EUROPEAN COMMISSION

Brussels, 28.11.2012
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Subject: State aid n° SA.34053 (2012/N) – Spain
Recapitalisation and Restructuring of Banco de Valencia S.A.

Sir,

1 PROCEDURE

(1) On 21 November 2011, the Spanish authorities notified the Commission of their intention to provide Banco de Valencia S.A. ("**BVA**") with a capital injection of maximum EUR 1 billion in ordinary shares and liquidity support of maximum EUR 2 billion through the *Fondo de Restructuración Ordenada Bancaria* ("**the FROB**")[1]. On the same day, the Commission approved the new capital injection for six months pending the notification of a restructuring plan[2]. Spain notified a first restructuring plan on 13 April 2012. On 26 June 2012, the FROB injected EUR 1 billion of share capital into BVA.

(2) On 20 July 2012, the Memorandum of Understanding on Financial Sector Policy Conditionality between the Kingdom of Spain and the Heads of State and Government of the Euro Area ("**the MoU**") was signed. The MoU sets a strict timeline for the recapitalisation and restructuring of the different groups of banks established on the

1 The FROB was established, in the context of the financial crisis, to provide public support for the consolidation of the Spanish banking sector by, *inter alia*, strengthening the capital buffers of credit institutions. The Commission adopted on 28 January 2010 a decision not to raise objections (case N 28/2010, OJ C57, 09.03.2010, p. 2) on FROB as a recapitalisation scheme for fundamentally sound institutions. The notified capital injection and liquidity support to BVA was not covered by that decision, since *inter alia*, it involved a non fundamentally sound institution. After the enactment of 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. The maximum for 2012 amounts to EUR 120 billion.

2 Case SA.33917, OJ C 63 of 21.11.2011, p.1.

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basis of stress test results[3]. In particular for credit institutions controlled by the FROB, such as BVA, additional public capital will only be provided by the FROB once individual restructuring plans have been approved by the Commission. Furthermore, the MoU indicates that those restructuring plans will incorporate the results of the stress test exercise conducted by the independent consultants. Finally, the restructuring plans were to be presented in time to allow the Commission to approve them by the end of November 2012.

(3) On 9 August 2012, the Spanish authorities submitted an amended outline of the restructuring plan for BVA to the Commission, which was discussed in a number of meetings and conference calls. Additional information exchanges took place frequently.

(4) On 26 November 2012, Spain communicated the final content of the restructuring plan ("**the Restructuring Plan**"), including the final figures pertaining to the size, composition and valuation of the assets and credit portfolio to be transferred to an Asset Management Company ("**AMC**") in the context of an impaired asset measure. With regard to issues pertaining to the asset valuation methodologies employed in the context of the impaired asset measure, the Commission has drawn on technical assistance provided by independent experts.

(5) Spain exceptionally accepts that the present decision be adopted in the English language.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

(6) BVA, a Spanish commercial bank, operates mainly in the regions of Valencia (representing 70% of its credit activity) and Murcia. BVA has been listed on the Spanish stock exchange since 1967[4]. Before the capital injection provided by the FROB in June 2012, Banco Financiero y de Ahorros, S.A ("BFA")[5] owned 26.88% of BVA. As a result of that injection, the FROB currently holds a controlling 90.9% equity stake in BVA. BFA's stake has been diluted to 3.52%. The remainder of BVA's equity is held by retail investors.

(7) BVA traditionally focused on retail banking for individuals and SMEs. However, BFA has recently gone through a period of geographical expansion and broadening of business activities, in particular real estate development, corporate banking and equity participations. At the end of December 2011, BVA had 427 branches and 2 199 employees. Its market share was [0-5]% in deposits and [0-5]% in loans at national

[3] On the basis of the stress test results and the recapitalisations plans, banks are categorised accordingly:
Group 0 - banks for which no capital shortfall is identified and no further action is required;
Group 1 - banks already owned by the FROB; Group 2 - banks with capital shortfalls identified by the stress test and unable to meet those capital shortfalls privately without having recourse to State aid;
Group 3 - banks with capital shortfalls identified by the stress test with credible recapitalisation plans and which are, in principle, able to meet those shortfalls privately without recourse to State aid. Group 3 banks will be split into:
(i) Group 3a - banks planning a significant equity raise (>2% Risk Weighted Assets - "RWA") and
(ii) Group 3b - banks planning a less significant equity raise (<2%RWA).
BVA was categorised as Group 1 bank.

[4] Listed on the Valencia Stock Exchange since 1940.

[5] BFA was created on 14 June 2010 and integrated seven Spanish banks.

level, and [5-10]% and [5-10]% respectively at a regional level. Table 1 provides BVA's main financial figures.

Table 1: BVA's main financial figures

	31.12.2011	**30.06.2010 (peak)**
Total assets (billion EUR)	22.5	23.3
Loans to customers (billion EUR)	17.1	18.5
Retail deposits (billion EUR)	7.2	9.3
Total wholesale funds - including central banks (billion EUR)	14.1	10.7
Employees Total Group	2 199	2 099
Number of branches	427	436
National Market share in deposits	[0-5]%	[0-5]%
Regional Market share in deposits	[5-10]%	[5-10]%
National Market share in loans	[0-5]%	[0-5]%
Regional Market share in loans	[5-10]%	[5-10]%

(8) BVA faces important operational challenges stemming mainly from the expansion it has undergone over the last few years. That expansion has resulted i*nter alia* in high exposure to the real estate sector[6] which has driven up its non-performing loans[7], and a large reliance on wholesale funding with a loan-to-deposit ratio of 188.5% as of 31 December 2011. Its Fitch long-term credit rating is BB- as of 24 September 2012 and its Moody's long-term credit rating is Caa1 as of 5 October 2012.

(9) On 28 September 2012, the results of the bottom-up stress test and asset quality review conducted by an independent consultant, Oliver Wyman, in the context of the MoU[8] ("**the MoU Stress Test**") revealed that BVA has a capital shortfall of EUR 3 462 million under the adverse scenario and EUR 1 846 million in the base case for the three-year time horizon (2012-2014) of the exercise.

2.2 The buyer

(10) As part of the Restructuring Plan, BVA will be bought by CaixaBank S.A. ("**CaixaBank**"). CaixaBank is an integrated financial group, with a banking business, insurance, pension and asset management activities, as well as holdings in international banks and industrial companies. As a listed bank, it is subject to supervision from the Bank of Spain ("**BoS**") and the National Stock Market Commission.

(11) CaixaBank is the largest retail bank in Spain with the widest distribution network and total assets of EUR 344 billion as of September 2012. It has 13.2 million customers, a network of 6 631 branches and 33 273 employees as of September 2012. Its market share is 14% in loans and 13.5% in deposits at national level. CaixaBank is currently ~76% owned by Caja de Ahorros y Pensiones de Barcelona.

(12) CaixaBank has the highest retail-market penetration in Spain and continues to increase the market share of its different banking services and products, with a prudent underwriting approach and a lower than average exposure to the real estate sector. Geographically, its presence is particularly strong in Catalonia and the Balearic Islands, and has been diversified with the successful acquisition of Banca Cívica, which has a strong presence in complementary regions such as Navarra, Andalucía, the Canary Islands and Castilla-León.

(13) CaixaBank holds stakes in international banks and a diversified investment portfolio that provides revenue diversification and a potential capital and liquidity cushion. As part of the group restructuring process that took place in 2011, all of CaixaBank's foreclosed real estate assets held prior to the end of February 2011 are currently being held by a separate entity within Caja de Ahorros y Pensiones de Barcelona, limiting CaixaBank's exposure to the real estate sector.

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6 The overall exposure of BVA to the real estate development sector represents 26% of its balance sheet, when on average for non-state aided banks this exposure is around 15%.

7 The non-performing loan ratio stood at 15.7% on 31 December 2011.

8 Ref. Oliver Wyman report, Asset Quality Review and Bottom-up Stress test exercise, 28 September 2012, http://www.bde.es/bde/en/secciones/prensa/infointeres/reestructuracion/

(14) CaixaBank has shown resilient pre-impairment income (+17.1% year-on-year as of September 2012), despite the crisis of the Spanish banking sector. As of September 2012, its Core Capital ratio under Basel II rules was 10.8%, while its Total Basel II capital ratio was 11.6%.

(15) CaixaBank has a strong liquidity position with approximately EUR 49 billion available liquidity and manageable future debt maturities. Its current loan-to-deposits ratio is 128%.

