, the FROB will compensate CEISS for the negative effect which could arise from the aforementioned adjustments in excess of EUR40 million and with a maximum amount of compensation of EUR 200 million.

In addition the abovementioned EUR 200 million guarantee shall also be used to cover the cost of the Review Mechanism, as well as any possible litigation cost arising from possible legal proceedings initiated by investors accepting the offer of Unicaja. In this case there will be no excess amount to be covered by Banco CEISS.

8.2 Provided the 75% threshold for the sum of the share capital of Banco CEISS and the overall value of the “Securities”, foreseen in the Term Sheet approved by the Commission in its decision of May 2013, is not reached, the distribution of litigation or arbitration costs arising from possible legal proceedings initiated by investors, not accepting the offer of Unicaja shall be distributed, as follows:

- 71% for the FROB. The total compensation from the FROB in this regard, will cover up to a maximum of EUR 241 million net of the value resulting from the “Compensation Mechanism” defined below; and
- 29% for CEISS.

8.3 The FROB shall receive, in consideration for assuming a proportion of the litigation costs as described above, a corresponding proportion of the Securities. The value of the Securities for the purposes of the Compensation Mechanism will be set in accordance with the independent assessment carried out by Oliver Wyman on the 1st August 2013, which concluded that 100% of Banco CEISS had an equity value of EUR 334 million.

The repurchase by Banco CEISS of the Securities held by the FROB will be executed against a payment in cash. The FROB will have the right to sell and therefore the Banco CEISS the obligation to buy at the earliest of the following circumstances:

- (i) When the payments made by FROB under the FROB Guarantee exceed 241 million Euros net of compensation mechanism received in cash, in the amount required so as to that limit is not exceeded
- (ii) In any case, from 31st December 2017.

Banco CEISS shall have in any moment the right to buy in cash, and the FROB the obligation to sell, the Securities held by the FROB at the corresponding value according

to the first paragraph of this point 8.3. Also Banco CEISS shall have the right to transmit, to any other party, its mentioned right to buy in cash the Securities held by the FROB.

9. PROVISIONS IN THE EVENT THAT THE OFFER IS NOT ACCEPTED

- 9.1** This section has been intentionally left blank because the measures were already implemented.
- 9.2** CoCos injected as FROB III (described in section 10) would be converted into shares at a price that enables the dilution of all the holders of preferential shares, perpetual subordinated and dated subordinated (hybrids) down to 50% of the stake in Banco CEISS.
- 9.3** The trigger of conversion of the necessarily convertible debt mentioned in sections 6 will be activated and those securities would be immediately converted into shares. The holders of securities subject to burden sharing will receive an equity stake in Banco CEISS in the form of new ordinary shares according to sections 6 and 9.2.above of up to 50%.
- 9.4** Should Unicaja's Offer be successful, the necessarily convertible debt of Banco CEISS of those bond holders that do not accept the Offer, could remain as necessarily convertible debt, unless, according to the regulatory framework of Basel III or another in force in the future, in any moment those instruments are not considered as Common Equity Tier 1. In that case those necessarily convertible debt will be converted into shares, according to the conditions stated in FROB's resolutions above mentioned.

10. PUBLIC CAPITAL INJECTION

- 10.1** On 30 April 2013, Banco CEISS received a capital injection through the issuance of contingent convertible securities ("the CoCos"), in the amount of EUR 604 million solely subscribed by the FROB in accordance with the term sheet attached hereto as Appendix IV.
- 10.2** Banco CEISS, in the first instance, and the Combined Entity, ultimately, to the extent that Banco CEISS is not capable of doing so, shall aim at repaying the CoCos injected by the FROB in full within a maximum term of 4 years from the date of their issuance. Furthermore, CoCos will be repurchased according to the following way:
- a) For the fiscal year [...] and [...]: [...] % of the excess regulatory capital, at consolidated level, above the applicable minimum capital requirements in 2016 under European (8,625%, including Basel III / CRD IV [...]) and Spanish law (CBE 3/2008 and CBE 7/2012), plus a capital buffer of [...] basis points.
 - b) For the fiscal year [...]: [...] % of the excess regulatory capital, at consolidated level, above the applicable minimum capital requirements in 2019 under European (10,5%, including Basel III / CRD IV [...]) and Spanish law (CBE 3/2008 and CBE 7/2012).
 - c) For the fiscal year [...]: [...] % of the excess regulatory capital, at consolidated level, above the applicable minimum capital requirements in 2019 under European (10,5%, including Basel III / CRD IV [...]) and Spanish law (CBE 3/2008 and CBE 7/2012), plus a capital buffer of [...] basis points.

