

Commission Decision of 27 March 2012 on the measures SA. 26909 (2011/C) implemented by Portugal for the restructuring of Banco Português de Negócios (BPN) (notified under document C(2012) 2043) (Only the Portuguese version is authentic) (Text with EEA relevance) (2012/660/EU)

- Article 1 (1) The following measures granted by Portugal constitute state aid:...
- Article 2 Within two months of notification of this Decision, Portugal shall...
- Article 3 This Decision is addressed to the Portuguese Republic.
Signature

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- (1) OJ C 371, 20.12.2011, p. 14.
- (2) OJ L 83, 27.3.1999, p. 1.
- (3) Portugal, 'Memorandum Of Understanding On Specific Economic Policy Conditionality', 17 May 2011, http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf.
- (4) As described in more detail in paragraph (53) BIC is a small bank which has been active in Portugal since 2008.
- (5) 'Note on Banco Português de Negócios' dated 17 February 2010.
- (6) See for example p. 96 of the Report on Financial Stability of the Bank of Portugal for the year 2008.
- (7) CGD is a bank wholly owned by the Portuguese State.
- (8) 'Note on Banco Português de Negócios' dated 17 February 2010, page 4.
- (9) Those impairments were estimated, after the nationalisation, 'at more than 20 % of the total of the assets of BPN at that time'; see Memorandum of 14 September 2010, p. 17.
- (10) According to the evaluations of both Deutsche Bank and Deloitte, BPN had a negative asset and financial value at the date of nationalisation.
- (11) Report on Financial Stability of the Bank of Portugal for the year 2008, cited at p. 16 of Memorandum of 14 September 2010.
- (12) Article 2(9) of the Nationalisation Law.
- (13) See p. 3 of the document sent by the Portuguese authorities entitled 'Nota: Banco Português de Negócios, S.A.' dated 17 February 2010.
- (14) In October 2008, CGD signed three short-term loan agreements with BPN: (i) on 9 October 2008 for an amount of EUR 200 million with a pledge over certain assets as well as the promise of mortgage rights over buildings under the control of BPN (ii) on 28 October 2008, for an additional amount of EUR 15 million, and (iii) on 29 October 2008, in the form of a new loan for EUR 20 million. A fourth short-term loan was granted by CGD for the purposes of liquidity provision to BPN for an additional EUR 80 million and was signed on 3 November 2008. All four loans were undertaken on Euribor 1 month plus spread of 1 % and the second, third and fourth loans benefited from the same collateral rights as the first EUR 200 million loan.
- (15) According to the 'Nota on BPN' dated 17 February 2010, the ELA facility was contracted on 17 October 2008, and was increased on 27 October 2008.
- (16) See p. 32 of January 2012 Restructuring Plan.
- (17) See p. 28 of January 2012 Restructuring Plan.
- (18) Resolução do Conselho de Ministros n.º 57-B/2010) for the reprivatization of BPN. The decree-law setting out the legal framework for the privatisation of BPN was approved in November 2009.
- (19) See p. 35 of January 2012 Restructuring Plan.
- (20) See the 'Aviso de Banco de Portugal n.º 3/2011' that requires credit institutions to reach a consolidated basis core tier 1 ratio of 9 % by 31 December 2011.
- (21) See response of the Portuguese authorities of 17 February 2012, Q. 7.
- (22) Confidential data.
- (23) Point 2.10 and 2.11 of the MoU.
- (24) A Memorandum governing the rules of the process was signed between BPN and the parties who declared an interest to enter the data room.
- (25) Núcleo Estratégico de Investidores (NEI), a group of investors.
- (26) See document sent by the Portuguese authorities entitled 'Plano Revisto', dated 20 January 2012, p. 125.
- (27) Minuta de contrato de compra e venda das acções no âmbito da reprivatização do Banco Português de Negócios, S.A.