(16) The MoU Stress Test identified a capital excess of EUR 5.7 billion (3.5% of risk weighted assets) in the adverse scenario for CaixaBank, confirming that it is among the most resilient Spanish institutions, with 9.5% EBA Core Tier 1. Total expected loss rates of 10.7% and 62.0% were estimated for the current credit book and foreclosed assets, respectively. Those figures compare favourably to loss rates for the system (14.6% for current credit book and 63.4% for foreclosed assets), confirming CaixaBank's higher credit quality.

2.3 The events triggering the measures for BVA

(17) Following the outbreak of the financial crisis in 2008, the Spanish authorities laid down via Royal Decree Law 9/2009 the legal foundations for the restructuring of the Spanish banking sector. Some of the banks present in the market had several structural limitations, such as weak corporate governance systems which prevented those institutions from detecting problems at an early stage.

(18) On 18 February 2011, the Spanish authorities adopted more stringent regulatory capital requirements for the entire banking sector, which, *inter alia*, obliged all credit institutions operating in Spain to meet, by 30 September 2011 at the latest, higher minimum regulatory solvency levels, known as "*capital principal*"[9].

(19) On 20 July 2011, BFA listed 47.6% of its shares in Bankia, a commercial bank where most of the banking business of BFA's merged savings banks were regrouped. BFA attained the required new solvency level with the capital raised through an initial public offering (EUR 3.1 billion), which also covered BVA.

(20) In November 2011, following an inspection by the BoS that revealed capital and liquidity shortfalls, BVA failed to raise capital from its key shareholders[10] or from other private investors. It could therefore not be excluded that BVA would fail to meet its obligations towards depositors and creditors. Consequently, the BoS took control over BVA, appointing the FROB as administrator. The FROB decided to inject EUR 1 billion in equity into BVA and to grant it a liquidity line of up to EUR 2 billion, so as to strengthen its precarious capital position and to address the liquidity issues mostly related to material deposits outflows on the back of a number of credit downgrades. The

9 See Royal Decree Law 2/2011 of 18 February 2011: "Real Decreto-ley 2/2011, de 18 febrero para el reforzamiento del sistema financiero". The new legal framework established that by 30 September 2011 any credit institution without private investors holding at least 20% of its equity or with wholesale funding exceeding 20% of its financing needs had to meet a solvency level (defined as "capital principal"), set at 10% of its RWA. The new rule applies at consolidated and solo level.

10 BVA and BFA were separate legal entities and the fact that BVA was included in the 'consolidation perimeter' for accounting purposes created no legal obligation for BFA to assist BVA by subscribing newly issued capital or by other means. As a consequence, BFA was not legally bound to assist BVA if it failed to meet the required ratios.

legal basis for the proposed measures was Article 7 of the Royal Decree Law 9/2009 of 26 June 2009, *sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito*. [11]

2.4 The sale of BVA through an open and competitive tender

(21) At the beginning of 2012, the Spanish authorities decided to sell BVA through an open, transparent and competitive tender procedure organised with the assistance of the investment bank Nomura ("**the Tender Procedure**").

(22) On 2 April 2012, the FROB launched the first phase of the Tender Procedure. About 35 potential buyers were contacted out of which five[12] submitted indications of interest by the end of April 2012.

(23) On 16 May 2012, the second phase of the Tender Procedure started with the five potential buyers. However, in the context of arising uncertainty through the announcement of the financial assistance programme for financial institutions in Spain, the Tender Procedure was stopped on 21 June 2012. On 26 June 2012, the FROB injected EUR 1 billion of capital into BVA.

(24) On 24 September 2012, the Tender Procedure was reactivated. Based on the experience achieved in April and May 2012 most of the potential buyers were approached and three interested buyers were identified (Banco Bilbao Vizcaya Argentaria S.A. ("**BBVA**"), CaixaBank and Bankinter S.A. ("**Bankinter**")). The interested buyers had: (i) access to ad hoc due financial, legal, tax diligence reports and a business plan prepared by KPMG; (ii) access to a memo prepared by Nomura; (ii) access to a virtual data room; (iii) the opportunity to meet with BVA's management and the teams responsible for preparing those reports; and (iv) access to BVA's credit files. On 14 November 2012 the three banks submitted non-binding offers.

(25) BBVA submitted an offer for the full perimeter of BVA, requesting EUR [5-10] billion of capital injection and a series of other conditions. For example the offer assumed the full use of deferred tax assets ("**DTAs**") in the amount of EUR [0-5] billion. In the event that BBVA would not be able to fully utilise the DTAs, the requested capital injection needed to be adjusted. BBVA's offer was conditional to further due diligence in the financial, commercial, legal and tax area. In case of additional findings, the offer would be adjusted.

(26) Bankinter submitted an offer for a reduced perimeter (approximately EUR [10-15] billion of assets). The offer included further support measures such as a EUR [0-5] billion upfront recapitalisation of the perimeter before its sale, an asset protection scheme, a contingent money-line if the level of deposits were to fall below certain thresholds before the sale was implemented as well as a transfer of litigation risks.

(27) CaixaBank submitted an offer for the full perimeter of BVA, requesting from the Spanish authorities an upfront capital injection of EUR [0-5] billion in BVA and an asset

[11] These measures were approved by the Commission in Case SA.33917, OJ C 63 of 21.11.2011, p.1.

[12] BBVA, BMN, Ibercaja, Santander, Unjcaja.

protection scheme ("**APS"**) on a portfolio with a gross book value of EUR [5-10] billion (net book value EUR [5 000 -10 000] million).

2.5 The alternative to a sale : orderly winding-down scenarios

(28) In order to compare the costs of the sale of BVA as a whole with the costs of an orderly winding down of the bank, the Spanish authorities have analysed and quantified the costs of the orderly winding down of BVA based on a good bank/bad bank split, taking into account the following assumptions:

(i) The split of BVA in a good bank and a bad bank. The good bank perimeter would be sold to a third party;

(ii) The remaining assets would remain in BVA and be put into run-off over time ("**Rump Bank**");

(iii) The share capital, hybrid and subordinate liabilities would remain in BVA and would be subject to full burden-sharing.

(29) Depending on the perimeter of the good bank, the long-term economic costs of the orderly winding down of BVA were estimated to be in a range of EUR 5.6 – 7.4 billion, whereas the upfront capital needs for Spain would amount to approximately EUR 8 billion.

(30) Prior to receiving the non-binding offers for BVA, a set of four criteria had been established in order to decide whether to continue the sales process or to launch the process for the orderly winding-down of the bank. The four criteria to be fulfilled cumulatively were: (i) that at least one credible buyer remains in the process; (ii) that the buyer is bidding for essentially the complete perimeter of BVA; (iii) that the buyer is able to close the transaction within the envisaged timeline of the MoU by end of November 2012; and (iv) that the total long-term economic costs, including other requested support measures, are lower than the costs of the orderly winding-down of EUR 7.3 billion.

(31) Neither BBVA's nor Bankinter's bid cumulatively fulfilled the four criteria. BBVA's request of capital support of at least EUR [5-10] billion is equal or even higher than the long-term economic costs of the orderly winding-down. Bankinter only bid for a restricted perimeter of BVA and withdrew its offer on […][*] 2012. As a result, the Spanish authorities decided to intensify the discussions on the offer provided by CaixaBank.

(32) After further negotiations, CaixaBank submitted a final bid on 23 November 2012.

(33) CaixaBank commits to buy all the shares of the FROB in BVA at a price of EUR 1, under the following conditions:

[*] Confidential information

(i) The FROB will carry out a capital injection into BVA for an amount of EUR 4.5 billion;

(ii) The FROB will grant an asset protection scheme (“APS”) to BVA to cover losses arising both from the assets of the small and medium-sized enterprises ("**SME**") portfolio (for an estimated gross value of EUR [5-10] billion) and the contingent risks (for an estimated gross value EUR [0-5] billion), set out in the pro forma balance sheet that the FROB and BVA provided on 22 November 2012. Beyond the consumption of the existing provisions, 72.5% of the losses would be absorbed by the FROB and the remaining 27.5% by BVA.