- 10.3** With regards to section 10.2, the repurchase of the CoCos will occur during the fiscal year following the fiscal year used as a reference for the calculation of the excess regulatory capital. This calculation will be carried out once the financial statements of the fiscal year used as a reference are closed, and will then be undertaken without delay.
- 10.4** Without prejudice to the competences of the Bank of Spain as the banking supervisor of Banco CEISS, the repurchase of the CoCos shall be, totally or partially, suspended if, on the basis of a reasoned request by Banco CEISS [for instance, the regulatory framework be significantly modified and/or should the actual economic situation be significantly worse than the one forecast in the Business Plan] endorsed by the Commission Services based on an opinion of the Monitoring Trustee, it is considered that it would endanger the solvency position of the bank in the following years.
- 10.5** If there is doubt on the capacity to repay the CoCos within the maximum term of 4 years from the date of their issuance, the Monitoring Trustee can request remedial actions in order to free up capital of Banco CEISS.
- 10.6** If the conversion occurs in accordance with the term sheet attached as Appendix IV, the holders of the CoCos (described in section 10.1) will receive shares of Banco CEISS.

11. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

11.1 Ban on acquisitions

Banco CEISS will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and also packages of assets which form is a business.

This does not apply to acquisitions that must be made in order to maintain financial and/or association related stability, or in the interests of effective competition, provided they have been approved beforehand by the Commission in a service letter. This does not apply either to acquisitions that belong, in terms of the management of existing obligations of customers in financial difficulty, to a bank's normal on-going business. The obligation is to apply until the Restructuring Period ends.

Banco CEISS may acquire stakes in undertakings provided that the price paid by Banco CEISS for any acquisition is less than [...] % of the balance sheet size of Banco CEISS at the date of this Decision and that the cumulative purchase prices paid by Banco CEISS for all such acquisitions over the whole Restructuring Period is less than [...] % of the balance sheet size of Banco CEISS at the date of the Decision.

11.2 Ban on Coupon

This section has been intentionally left blank because the measures were already implemented.

11.3 Dividend restriction

Until the CoCos have been repurchased in full from the FROB:

- a) Banco CEISS shall not pay out any dividends
- b) Except as foreseen under points 8.2, 8.3 (repurchase of Securities from investors or from the FROB) and for the CoCos in the amount of EUR 604 million solely subscribed by the

FROB in accordance with the term sheet attached hereto as Appendix IV, Banco CEISS (i) will not pay dividends on shares or coupons on hybrid capital instruments or any other instruments for which the coupon is discretionary, (ii) will not repurchase any of their own shares or call hybrid capital instruments for the duration of the restructuring period without prior approval by the Commission services, (iii) must not buy back hybrid capital instruments, unless such a measure, possibly in combination with others, allows the institution to fully absorb its capital shortfall, and occurs sufficiently close to current market levels and not more than 10% above the market price; any buy back is subject to prior approval by the Commission services.

- c) Unicaja Banco will not pay out annual dividends in excess of [...]% of its annual distributable profit until Unicaja Banco becomes publicly traded, and in excess of [...]% once Unicaja Banco becomes publicly traded. If, as a consequence of a payout higher than [...]%, and exclusively for this specific reason, the estimated annual amount of CoCos to be repaid is not achieved, the actual available excess capital to be used to repay the CoCos will be increased by the amount resulting of the difference between the [...]% forecast and the percentage actually paid, provided that the statutory regulatory capital ratios are always met.

The rules described in section 10.2 to determine the minimum required capital will be modified to reduce the trigger capital above which CoCos are repaid. Such reduction (in basis points) of the minimum required capital will be carried over to the following years.

11.4 Ban on Advertising

The Combined entity must not use the granting of the aid measures or any advantages arising there from for advertising purposes.