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- (28) According to Article 2.5 (c) of the Framework Agreement the agreement would be terminated should the sale not be concluded by 31 March 2012 (subject to the possibility for BIC to extend that deadline).
- (29) The amount of the capital injection needed to reach the level sought by BIC was estimated by the Portuguese authorities as follows: approximately EUR [...] million in September 2011, EUR [...] million in November 2011, and EUR 600 million in January 2012.
- (30) The SPVs passed from the control of BPN on 15 February 2012 and were transferred to the State.
- (31) The Portuguese authorities note that the current non-performing loans amount to EUR [...] million as at September 2011, see document sent by the Portuguese authorities entitled 'Plano Revisto', dated 20 January 2012, p. 126.
- (32) According to the Portuguese authorities, the existing provisions should ensure that BIC will in practice not use that possibility, as non-performing loans would need to increase in the first year following the sale by around [...] % for BIC to be able to use that option
- (33) That reference rate may vary depending on duration and currency of the deposits (EURIBOR/LIBOR).
- (34) That possibility was included in the Framework Agreement in order not to impose on BIC any less prudent decisions taken by the previous management of BPN.
- (35) According to the answer of the Portuguese authorities of 2 September 2011 and the document sent by the Portuguese authorities entitled 'Plano Revisto', dated 20 January 2012, p. 126, BIC can use that money line for up to three years during a drawing period of four years.
- (36) Electronic mail from the Portuguese authorities received on 17 February 2012 in response to Commission's request for information of 8 February 2012, question 17. According to that response, the capital injection led to the reimbursement of EUR 210 million of CGD money market loans.
- (37) See in particular the Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, [OJ C 270, 25.10.2008, p. 8](#).
- (38) Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, [OJ C 270, 25.10.2008, p. 8](#), point 51.
- (39) Considering the submission of 20 January 2012 that sets out the loan of EUR 80 million granted on 3 November 2008.
- (40) See the 'Aviso de Banco de Portugal n° 3/2011' that requires credit institutions to reach a consolidated basis core tier 1 ratio of 9 % by 31 December 2011.
- (41) [OJ C 10, 15.1.2009, p. 2](#).
- (42) Communication from the Commission on the treatment of impaired assets in the Community banking sector, [OJ C 72, 26.3.2009, p. 1](#).
- (43) 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, [OJ C 195, 19.8.2009, p. 9](#).
- (44) Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, [OJ C 356, 6.12.2011, p. 7](#).
- (45) Commission Decision of 29 October 2008 in State aid case NN60/2008 – Portuguese guarantee scheme, [OJ C 9, 14.1.2009](#) and Corrigendum, [OJ C 25, 31.1.2009](#), prolonged by the Commission Decision of 22 February 2010 in State aid case N51/2010, [OJ C 96, 16.4.2010](#), further prolonged by the Commission Decision of 23 July 2010 in State aid case N315/2010, [OJ C 283, 20.10.2010](#), further prolonged by the Commission Decision of 21 January 2011 in State aid case SA.32158, [OJ C 111, 9 April 2011](#) and further prolonged by the Commission Decision of 21 December 2011 in State aid case SA.34034, not yet published.
- (46) Including 45 actions against BPN ex management, 25 civil proceedings and 20 criminal proceedings.
- (47) See Notice of Banco de Portugal of 10 May No 3/2011, Official Gazette No 95, Series II.
- (48) See point 22 of the Restructuring Communication.
- (49) See Case T-17/03 *Schmitz-Gotha Fahrzeugwerke GmbH v Commission* [2006] ECR II-1139.

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- (50) Submission by Portugal dated 17 February 2012, Annex II.
- (51) See, amongst others, Commission Decisions in Case N 61/2009, *Rescue and Restructuring of Caja Castilla la Mancha*, [OJ C 289, 26.10.2010, p. 1](#).
- (52) See, amongst others, Commission Decisions in Case N 61/2009, *Rescue and Restructuring of Caja Castilla la Mancha*, [OJ C 289, 26.10.2010, p. 1](#) and in Case NN 19/2009, *Restructuring aid to Dunfermline Building Society*, [OJ C 101, 20.4.2007, p. 7](#).

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