(34) Furthermore, the offer is made under the following assumptions:

(i) The share purchase will be made only after the General Assembly of BVA adopts a capital reduction and, simultaneously, an increase of capital corresponding to the capital injection of EUR 4.5 billion by the FROB;

(ii) BVA will previously transfer the assets belonging to the credit portfolio, real estate assets and BVA’s investments in real estate companies to the SAREB (the Asset Management Company set up by the Spanish authorities) as well as all other BVA assets included in the list of assets to be transferred to the SAREB pursuant to Royal Decree Law 1559/2012 on the legal regime of the SAREB, against the value – and with the effects – laid down in the pro forma balance sheet that the FROB and BVA provided on 22 November 2012;

(iii) The FROB will carry out a Liability Management Exercise regarding hybrid instruments and subordinated debt issued by BVA, in accordance with Royal Decree Law 9/2012 in order to achieve the contribution by the holders of such instruments, so that BVA will face no liability for such instruments, as foreseen in the pro forma balance sheet that the FROB and BVA provided on 22 November 2012.

2.6 Overview of the aid measures

(35) Since 2011, BVA has benefitted or will benefit from several aid measures. Spain has provided a capital injection of EUR 1 billion and a liquidity facility of up to EUR 2 billion through the FROB. Moreover, as envisaged in the MoU, the Spanish authorities will transfer assets amounting to EUR [5-10] billion gross (estimated EUR [0-5] billion transfer price) to the AMC.

(36) In the context of the sale of BVA to CaixaBank, the Spanish authorities intend to grant an asset protection scheme covering a portfolio of EUR [5-10] billion of assets and guarantees (gross book value) and provide an additional capital injection of EUR 4.5 billion. Table 2 provides an overview of the aid measures.

Table 2: Overview of the aid measures

Measure	Description	Amount (EUR million)	Approved by the Commission	RWA[13]
A	Liquidity support	2 000	21.11.2011	Not Applicable
B	Recapitalisation measure (rescue)	1 000	21.11.2011	6.3 %
C	Impaired asset measure	500	28.11.12	3.4%
D	Recapitalisation measure:	4 500	28.11.12	43 %
E	Asset protection scheme	1 225	28.11.12	11.7 %

2.6.1 Measure A: Liquidity support of November 2011

(37) Following the Commission's temporary approval of rescue aid to BVA by decision of 21 November 2011[14], which obliged Spain to submit a restructuring plan within six months of that decision, BVA received a liquidity facility of up to EUR 2 billion. The interest charged on that liquidity facility was equivalent to 100 basis points ("**bps**") on top of the marginal credit facility of the European Central Bank ("**ECB**").

2.6.2 Measure B: Recapitalisation of June 2012

(38) By that same decision of 21 November 2011[15], the Commission approved the FROB's subscription of EUR 1 000 million of new ordinary shares in BVA, which effectively took place in June 2012.

(39) That capital injection represented 6.32% of BVA's RWA as of 31 December 2010 and brought its capital principal level to 10%. As a result of that capital injection, the FROB obtained a controlling 91% stake in BVA and sits on its Board of Directors.

2.6.3 Measure C: The transfer of impaired assets to the AMC

[13] RWA as of the relevant reference date when the aid measure was granted. The percentages of the measures of 28 November 2012 are calculated on RWA after transferring assets to SAREB.

[14] Case SA.33917, OJ C 63 of 21.11.2011, p.1.

[15] Case SA.33917, OJ C 63 of 21.11.2011, p.1.

a. Objective

(40) BVA will benefit from an impaired asset measure whereby it transfers assets to the AMC. The aim of that measure is to remove uncertainty about the future value of its most problematic asset portfolio and allow BVA to concentrate on the implementation of the Restructuring Plan.

b. AMC: set up and characteristics

(41) Under the terms of the MoU, assets of banks needing State aid related to real estate development will be transferred to the AMC, for which a blueprint and the legislative framework[16] was prepared by the Spanish authorities in consultation with the Commission, the ECB, the European Stability Mechanism ("**ESM**"), and the International Monetary Fund ("**IMF**").

(42) The overall objective of the AMC will be the management and orderly divestment of the portfolio of assets and loans received, maximising their recovery over a maximum of 15 years. In pursuing that activity, the AMC will contribute to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.

(43) The design of the AMC (including its legal and financial structure, operational model, and business and divestment plans) was conceived by the FROB in close collaboration with the BoS and the Ministry of Economic Affairs and Competitiveness ("**the MOF**"), as well as with the Commission, the ECB, the ESM and the IMF.

(44) The volume of assets to be transferred to the AMC – taking into account only the portion corresponding to Group 1 banks following the classification pursuant to the MoU – is estimated to be around EUR 45 billion. That amount will increase after the assets of the Group 2 banks are transferred. However, the maximum volume of impaired assets that Spanish banks can transfer to the AMC will in principle not exceed EUR 90 billion.

(45) The own funds of the AMC, established as a limited liability company, will be approximately 8% of the volume of its total assets and its capital structure will consist of a non-majority holding of the FROB and a majority holding by private investors. That structure was chosen in order to prevent the consolidation of the overall debt of the AMC with the debt of the Spanish state.

(46) As part of the AMC's governing bodies a so-called "Monitoring Committee" was established, consisting of four parties (the MOF, the Ministry of Financial Affairs and Public Administration, the BoS and the CNMV[17]), with a mandate to oversee compliance with the general objectives for which the AMC was set up. The Committee's functions include analysis of the business plan and of possible deviations from it, and monitoring of divestment plans and of the repayment of guaranteed debt. The Monitoring Committee will ask the AMC for periodic information which it considers appropriate for the carrying out of its task.

[16] Royal Decree Law 24/2012 on credit institution restructuring and resolution specifies the details of the AMC.

[17] The Spanish government agency responsible for regulating the securities market.

c. Scope of the transfer of impaired assets and loans

(47) As envisaged in the MoU, all banks classified in Group 1 such as BVA will transfer the following categories of assets to the AMC as from December 2012: a) foreclosed assets whose net carrying amount exceeds EUR 100 000, b) loans/credits to real estate developers whose net carrying amount exceeds EUR 250 000, calculated at borrower, rather than transaction, level and c) controlling corporate holdings linked to the real estate sector.

(48) The overall portfolio of impaired assets and loans to be transferred by BVA to the AMC amounts to EUR [5-10] billion in terms of gross book value. The value of the controlling corporate holdings linked to the real estate sector was estimated based on the value of the underlying assets held by those holdings.

(49) As a result of the asset transfer, BVA's RWA will be reduced by EUR [1 000 – 5 000] million.

d. Methodology for the calculation of the transfer value

(50) The transfer value has been established on the basis of two components. First, the economic value of the assets was determined, both for the foreclosed assets and the loans related to the real estate development sector. Furthermore, for calculating the transfer value, the expected losses in the baseline scenario of the MoU Stress Test for BVA was used as a reference. The methodology of that valuation was endorsed by a dedicated group composed of the Spanish supervisory authority (the BoS), the Commission and the ECB, with the IMF acting as an observer.

(51) Second, the estimate of the economic value was adjusted by applying a discount due to the characteristics inherent to the transfer of the assets to AMC. That discount is the result of aspects such as: a) the aggregate acquisition of the assets; b) the consideration of certain expenses previously borne by BVA, which must now be assumed by the AMC, such as asset management and administration costs, including financial costs; and c) the negative short-term outlook for divestment of the assets by the AMC. The methodology of that valuation has been endorsed by a dedicated group composed of the BoS, the Commission and the ECB, with the IMF acting as an observer.

e. Independent expert advice for the Commission

(52) The Commission has relied on independent experts in order to assist it in the assessment of the proposed methodology and transfer price in connection with the real economic value of the transferred assets and the quantification of the market price of those assets, as laid down in its **Impaired Assets Communication**[18], which serves as the reference framework for this measure.

[18] Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1.

f. Purchase of those assets by the AMC

(53) The AMC will pay BVA the established transfer value by State-guaranteed debt securities issued by the AMC (“**the AMC bonds**”). The AMC bonds have a one-, two- or three-year maturity, with an average weighted life of 1.95 years. The foreseen yield on the AMC bonds will be the lower of: a) the Spanish government bond yield for the same maturity or b) 12 month Euribor plus 200 bps.

g. The transfer value

(54) Based on the methodology and discounts described in recitals (50) and (51) the transfer value of BVA's assets amounts to EUR [0-5] billion (net value), which is equal to [40-50]% of the gross book value as of those assets as of 30 June 2012. Those figures are an estimate based on the situation of those assets as of 30 June 2012. It is possible that the final figures could differ from these levels as the transfer will only take place in December 2012.

(55) The Spanish authorities have provided a letter from the BoS certifying the detailed results and solvency effects of the asset transfer to the AMC by BVA.

h. Market price

(56) According to Spain, the market value of the transferred portfolio is [30-40]% of the transferred nominal amount, and thus amounts to EUR [0-5] billion.