11.5 Remuneration of bodies, employees and essential agents

The Spanish Authorities undertake to ensure that Banco CEISS meets the legislation applicable at the time in all salary and compensation matters, especially regulation related to remuneration limits applicable to credit institutions (primarily currently regulated by Spanish law through Royal Decrees Law 2-2012 of February 3rd and 3-2012 of February 11th; RD 771/2011 of June 3rd; Orden ECC/1762/2012 of August 3rd and Bank of Spain Circular 4/2011 of November 30th). Likewise, it commits to ensure that Banco CEISS complies scrupulously with the conditions specifically relevant in the frame of the EU framework for State aid. Therefore, in line with point 38 of the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication'), Banco CEISS will restrict the total remuneration to staff, including board members and senior management to a maximum of 15 times the national average salary in the Member State where the beneficiary is incorporated or 10 times the average salary of employees in the beneficiary bank. Restrictions on remuneration must apply until the end of the restructuring period or until the bank has repaid the State aid, whichever occurs earlier.

Furthermore, any employees dismissed in line with point 5.5 of this term sheet should not receive severance payments in excess of what is required by law or contract.

11.6 The Spanish Authorities also undertake to ensure the most efficient use of public resources, regarding compensation and salaries issues, as inspiring principle of RDL 24/2012 of August 31st, on restructuring and resolution of banks. Therefore, it will oversee that the restructuring process is very demanding, seeking that severance pays approach to the legal minimum, but with some flexibility to avoid delaying the process; it will also assess, if appropriate, to propose general and personnel expenses reductions in Banco CEISS if: the actual net margin at the end of each year is 20% below the projected target; or the actual pre-provision profit at the end of each year is 25% below the projected target; and always when losses are reported in the income statements at the end of each year or the entity do not comply with minimum solvency regulatory requirements on the same date.

11.7 Listing of Unicaja Banco

Unicaja Banco shall present a credible timeline by June 2014 in order to become publicly traded no later than 31.12.2016.

11.8 Ban on commercial aggressive practices

The Combined Entity shall avoid engaging in aggressive commercial practices in the Core Regions throughout the duration of the Restructuring Period.

12. MONITORING TRUSTEE

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

12.2 The appointment, duties, obligations and discharge of the Monitoring Trustee must follow the procedures set out in the “Monitoring Trustee” Appendix V.

12.3 Spain and Banco CEISS are to ensure that, during the implementation of the Decision, the Commission or the Monitoring Trustee have unrestricted access to all information needed to monitor the implementation of this Decision. The Commission or the Monitoring Trustee may ask Banco CEISS for explanations and clarifications. Spain and Banco CEISS are to cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of this Decision. Also, Unicaja Banco shall cooperate with the Monitoring Trustee exclusively regarding the commitments of the Combined Entity described within the Term Sheet”.

Appendix I - Holdings on listed companies to be divested

[...]

Appendix II - Holdings on unlisted companies to be divested

[...]

Appendix III - List of hybrid capital issues

Emission	Date of emission	Maturity	Balance	Interest rate (%)
Preferred shares	29/12/2003	Perpetual	48,1	3,3%
Preferred shares	11/11/2004	Perpetual	112	5,2%
Preferred shares	19/05/2009	Perpetual	200	8,3%
Preferred shares	25/05/2009	Perpetual	100	9,2%
Preferred shares	29/10/2010	29/10/2015	525	8,1%
Subordinated Debt	30/10/2008	29/12/2018	16,6	1,9%
Subordinated Debt	30/06/2005	30/06/2015	147,4	2,3%
Subordinated Debt	07/12/2005	07/12/2015	96,2	2,4%
Subordinated Debt	28/08/2008	28/08/2018	200	7,5%
Subordinated Debt	19/12/2008	19/12/2018	124,7	5,4%
Subordinated Debt	30/06/2009	28/09/2019	200	5,5%
Subordinated Debt	23/02/2010	23/02/2020	98,7	5,9%
Subordinated Debt	29/06/2010	29/06/2020	83,3	3,5%
Subordinated Debt	21/06/1990	Perpetual	6,6	0,0%
Total			1.958,5	

Appendix IV – Term Sheet of the CoCos to be injected by the FROB

Terms and Conditions of the capital injection of contingent convertible securities (“CoCos”) to be subscribed by the FROB in Banco CEISS