2.6.4 Measure D: Recapitalisation of December 2012

(57) CaixaBank’s offer for the full perimeter of BVA requested from the Spanish authorities entails the condition to inject EUR 4.5 billion of upfront capital in BVA. Accordingly the FROB will subscribe for EUR 4 500 million in ordinary shares issued by BVA. The FROB will contribute bonds issued by the ESM for an amount of EUR 4 500 million in consideration for the new shares in BVA.

2.6.5 Measure E: Asset protection scheme linked to the sale of BVA

(58) CaixaBank's offer for BVA contains the condition that Spain provides an asset protection scheme. The conditions of that scheme are defined in a "Protocol of financial support measures" (Protocolo de medidas de apoyo financiero para la reestructuracion de Banco de Valencia, hereafter "**the protocol**").

(59) Through that scheme, the FROB will cover all loans from SME (disponible and dispuesto) and off-balance sheet guarantees (avales, including avales financieros, técnicos, otras obligaciones) over a ten-year period starting from 30 September 2012, which results in a credit portfolio (gross) of EUR [5 000 – 10 000] million, representing

[30-40]% of BVA's total assets and guarantees. Table 3 provides an outline of the assets covered by the scheme and its structure.

Table 3: Overview of the portfolio covered by the scheme

€ million	Total drawn	Available	Guarantee (avales)	Net Exposure (Nominal value)	Provisions	Exposure net of provisions (BV of covered portfolio)
Credit Portfolio - Individual level:						
RED loans						
Mortgage loans						
SME loans	[1,000-5,000]	[100-500]	[10-50]	[5,000-10,000]	[100-500]	[1,000-5,000]
Contingent Risks			[1,000-5,000]	[1,000-5,000]	[10-50]	[1,000-5,000]
Written off loans						
Subtotal	[1,000-5,000]	[100-500]	[1,000-5,000]	[5,000-10,000]	[100-500]	[5,000-10,000]
Real Estate/Tangible Assets - Individual level						
IPRA's and rest of non-currnet assets held for sale						
Stock						
Property investments (rents)						
Subtotal						
Shares in Real Estate companies						
Subtotal						
Total	[1,000-5,000]	[100-500]	[1,000-5,000]	[5,000-10,000]	[100-500]	[5,000-10,000]

Total assets guaranteed by APS	[5,000-10,000]
Maximum possible Loss for FROB (72,5%)	[1,000-5,000]
APS remuneration (%)	0.01

(60) According to the protocol, the FROB bears 72.5% of any losses going beyond the current provisions of EUR 404 million of the asset portfolio covered by the asset protection scheme, while CaixaBank covers the remaining 27.5%.

(61) The current provisions by BVA for the assets of the covered portfolio are EUR [500-1,000] million below what would be required under the adverse scenario of the MoU Stress Test.

(62) CaixaBank will pay a 0.01% annual fee calculated on the basis of the outstanding amount of the APS-protected portfolio.

3 THE RESTRUCTURING OF BVA

(63) The Restructuring Plan states that, in accordance with Royal Decree Law 24/2012 and in view of: a) its significant capital shortfall as revealed in the MoU Stress Test; b) the considerable amount of State aid already received since 2011; and c) the impossibility to restore BVA's stand-alone viability, BVA will be placed under resolution within the meaning of that Royal Decree Law.

(64) Accordingly, the Spanish authorities will carry out an in-depth restructuring of BVA's activities as set out in the Restructuring Plan through the sale of BVA to CaixaBank.

(65) The commitments by the Spanish authorities have been presented in a separate document entitled: *"Term Sheet of BVA"* (hereinafter referred to as "**the Term Sheet**",

annexed to the present decision)[19].

(66) The Restructuring Plan was prepared by the Spanish authorities with CaixaBank and was submitted to the Commission on 26 November 2012. It covers the period 2012 – 2015 and includes the following measures.

3.1 Restoration of viability through a sale of BVA to CaixaBank

(67) Amongst the restructuring measures is the migration of BVA's systems[20] into those of CaixaBank, whereby […]. The Restructuring Plan details the integration of BVA into CaixaBank ("**the combined entity**") which will be implemented in the following manner:

(68) Between the signature of the SPA and the actual acquisition of control of BVA by CaixaBank, a Committee will be set up. That committee will be composed of an equal number of members appointed by the FROB and CaixaBank. The main task of that committee will be to prepare and monitor the transition of the control of the business and the IT integration of BVA into CaixaBank.

(69) The branch network of the combined entity will be rationalised along two criteria: (i) geographical density and (ii) profitability. In those areas where BVA and CaixaBank are both present, CaixaBank will either reduce BVA's branches and employees or its own.

(70) As a result of the integration of BVA into CaixaBank and the restructuring of its network, at least [80-90]% of the [0-500] branches as of 31 December 2011 will be closed over an estimated period which will end on 31 December 2015 at the latest. Likewise, at least [40-50]% of BVA's [1 000 – 5 000] employees as of 31 December 2011 will be made redundant.

(71) After the integration of BVA into CaixaBank, the combined entity will have the following financial characteristics.

Table 4: Pro-forma financial figures of the combined entity[21]

Main figures (EUR billion)	**"la Caixa"-BVA**
Total Assets	374
Loans to clients	237
Deposits	145
Total capital	30
Clients funds off balance	55
Deposits' market share	[10-15]%

[19] See the Annex.

[20] i.e. risk, human resources, finance, treasury and control.

[21] Table 4 is based on a pro-forma balance sheet of 9/2012, reflecting the transfer of assets to the AMC, the capital injection and SLEs.

Main ratios 2012e	"la Caixa"-BVA
Solvency	[10-15]%
Core Capital	[10-15]%

3.2 Contribution to the restructuring costs of BVA

(72) In accordance with the MoU and Royal Decree Law 24/2012, prior to benefiting from State aid, aided banks must conduct burden-sharing exercises on existing shareholders, and on holders of preference shares and subordinated (both perpetual and dated) debt instruments so as to, inter alia, maximise the loss-absorption capacity of the aided bank.

3.2.1 Burden-sharing on existing shareholders of BVA

(73) The unitary nominal value of EUR 0.2 per share of existing minority shareholders will be reduced to the lowest possible unitary nominal value of EUR 0.01, as a result of the reduction and simultaneous increase of capital that the FROB will execute with effect of 30 October 2012. The capital reduction will result in a reduction of 95% of the nominal value of the shares.

3.2.2 Subordinated Liability Exercise in BVA

(74) Holders of preference shares, perpetual and dated subordinated debt will be subject to a Liability Management Exercise ("LME"). The preference shares and subordinated debt instruments will be bought back at prices implying haircuts of […]% and […]% on their nominal values, respectively, requiring the holders of the instruments to invest the residual value received in shares of Banco de Valencia bearing a nominal of EUR […]. Holders of dated retail subordinated debt of a total amount of EUR 100 million will also be subject to a haircut of […]% but will be required to invest the amounts received into compulsory convertible bonds with zero coupon of at least the same maturity as the original instrument. The mandatory conversion will occur in 2014 at the earliest.

(75) As a result of the operations described in recitals 72 and 73, the existing minority shareholders, converted former preference share and non-retail subordinated debt holders will hold approximately […]% shares in BVA, the value of which is currently estimated at around EUR […] million by the Spanish authorities.

4 POSITION OF THE SPANISH AUTHORITIES

4.1 Position of the Spanish authorities on the Restructuring Plan

(76) The Spanish authorities accept that the proposed measures constitute State aid and request the Commission to verify if the measures are compatible with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ("the TFEU"), as they are necessary to remedy a serious disturbance in the Spanish economy.

(77) In particular, the Spanish authorities submit that the measures are: (i) appropriate and well-targeted; (ii) necessary and limited to the minimum amount necessary; and (iii) proportionate as designed to minimize negative spill-over effects on competitors.

i. *Appropriate and well-targeted*. The Spanish authorities submit that BVA is systemically important within the Spanish financial system, especially in its geographical operating area[22].

ii. *Necessary and limited to the minimum amount*. The Spanish authorities submit that the measures proposed are the least costly option to avoid a disorderly liquidation of BVA.

iii. *Proportionate*. The Spanish authorities submit that the terms and conditions imposed on BVA and the integration into CaixaBank contains sufficient safeguards against possible abuses and distortions of competition.

4.2 Commitments of the Spanish authorities

(78) The Spanish authorities have undertaken a number of commitments related to the implementation of the Restructuring Plan. The commitments by the Spanish authorities have been presented in the Term Sheet. The Spanish authorities commit to comply with the commitments listed in the Term-Sheet, if necessary, by ensuring that BVA and CaixaBank comply with those commitments.