1. Emisor:	Banco CEISS, S.A.
2. Suscriptor:	Fondo de Reestructuración Ordenada Bancaria (“FROB”)
3. Base normativa:	Ley 9/2012, de reestructuración y resolución de entidades de crédito / Ley 13/1985 / Ley de Sociedades de Capital
4. Finalidad:	Apoyo financiero en el marco de lo dispuesto en la Ley 9/2012.
5. Importe total de la emisión:	Hasta un total de EUR 604 millones.
6. Instrumento:	Obligaciones contingentemente convertibles en acciones de nueva emisión (“Cocos”).
7. Valor nominal unitario:	El valor nominal EUR 100 000
8. Precio de emisión:	Emisión a la par
9. Fecha de desembolso:	Los Cocos se desembolsarán el 30 abril de 2013.
10. Vencimiento:	Salvo que previamente se hayan recomprado y amortizado o bien se hayan convertido, los instrumentos tienen carácter perpetuo, sin que tengan una fecha de amortización.
11. Compromiso de recompra y amortización anticipada:	Conforme a lo establecido en la Ley 9/2012, el emisor deberá recomprar o amortizar los títulos suscritos por el FROB tan pronto como esté en condiciones de hacerlo en los términos comprometidos en el plan de reestructuración. El emisor reembolsará los instrumentos a su valor nominal junto con la remuneración devengada no satisfecha.

12. Representación:	Anotaciones en cuenta o títulos físicos
13. Remuneración:	<p>La remuneración será fija, del 8,5% anual, con incrementos anuales en las siguientes condiciones, mientras el FROB sea el tenedor de los instrumentos:</p> <p>a) La remuneración se incrementará en 25 puntos básicos tras el primer aniversario de la suscripción por el FROB (2º año)</p> <p>b) A partir del segundo aniversario (3er año) de la suscripción por el FROB, la remuneración se incrementará anualmente en 50 puntos básicos</p>
14. Periodos de remuneración:	[...]
15. Devengo de la remuneración:	<p>(i) No discrecional, predeterminada, de carácter no acumulativo.</p> <p>(ii) El devengo de la remuneración en efectivo estará condicionado en todo caso a: La existencia de elementos distribuibles, entendidos como la suma de beneficios y reservas distribuibles. El cumplimiento de los requerimientos de recursos propios de acuerdo con la normativa aplicable en cada momento.</p> <p>(iii) Adicionalmente, el Banco de España podrá exigir la cancelación del pago en efectivo de la remuneración basándose en la situación financiera y de solvencia de la entidad o su grupo consolidable.</p> <p>(iv) En caso de decisión de no pago en efectivo de la remuneración fija por cualquiera de las razones mencionadas anteriormente, y mientras el FROB sea el tenedor de los valores, la entidad abonará al FROB la remuneración mediante la entrega de un volumen de CoCos o acciones de la entidad equivalente, en valor económico, al importe de la remuneración que debiera haberse abonado.</p>
16. Fechas de pago de la remuneración:	Al final de cada periodo de remuneración.
17. Supuestos de conversión obligatoria a instancia del FROB:	El FROB podrá solicitar instar la conversión de los Cocos en acciones ordinarias del emisor en los supuestos establecidos en la Ley 9/2012.
18. Supuestos de conversión automática:	[...]

19. Comunicación de la ocurrencia del evento de conversión:	[...]
20. Relación de conversión y determinación del valor económico:	<p>a) Mientras el FROB sea el tenedor de los instrumentos, la relación de conversión será variable. En este caso, la determinación de la relación de conversión se realizará tomando el valor nominal de los CoCos y aplicando un descuento al valor de mercado de las acciones de la entidad emisora en el momento de la conversión, de conformidad con las directrices de la Unión Europea aplicables. A estos efectos, con carácter previo a la conversión, se solicitará autorización a la Comisión Europea para garantizar la compatibilidad de la relación de conversión con la normativa de ayudas de Estado de la Unión Europea. El valor de mercado de las acciones de la entidad se determinará de acuerdo con el valor económico de la entidad emisora en ese momento, de conformidad con lo dispuesto en la Ley 9/2012 y los criterios establecidos por la Comisión Europea. En el caso de que, a raíz de la valoración del emisor en la fecha de conversión, al FROB debiera corresponderle un porcentaje del capital del emisor que no pueda alcanzarse mediante una operación mercantil de reducción y ampliación de capital, los accionistas significativos de la entidad se comprometen a transmitir al FROB, a cambio de un precio simbólico y en función de su % de participación en el capital, un número de acciones tal que permitan que el FROB alcance la participación en el capital que le correspondería conforme a la valoración económica efectuada.</p> <p>b) En el caso de que, en la fecha de conversión, los tenedores de los CoCos fueran terceros ajenos al FROB, la ecuación de canje se definirá de acuerdo con los estándares de mercado para instrumentos similares de tal forma que los instrumentos mantengan su calificación regulatoria (ecuación de canje fija o con rango de conversión).</p>
21. Conversión parcial	Permitida en caso de ocurrencia del “evento contingente” señalado en el punto 19 anterior por un importe tal que permite alcanzar el nivel de solvencia allí estipulado (5,125% o el que resulte).

22.Orden de prelación:	<p>Por detrás de todos los acreedores, subordinados o no;</p> <p>Por detrás de los tenedores de participaciones preferentes y/o acciones preferentes; En el mismo orden de prelación (<i>pari passu</i>) que las demás emisiones de participaciones preferentes convertibles u otros valores convertibles equiparables a éstos;</p> <p>Por delante de los accionistas ordinarios.</p>
23. Admisión a negociación:	<p>No. Aunque se contemplará expresamente la posibilidad de solicitar su admisión a negociación en cualquier momento mientras el FROB sea el tenedor de los instrumentos.</p>
24. Sindicato de titulares:	<p>En caso de transmisión a terceros, se constituirá el sindicato de titulares cuyo funcionamiento quedará regulado en la escritura de emisión. Mientras el FROB sea el único tenedor gozará de todas las facultades que legalmente corresponden al sindicato de obligacionistas.</p>
25.Derechos de voto:	<p>Los Cocos no tendrán derechos de voto</p>
26. Transmisibilidad:	<p>Si.</p>
27. Derechos de suscripción preferente:	<p>No.</p>
28. Tratamiento regulatorio:	<p>Computan ilimitadamente como recursos propios básicos de acuerdo con la Circular 3/2008 e ilimitadamente como capital principal conforme al RDL 2/2011.</p>

Appendix V - Monitoring Trustee

(A) Appointment of the Monitoring Trustee

- (i) Spain undertakes to ensure that Banco CEISS appoints a Monitoring Trustee to carry out the duties of a Monitoring Trustee, as set out in paragraph C below. The mandate of the Monitoring Trustee applies to the entire duration of the Restructuring Plan. At the end of the mandate, the Trustee shall submit a final report to the European Commission.
- (ii) The Trustee must be independent of Banco CEISS and of the Combined Entity. The Trustee must possess, for example, as an investment bank, consultant or auditor, the specialized knowledge that is required in order to carry out its mandate as described here below, and must at no time be exposed to any conflict of interest. The Trustee is to be remunerated by Banco CEISS in a way that must not impede the independent and effective fulfilment of its mandate.
- (iii) Spain undertakes to ensure that Banco CEISS submits the names of two or more persons to the Commission for approval as Monitoring Trustee no later than four weeks after notification of the Decision.
- (iv) These proposals must contain sufficient information about those persons to enable the Commission to verify whether the proposed Monitoring Trustee fulfils the requirements set out in paragraph A(ii), and must in particular include the following:
 - (a) the full terms of the proposed mandate with all the provisions which are necessary to enable the Monitoring Trustee to fulfil its duties; and
 - (b) the draft of a work plan describing how the Monitoring Trustee intends to carry out its assigned duties.
- (v) The Commission has the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Trustee to fulfil its obligations. If only one name is approved, Banco CEISS will appoint the person or institution concerned as Monitoring Trustee or cause that person or institution to be appointed, in accordance with the mandate approved by the Commission. If more than one name is approved, Banco CEISS is free to decide which of the approved persons should be appointed as Trustee. The Trustee will be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.
- (vi) If all the proposed Monitoring Trustees are rejected, Spain undertakes to ensure that Banco CEISS submits the names of at least two further persons or institutions within two weeks of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs A(i) and A(iv).
- (vii) If all further proposed Monitoring Trustees are also rejected by the Commission, the Commission will nominate a Monitoring Trustee which Banco CEISS will appoint or cause to be appointed, in accordance with a Trustee mandate approved by the Commission.