(79) In particular, the Spanish authorities commit to a yearly reporting on the evolution of the asset protection scheme provided by the FROB as well as on the liquidation of BVA as an independent legal entity. Those reports will start from the date of the present Decision until the date on which the protection offered by the asset protection scheme is terminated.

(80) The Spanish authorities commit to additional safeguards in the management of the asset protection scheme. First, the auditor of the scheme will be appointed by the FROB and cannot be the auditing firm of CaixaBank or of BVA. Second, to ensure that the asset of the scheme are managed with the same degree of diligence as any other assets of CaixaBank, CaixaBank will define an incentive policy for the management and staff of a dedicated unit, so as to maximise the net present value of the asset of the scheme and, in particular, to ensure alignment of objectives and strategies. That incentive policy shall be agreed by CaixaBank with the FROB and submitted for approval to the Commission by 1 March 2013. That incentive policy will be implemented and brought into practice during 2013.

5 ASSESSMENT

[22] BVA's market share in deposits in the region where it operates is [5-10]%.

5.1 Existence of State Aid

5.1.1 Beneficiaries of the aid measures

(81) With regards to CaixaBank, the Commission needs to assess whether measures A through E benefit it as the purchaser of the BVA's banking business. According to point 49 of the Banking Communication, in order to ensure that no aid is granted to the buyer of a financial institution sold by the State, it is important that certain requirements are met, and in particular that i) the sale process is open, transparent, non-discriminatory and unconditional; ii) the sale takes place on market terms; and iii) the State maximises the sale price for the assets and liabilities involved.

(82) On the basis of the information provided by Spain, the Commission considers that the Tender Procedure described in section 2.4 was open and non-discriminatory and resulted in the best bid winning the tender. No other participant made an offer requesting less public support. Therefore, the fact that CaixaBank did not offer a positive price for BVA does not preclude that that sale price reflects the market value of the business since the net equity of BVA was clearly negative. As the Commission has no reason to believe that the offer made and the price paid did not reflect the market price of the business, it concludes that CaixaBank is not a beneficiary of the aid measures and thus has not received aid.

(83) With regards to BVA, the Commission notes that BVA will disappear as an independent legal and economic entity, and that its economic activities will be transferred to CaixaBank. Therefore, while BVA has benefitted from the aid measures granted until the adoption of the present decision, it will no longer benefit from the aid measures granted prior to that decision. The Commission therefore concludes that BVA is not the beneficiary under the present decision.

(84) Finally, with regards to the transferred business ("**the legacy business**"), the Commission notes that it comprises all of BVA's banking activities. After its disposal, some of BVA's branches will continue to operate in CaixaBank's network, while BVA will cease to exist as an independent legal entity. The legacy business will therefore be allowed to continue providing the same range of banking and financial services to its customers as BVA did before the sale and will clearly continue to carry out an economic activity within the combined entity.

(85) The Commission therefore considers the legacy business as a beneficiary of the measures described in section 2.6. For the sake of simplicity, it will refer to that business as "BVA", as it comprises all its activities.

5.1.2 Measures already temporarily approved / not approved

(86) With regard to the measures temporarily approved by the Commission as rescue aid in its decision of 21 November 2011 (namely measures A to B), the Commission has

already concluded that those measures constitute State aid in favour of BVA. As a consequence, it is not necessary to reassess whether they constitute State aid in this decision.

(87) The measures that need to be assessed in this decision in order to determine whether they constitute State aid within the meaning of Article 107(1) TFEU are measures C, D and E as described in section 2.6.

(88) According to Article 107(1) TFEU State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States. The Commission observes that the Spanish authorities do not dispute that measures C through E constitute State aid.

(89) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

5.1.3 State resources and imputability

(90) As regards the transfer of assets to the AMC (measure C), while the capital structure of the AMC will consist of a majority holding by private investors, the Commission nevertheless considers the impaired asset measure to involve State resources. First, the AMC was set up for a public policy objective, namely to help troubled Spanish banks by transferring their most risky assets off their balance sheet and thus by helping them implement their restructuring plans. That genesis in public policy considerations is also underlined by the fact that the AMC was set-up between the Spanish authorities and its international partners as a result of the MoU and the special legal setting implemented by the Spanish authorities for the AMC. Second, the FROB will be the single largest investor in the AMC and the bonds issued by the AMC will be guaranteed by the State. Without that State guarantee, the measure could not be financed. Indeed, the amount of own funds invested by private investors is very small when compared to the amount of State guaranteed bonds. Third, the Spanish public authorities will keep high degree of oversight over the AMC's decisions and overall management issues. Therefore, the AMC's shareholding structure does not contradict the fact that measure C is imputable to the State and constitutes State resources.

(91) As regards the additional recapitalisation measure (measures D) and the asset protection scheme (measure E), the Commission recalls that the FROB, the intervening authority providing the measures, is directly financed through State resources and its decisions are directly imputable to the State. The FROB essentially acts as the prolonged arm of the State. The Commission therefore considers that measures D and E are financed by State resources and imputable to the State.

(92) It follows from the above that measures C, D and E are financed by State resources and imputable to the State.

5.1.4 Advantage

(93) As regards the transfer of assets to the AMC (measure C), BVA receives a clear advantage in that its most risky portfolio is transferred off its balance sheet, thus avoiding the consequences (i.e. additional provisions, management of the assets, etc.) of potential future losses on those assets. The transfer of impaired assets will be EUR [5-10] billion.

(94) Moreover, point 15 of the Impaired Assets Communication provides that public asset relief measures are considered State aid if the impaired assets are purchased at a value above the market price. Since the transfer price will be greater than the current market value of BVA's portfolio, it therefore confers an advantage on BVA.

(95) It should also be noted that the AMC cannot be considered as a market investor. The fact that private investors take part in the equity of the AMC does not alter that conclusion. Current market circumstances in Spain are such that purchases of such a large amount of real estate assets under market conditions can only happen if the purchaser receives vendor financing, i.e. that the purchase price is financed by the selling entity. In the present instance, the bank will not, however, be providing vendor financing. Furthermore, private investors are purchasing such assets only at very low prices (i.e. fire-sale conditions), given the uncertainty surrounding their value. Those low prices are due to liquidity constraints affecting the European financial system, particularly prevalent in Spain at the moment.

(96) In fact, the transfer price of the assets, while conservative and below the real economic value, is still above the market price that a private investor would have been willing to pay for those assets. It can therefore be excluded that a market economy investor would have purchased the proposed assets out of private funds on a comparable scale and on similar terms

(97) For those reasons, the Commission agrees with Spain that measure C would not have been provided by a market economy investor expecting a reasonable return on his investment, particularly in the light of the overall volume of the intervention and given the current market circumstances.

(98) As regards the additional recapitalisation measure (measures D) and the asset protection scheme (measure E), the Commission recalls that the granting of those two measures were the main conditions of CaixaBank's bid for BVA, amounting, in essence to a substantial negative price. Providing those two measures enables CaixaBank to integrate BVA into its business. In fact, were it not for these two measures, BVA would not have found a buyer and would therefore have to have been liquidated or resolved.

(99) More specifically, with regards to the asset protection scheme (Measure E), the Commission notes that it clearly provides an advantage to the business which is to be continued, as it will be sheltered from 72.% of the excess losses, and therefore provides it with a capital relief. In view of the fact that (i) the assets covered are impaired and therefore the drawing probability of the guarantee is sizeable and (ii) there is only a symbolic remuneration, no market investor would have been willing or able to offer the same level of guarantee.

(100) For those reasons, the Commission agrees with Spain that measures C, D and E provide an advantage to BVA.

5.1.5 Selectivity

(101) Since measures C, D and E are exclusively addressed to BVA, they should be considered selective in nature.

5.1.6 Distortion of competition and effect on trade between Member State

(102) The Commission considers measures C, D and E to distort competition since they enable the business to survive within another legal entity while it would have otherwise disappeared without public support.

(103) The Commission also considers that the measures are likely to affect trade between Member States since BVA's business activities continue – within CaixaBank - to compete on the Spanish retail market, the mortgage lending markets and the commercial lending markets. In all those markets, some of BVA's competitors are subsidiaries and branches of foreign banks.

5.1.7 *Conclusion*

(104) On the basis of the forgoing, the Commission considers that measures C, D and E fulfil the conditions laid down in Article 107(1) TFEU and that those measures therefore constitute State aid within the meaning of that provision. The Commission also recalls that it had already found measures A and B to constitute State aid within the meaning of Article 107(1) TFEU in a previous decision.

5.2 Amount of aid

5.2.1 Guarantees of liabilities (measure A)

(105) As explained in recital (37), BVA received a liquidity facility amounting to maximum EUR 2 billion.

5.2.2 Recapitalisations (measures B and D)

(106) BVA has received or will receive recapitalisations of approximately EUR 5 500 million. The Commission considers the aid element in the recapitalisation to be up to 100% of the nominal amount and, hence, concludes that the recapitalisation measures entail aid of an amount up to EUR 5 500 million.

5.2.3 Impaired asset measure (measure C)

(107) As regards the aid amount included in the transfer of assets to the AMC, it should be noted that according to footnote 2 to paragraph 20(a) of the Impaired Assets Communication the aid amount in an asset relief measure is the difference between the transfer price of the assets and the market price. In the case at hand, the transfer price was EUR [0-5] billion, whilst the market price was estimated to be EUR [0-5] billion.

(108) Consequently, the aid entailed in the impaired asset measure amount to EUR 0.5 billion.

5.2.4 Asset protection scheme (measure E)

(109) Under the terms of the asset protection scheme, the FROB has committed to pay to CaixaBank 72.5% of the losses on the portfolio covered by the scheme. FROB's maximum commitment therefore amounts to EUR [1 000-5 000] million.

(110) The portfolio covered by the scheme is mostly made up of loans to SMEs and guarantees. As regards the total expected losses, the Spanish authorities, based on the work of their independent experts, estimate that they will reach approximately EUR [100-500] million in the base case scenario and EUR [500-1 000] million in the adverse scenario (or [5-10]% of nominal in the base case scenario and [10-15]% in the adverse scenario). Accordingly, the FROB will cover expected losses for an amount up to EUR 624 million as well as unexpected losses up to EUR [1 000-5 000] million.

(111) Since the asset protection scheme covers both expected as well as unexpected losses, the aid granted through that scheme comprises an element akin to a capital injection (consisting of the amount of capital that would be absorbed by the expected losses and the capital relief of the measure) as well as a guarantee element (protecting the portfolio from the risk of unexpected losses.

(112) The asset protection scheme will lead to a RWA relief of EUR [1 000-5 000] million on the covered portfolio resulting in a EUR 231 million capital relief.

(113) The capital injection element of the scheme therefore amounts to the sum of the expected losses covered by the FROB (EUR 624 million) and the capital relief (EUR 231 million), totalling EUR 855 million.

(114) In addition, the FROB provides a guarantee on the unexpected losses of the asset protection scheme portfolio. That guarantee should be appropriately remunerated to account for the RWA relief effect of the measure (and the risk), as it has effect equivalent to a recapitalisation measure on regulatory capital in the amount of the capital relief achieved. The appropriate level of remuneration for the guarantee therefore must be calculated with regard to the regulatory capital relief provided by the guarantee itself. Based on the average cost of capital for Spanish banks which is estimated at around 16%[23], the Commission considers that the appropriate remuneration fee of the asset protection scheme should amount to EUR 370 million[24]. Therefore the proposed remuneration of 0.01% per annum on the outstanding covered portfolio seems purely symbolic compared to the fee which would be payable for a "plain" recapitalisation having the same capital effect. The Commission thus considers that the lack of appropriate remuneration for the asset protection scheme increases the aid element by up to EUR 370 million.

(115) In total, the aid element involved in the asset protection scheme amounts to EUR 1 225 million.

5.2.5 Conclusion

(116) On the basis of the foregoing, it should be concluded that BVA has received or will receive State aid in the form of capital injections and impaired asset measures amounting up to EUR 7 225 million (64.4% of RWA)[25], in addition to the liquidity facility worth EUR 2 000 million.

5.3 Legality of the aid

(117) The Commission notes that Spain notified measures C, D and E to the Commission for its approval prior to putting them into effect and thus complied with its obligations under Article 108(3) TFEU.

5.4 Compatibility of the aid with the internal market

(118) As regards the compatibility of the aid provided to BVA, the Commission must determine, first, whether the aid can be assessed under Article 107(3)(b) TFEU, i.e.

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23 The weighted average cost of capital estimated by the Commission's experts in Commission Decision of 25 July 2012 in case SA.33733 Restructuring of UNNIM Banc SA, not yet published.

24 It is calculated as 16% (cost of capital) of the APS capital relief over 10 years.

25 RWA as of the relevant reference date when the aid measure was granted.

whether the aid remedies a serious disturbance in the economy of Spain. Subsequently, the Commission, using that legal basis, must assess whether the proposed measures are compatible with the internal market.

5.5 Legal basis for the compatibility of the aid

(119) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the 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[26]. The Commission confirmed that view by adopting the 2011 Prolongation Communication[27].

(120) In respect of the Spanish economy that assessment was confirmed in the Commission's various approvals of the measures undertaken by the Spanish authorities to combat the financial crisis[28]. Therefore, the legal basis for the assessment of the measures is Article 107(3)(b) TFEU.

5.6 Compatibility assessment

(121) BVA has benefited and will continue to benefit from several State aid measures whose compatibility has not previously been assessed by the Commission, namely measures C, D and E. BVA also benefitted from aid found compatible by the Commission as rescue aid (measures A and B).

(122) Since all those measures have been provided in the context of the restructuring of BVA it will need to be determined below whether measures C, D and E as well as A and B are compatible as restructuring aid, in particular based on the Restructuring Plan submitted by the Spanish authorities. The Commission will therefore examine the Restructuring Plan under its Restructuring Communication which sets out the rules applicable to the granting of restructuring aid to financial institutions in the current crisis.

(123) However, prior to that examination, the Commission should examine whether measure D (the additional recapitalisation measure) is compatible with Recapitalisation Communication and whether measures C (the impaired asset measure) and E (the asset protection scheme) are compatible with the Impaired Assets Communication.

26 This has been confirmed in the Banking Communication (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), the Recapitalisation Communication (Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2), the Impaired Asset Communication and the Restructuring Communication (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).

27 Communication 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.

28 See e.g. Reintroduction of the Spanish Guarantee Scheme SA 34224 (2012/N), OJ C82/2012 of 21.03.2012.

5.7 Compatibility of measure D with the Banking and Recapitalisation Communications: Appropriateness, necessity, proportionality

(124) As recalled in point 15 of the Banking Communication, in order for aid to be compatible under Article 107(3)(b) TFEU it must comply with general criteria for compatibility under Article 107(3) TFEU, which imply compliance with the following conditions:[29]:

a. *Appropriateness*: The aid must be well-targeted in order to effectively achieve the objective of remedying a serious disturbance in the economy.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve this objective. Thus, it must be of the minimum amount necessary to reach the objective, and take the most appropriate form to remedy the disturbance.

c. *Proportionality*: The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(125) As regards the additional recapitalisation of BVA (measure D), that measure is appropriate to remedy a serious disturbance in the Spanish economy, as it will prevent the disorderly liquidation of BVA and a threat to financial stability.

(126) It is also necessary to achieve that objective since it avoids the disorderly liquidation of BVA which would jeopardise financial stability. That capital injection was a condition of CaixaBank’s bid for BVA, the sale of which constitutes the least costly option for Spain to achieve its objective of financial stability, as described in section 2.5.

(127) As regards the remuneration for that measure, the Commission has accepted that a distressed bank may pay a lower remuneration than what would normally be necessary if such a discount is required to ensure financial stability and is accompanied by the presentation of a thorough and far-reaching restructuring plan, including a change in management and corporate governance where appropriate. In the case of BVA, the Commission notes that Spain has submitted a far-reaching restructuring plan, including the change of ownership and BVA's disappearance as a stand-alone entity. Therefore, the Commission considers that the absence of remuneration for the recapitalisation measure can be accepted.

(128) Given that the sale of BVA constitutes the least costly possibility to reach the objective of financial stability in the Spanish economy and, in the light of the far-reaching restructuring, the Commission concludes that measure D is appropriate, necessary and proportionate.