(B) General duties and obligations

- (viii) The Monitoring Trustee is to assist the Commission with the full and correct implementation of all Commitments within this term sheet and to assume the duties of a Monitoring Trustee specified in the Commitments document. The Trustee is to carry out the duties under this mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the Commission. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Banco CEISS, issue orders or instructions to the Trustee in order to ensure compliance with the Commitments. Banco CEISS and the Combined Entity are not entitled to issue instructions to the Trustee.

(C) Duties and obligations of the Trustee

- (ix) The duty of the Trustee is to guarantee full and correct compliance with the obligations set out in this termsheet and the Commitments, and full and correct implementation of Banco CEISS's Restructuring Plan. The Commission may, on its own initiative or at the request of the Monitoring Trustee, issue any orders or instructions to the Monitoring Trustee or Banco CEISS in order to ensure compliance with this termsheet and the Commitments attached to the Decision.

- (x) The Monitoring Trustee:

- (a) is to propose to the Commission in its first report a detailed work plan describing how it intends to monitor compliance with the Commitments attached to the Decision;
- (b) is to monitor the full and correct implementation of all Commitments set out in this termsheet and Banco CEISS's Restructuring Plan.
- (c) is to assume the other functions assigned to the Trustee in the Commitments attached to the Decision;
- (d) is to propose measures to Banco CEISS that it considers necessary to ensure that Banco CEISS fulfils the Commitments attached to the Decision; and
- (e) is to take into account any regulatory changes on solvency and liquidity when verifying the evolution of the actual financials with respect to the projections made in the Restructuring Plan.
- (f) is to submit a draft written report to the Commission, Spain and Banco CEISS within thirty days after the end of each six-month period. The Commission, Spain and Banco CEISS can submit comments on the draft within five working days. Within five working days of receipt of the comments, the Trustee is to prepare a final report, incorporating the comments as far as possible and at its discretion, and submit it to the Commission and to the pertinent Spanish Authorities. Only afterwards the Trustee is also to send a copy of the final report to Spain and Banco CEISS. If the draft report or the final report contains any information that may not be disclosed to Banco CEISS, only a non-confidential version of the draft report or the final report is to be sent to Banco CEISS. Under no circumstances is the Trustee to submit any version of the report to Spain and/or Banco CEISS before submitting it to the Commission.

The report is to focus on the duties set out in the mandate by the Trustee and compliance with the obligations by Spain and Banco CEISS, thus enabling the Commission to assess whether Banco CEISS is being managed in accordance with the obligations. If necessary, the Commission may specify the scope of the report in

more detail. In addition to these reports, the Trustee is to report promptly in writing to the Commission if it has reasons to suppose that Banco CEISS is failing to comply with these obligations, sending a non-confidential version to Banco CEISS at the same time.

(D) Duties and obligations of Banco CEISS

- (xi) Banco CEISS is to provide and to require its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks under this mandate. The Trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of Banco CEISS or of the business to be sold that are necessary to fulfil its duties under the mandate. Banco CEISS is to make available to the Trustee one or more offices at its business premises and all employees of Banco CEISS are to be available for meetings with the Trustee in order to provide it with all the information it needs to perform its duties.
- (xii) Subject to Banco CEISS' approval (this approval may not to be unreasonably withheld or delayed) and at its expense, the Trustee may appoint advisors (in particular for corporate finance or legal advice), if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any costs and other expenses incurred by the Trustee are reasonable. Should Banco CEISS refuse to approve the advisors proposed by the Trustee, the Commission may approve their appointment instead, after hearing Banco CEISS' reasons. Only the Trustee is entitled to issue instructions to the advisors.

(E) Replacement, discharge and reappointment of the Trustee

- (xiii) If the Trustee terminates its functions under the Commitments or if there are any other significant grounds, such as a conflict of interest on the part of the Trustee:
 - (a) the Commission can, after hearing the Trustee, require Banco CEISS to replace it, or
 - (b) Banco CEISS, with the approval of the Commission, can replace the Trustee.
- (xiv) If the Trustee is removed in accordance with paragraph E(xiii), it may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee is to be appointed in accordance with the procedure referred to in paragraphs A(i) to A(vi).
- (xv) Besides removal in accordance with paragraph E(xiii), the Trustee is to cease its activities only after the Commission has discharged it from its duties. This discharge is to take place when all the obligations with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it is subsequently found that the relevant remedies have not been fully and properly implemented.