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

5.8 Compatibility of measures C and E with the Impaired Assets Communication

(129) The Impaired Assets Communication defines impaired asset relief as any measure which "*free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses*" and sets out criteria for the compatibility of such measures with the internal market. Those criteria comprise: (i) the eligibility of the assets; (ii) the transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

5.8.1 Eligibility of assets

(130) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility. Whilst the Impaired Assets Communication explicitly refers to "toxic assets", it also makes clear that an overtly narrow relief measure would not be advisable. Rather, it notes that a proportionate approach needs to be developed to allow a Member State whose banking sector is affected by factors of such magnitude as to jeopardise financial stability, such as the burst of a bubble in their own real estate market, to extend eligibility to well-defined categories of assets corresponding to the systemic threat.[30]

(131) As regards the impaired assets measure (measure C), that measure is targeted at foreclosed assets related to real estate and real estate and development loans, being the most risky asset class emanating from the recent burst of the Spanish real estate bubble. The Commission notes that those assets are in line with asset categories set out in Annex II to the Impaired Assets Communication and, therefore, are in line with the eligibility criteria of that Communication.

(132) As regards the asset protection scheme (measure E), it encompasses a portfolio comprising mainly SME loans and guarantees. The Commission considers that not all the assets covered by the asset protection scheme are related to risky real estate loans or are "toxic" assets. The eligibility criteria for measure E are in essence the result of the review of BVA's loan book by CaixaBank, which subsequently included a request for an asset protection scheme covering what it considers to be the riskiest assets.

(133) According to point 36 of the Impaired Assets Communication, the wider the eligibility criteria of an impaired asset measure, the more thorough the restructuring must be. In the present case, the restructuring amounts to a resolution of BVA, and the Commission hence considers that the large scope of the asset protection scheme is remedied by the extent of the envisaged restructuring.

[30] Cf. Case N 725/2009, Irish asset relief - NAMA, OJ C 94 of 14 4.2010.

5.8.2 *Transparency and disclosure*

(134) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. In other words, the Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.

(135) As regards the impaired assets measure (measure C), the Commission notes that independent experts have been engaged to value the assets and that the valuation methodology has been endorsed by the BoS as well as by a group including international institutions.

(136) While the definitive number of impaired assets falling under measure C is not currently available due to accounting and other changes that may occur between the date of this decision and the final date of the asset transfers, which may have a minor impact on the values, the asset classes to be transferred have been clearly identified and the transfer will be performed on the basis of this approved methodology. The Commission therefore considers that the Member State has provided full disclosure on the entirety of assets on the balance sheet of BVA which will be transferred to the AMC.

(137) As regards the asset protection scheme (measure E), the Commission considers that full ex-ante disclosure of the assets covered under the scheme has been achieved [31]. The Spanish authorities have granted access to information on the asset pool covered to its own advisers. That pool of assets has also been assessed by the external expert (Oliver Wyman) in the context of the MoU Stress Test, who has shared its insights on the value of those assets with the Commission. The Commission considers that it has obtained a degree of information regarding the portfolio and its value which is proportionate in the context of the disappearance of BVA as an independent entity and the continuation of its business within CaixaBank.

(138) The requirements for transparency and disclosure of the Impaired Assets Communication are thus met.

5.8.3 *Management of the assets*

(139) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of a clear functional and organisational separation between the beneficiary bank and its assets, notably as to their management, staff and clientele. The Communication provides, in that respect, that it should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.

[31] See Table 3.

(140) As regards the impaired assets measure (measure C), the Commission notes that the assets will be managed by the AMC, which is fully independent from BVA. As regards the asset protection scheme (measures E), the Commission recalls that BVA will cease to exist as an independent entity, and that CaixaBank will assume the management of the assets covered by that scheme. The Commission therefore concludes that the separate asset management is in line with the requirements of Impaired Assets Communication.

5.8.4 Valuation

(141) Section 5.5 of the Impaired Assets Communication notes in that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of valuation is to establish the real economic value of the assets. That value constitutes the benchmark level in so far as a transfer of impaired assets at this value indicates the compatibility of aid – it ensures the relief effect by exceeding current market value but keeping the aid amount to the minimum necessary.

(142) As regards the impaired assets measure (measure C), Spain appointed Oliver Wyman to assess the portfolio and has applied a number of haircuts in order to arrive at the transfer value. In addition, Spain has provided a letter from BoS certifying the detailed results of the asset transfer to the AMC. As regards the asset protection scheme (measure E), the estimates for the real economic value of the portfolio covered by the asset protection scheme are likewise based on the analysis prepared by Oliver Wyman.

(143) The Commission has examined the valuation and in particular the underlying general methodology in order to ensure a consistent approach at Union level. For that purpose, the Commission has contracted external experts in order to scrutinize the valuation prepared by Oliver Wyman.

(144) The valuation is therefore in line with the Impaired Asset Communication.

5.8.5 Burden-sharing and remuneration

(145) As regards burden-sharing, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing. Thus, the assets should be transferred at or below the real economic value of those assets.

(146) Furthermore, the Impaired Assets Communication explains that burden-sharing is achieved through an adequate remuneration of the aid. Any pricing of asset relief must include remuneration for the State that takes account of the risks of future losses exceeding those that are projected in the determination of the real economic value. Section II of Annex V to the Impaired Asset Communication provides that the pricing of

the impaired asset measure must include remuneration for the State that adequately takes account of the risks of future losses exceeding those that are projected in the determination of the real economic value. Such remuneration may also be provided by setting the transfer price of assets well below the real economic value to a sufficient extent so as to provide for adequate compensation for the risk in the form of a commensurate upside.

(147) As regards the impaired assets measure (measure C), the Commission notes that the assets have been fully written down to their transfer value. The transfer price is on a relative basis [10-20] % lower than their real economic value, the latter being certified by the independent experts retained by the Commission. Therefore, the compensation for the risk of the State is embedded in the low transfer price, which corresponds to a remuneration of EUR [0-5] billion, and the payment through bonds.

(148) In addition, BVA will receive bonds of a maturity of one- two- or three-years in exchange for its assets rather than cash. The yield on those bonds is set at the lowest between the rate of the corresponding maturity government bond and 12-month Euribor plus 200 bps. It is very likely that the bonds will be rolled over several times at the request of the AMC, as eventual redemption will depend on the sales of the assets transferred over a 15-year period. As a result of the form of the payment which it receives, BVA forgoes revenue which it might otherwise generate if it had cash available which it could lend on at a higher yield or invest in higher yielding risk-free bonds.

(149) As for the asset protection scheme (measure E), the Commission notes that the existing provisions for the assets covered by the scheme of EUR 404 million are significantly below the level of expected losses. As a result, the guarantee of the FROB covers not only unexpected losses, but also a sizeable fraction of expected losses which is not in line with the Impaired Assets Communication. As a consequence, that part of the measure should not be considered as a standard guarantee but as akin to a capital injection, as explained in recital (111). It is indeed conceptually similar, at least in part, to a transfer of assets above their real economic value.

(150) The capital injection element of the asset protection scheme – estimated to amount to EUR 855 million – should in principle be subject to a claw-back, as was done in previous cases[32].

(151) However, in practice, requiring a claw-back is incompatible with the sale of BVA to a third party through a formalised tender procedure, since the bidders would have compensated the potential cost of the claw-back in advance by demanding additional support measures in their offers. The capital injection element of the asset protection scheme can thus be deemed compatible only if it is accompanied by an in-depth and far-reaching restructuring of the entity.

[32] See Commission Decision of 15 December 2009 in case C 17/2009 LBBW, OJ L 188, 21.07.2010.

(152) Regarding the remuneration of the impaired asset measure, the Commission notes that there is only a symbolic remuneration for the asset protection scheme and that it does not compensate for the capital relief effect generated. It therefore is not in line with the Impaired Assets Communication.

(153) However, the level of remuneration should also be assessed within the specific context of the offer presented by CaixaBank to acquire BVA, which was the result of an open, transparent and competitive process. Moreover, the Commission notes positively that losses in the portfolio are shared between the FROB and CaixaBank, with a greater percentage of losses being borne by CaixaBank than in similar measures previously approved.[33] The Commission therefore considers that the offer of CaixaBank and the resulting asset protection scheme take account of the conditions regarding the remuneration of the scheme.

(154) The Commission therefore considers that, taking into account the far-reaching restructuring of BVA and its BVA's disappearance as a stand-alone entity, the requirements regarding burden sharing in the Impaired Assets Communication have been met.

5.8.6 Conclusion on the compatibility of measures C and E with the internal market

(155) In light of the above, the Commission considers measure C to fulfil the conditions on eligibility of assets, ex ante transparency and disclosure, asset management arrangements, valuation, burden sharing and remuneration as laid down in the Impaired Assets Communication.

(156) The Commission concludes that although measure E is not fully in line with the Impaired Assets Communication, in particular as there is only a symbolic remuneration and as it covers a significant fraction of the expected losses of the portfolio which should be borne by the beneficiary of the scheme and not by the Member State, it is possible to accept such deviations from some of the requirements of that Communication if they are compensated for by a thorough and far-reaching restructuring. In the case of BVA, the Commission notes that Spain has submitted a far-reaching restructuring plan including the change of ownership, the dissolution of BVA and its disappearance as a stand-alone entity.

5.9 Compatibility of all aid measures (A-E) with the Restructuring Communication

(157) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current financial crisis. According to the Restructuring Communication, in order to be compatible 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

33 See Commission Decision of 25 July 2012 in case SA.33733 Restructuring of UNNIM Banc SA, not yet published. See Commission Decision of 25 July 2012 in case SA.34255 Restructuring of CAM, not yet published.

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.

5.9.1 Restoration of viability within CaixaBank

(158) As the Commission has indicated in its Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which shows 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.

(159) Points 9 and 10 of the Restructuring Communication indicate that the Member State should provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should, furthermore, also identify the causes of the difficulties faced by a financial institution and provide a business model that restores the bank's long-term viability.

(160) In the present case, the Commission observes that the Spanish authorities have chosen to sell BVA's legacy business via an open tender procedure and to discontinue BVA as an independent economic activity. The Commission, therefore, has to assess whether the integration into CaixaBank will enable long-term viability to be restored to the legacy business.

(161) According to point 17 of the Restructuring Communication the sale of a financial institution to a viable third party with sufficient financial means and the capacity to absorb that institution can help to restore its long-term viability.

(162) In the present case, the Commission considers that requirement to be met by CaixaBank, a banking group incorporated in Barcelona, with 6 631 branches, 33 273 employees, a total balance sheet of EUR 343.8 billion, and a consolidated net profit of EUR 231 million as of September 2012.[34]

(163) First, the Commission notes that the business of BVA is absorbed by a much larger group. In terms of total assets, the ratio exceeds 1:15. As a consequence, the impact of the acquisition of BVA on CaixaBank's accounts and prudential position will be limited.

(164) Second, as regards viability, CaixaBank complies and will continue to comply with the legal solvency requirements after the integration of BVA.

[34] Net profit of EUR 231 million is an annualised figure based on the first nine months of 2012. In 2011, CaixaBank generated EUR 1 185 million in net profit.

(165) Third, CaixaBank's liquidity position is one of its strengths with approximately EUR 49 billion available liquidity and manageable future debt maturities which provides it with a capacity to absorb BVA's funding profile.

(166) Fourth, CaixaBank is a national leader in terms of size, since it is the third-largest financial institution in Spain.

(167) Fifth, the management of CaixaBank is considered as a benchmark in retail banking in Spain. It is among the banks with the highest efficiency ratio and has a relatively low loan-to-deposit ratio as well as good quality of its credit portfolio.

(168) Sixth, CaixaBank has an established and favourable track record in merging with an external retail banking entity[35] and through successful integration, extracting foreseen synergies.

(169) Seventh, the Commission notes that the quality of CaixaBank's credit portfolio presents a level of non-performing loans ("NPL") which is well below the sector's average.

(170) Eighth, the Commission acknowledges that as regards CaixaBank the MoU Stress Test identified a capital excess of EUR 5.7 billion (or 3.5% of RWA) in the adverse case scenario, confirming it to be among the most resilient Spanish financial institutions, with 9.5% EBA Core Tier 1 after the stress period. Total loss rates of 10.7% and 62.0% were estimated for the current credit book and foreclosed assets, respectively. Those figures compare favourably to loss rates for the system (14.6% for current credit book and 63.4% for foreclosed assets), further confirming CaixaBank's higher credit quality.

(171) Ninth, the Commission further notes that CaixaBank has been actively reducing its real estate exposure, which was one of the main reasons for the failure of BVA.

(172) Tenth, the Restructuring Plan will allow CaixaBank to comply with the relevant regulatory requirements even in stress scenarios of a protracted global and national recession, in line with point 13 of the Restructuring Communication.

(173) The Commission thus believes that, on the basis of the information provided by the Spanish authorities, CaixaBank has the capacity and the required know-how to own and manage BVA's legacy business in compliance with regulatory and prudential requirements.

(174) In light of the above, the Commission considers that the integration into CaixaBank adequately ensures the long-term viability of BVA's legacy business.

5.9.2 Own contribution and burden-sharing

[35] Merger with Banca Cívica in March 2012.

(175) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides that (i) both the restructuring costs and the amount of aid should be limited and (ii) a significant own contribution is necessary.

(176) Point 23 of the Restructuring Communication provides that restructuring aid should be limited to the amount necessary to cover the costs which are necessary for the restoration of viability.

(177) The Restructuring Communication further provides that, in order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved in particular by absorbing losses with available capital

(178) In this regard, the Commission observes that BVA's previous owners will be fully wiped out as a result of the measures granted in the context of its restructuring, except for the minor compensation as described in recital (73). Moreover, the Commission notes positively that the commitments regarding the burden-sharing of hybrid instruments go beyond the prerequisites of the Restructuring Communication. As described in recitals (74)-(75), all hybrid capital instruments will also be subject to significant burden-sharing. As the Commission would normally consider an exchange of hybrid capital instruments at market price plus a premium into cash to fulfil the requirements of the Restructuring Communication. In that respect, it welcomes that commitment by Spain which results in the maximum legally possible burden-sharing by hybrid instrument holders, and consequently, a decrease in the amount of public funds that are necessary to restore BVA's viability.

(179) In addition, the Commission considers that, in the present case, aid can be deemed limited to the minimum necessary only if (i) the sale option chosen by Spain was effectively the least costly option in terms of public resources; and (ii) the level of restructuring aid granted has been effectively kept to the minimum necessary.

Comparison between a sale and an orderly liquidation - aid limited to minimum through the sale of BVA

(180) The Commission notes that the FROB effectively worked out liquidation and resolution scenarios built on different assumptions as described in section 2.5. In that context, the Commission notes that the Spanish authorities estimated the long-term economic costs of the orderly winding down of BVA to lie in a range of EUR 5.6 – 7.4 billion, whereas the upfront capital needs for Spain would amount to approximately EUR 8 billion, which remains significantly higher than the restructuring aid involved in the sale (up to EUR 5.725 billion)[36].

[36] The sum of the capital injection of EUR 4 500 million and the aid entailed in the asset protection scheme of EUR 1 225 million.

(181) In parallel, Spain continued the sales process for BVA. In that regard, the Commission notes, first, that the sale to CaixaBank is the result of an open tender procedure which the Commission considers as a proper way to gauge market interest and to determine the market price.

(182) Second, the Commission notes that several bidders expressed their interest in the first phase and that only one of them submitted a binding offer.

(183) The Commission therefore concludes that CaixaBank's bid adequately reflects the market price for the business.

(184) In addition, in order to ensure that the assets under the asset protection scheme are managed with the same degree of diligence as any other assets of CaixaBank and thus to limit to the greatest extent possible the scope for triggering the guarantee provided by the FROB, CaixaBank on behalf of Spain has committed to a number of safeguards[37]. Those safeguards will ensure that CaixaBank should be induced to maximise the net present value of the assets under the asset protection scheme, thereby minimising the losses to be borne by the FROB.

(185) Comparing the negative sales price offered by CaixaBank with the cost under the alternative scenarios shows that the cost for the State to sell BVA in full are lower than the costs arising from an orderly liquidation of that bank.

(186) The Commission thus concludes that the amount of aid can be deemed limited to the minimum necessary.

5.9.3 Limiting distortion of competition

(187) Finally, section 4 of the Restructuring Communication requires that the restructuring plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates post-restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the BVA's own contribution and burden-sharing over the restructuring period.

(188) The Commission recalls that BVA has received State aid in the form of capital injections and impaired asset measures up to an amount of EUR 7 225 million, in addition to the liquidity facility worth EUR 2 000 million.

(189) The aid amount of EUR 7 225 million is equivalent to 64.4% of BVA's RWA.[38] As the relative amount of aid to the beneficiary is very large, and adequate remuneration is

[37] See Section A of the Term Sheet.
[38] RWA as of the relevant reference date when the aid measure was granted.

excluded, significant measures are necessary to limit potential distortions of competition.

(190) The Commission notes that the takeover of BVA by CaixaBank results both in the wiping out of former BVA share- and hybrid capital holders and in the disappearance of BVA as a standalone entity. The Commission considers that the exit of a failed institution which engaged in excessive risk-taking is a clear indication that moral hazard is addressed. As a result, potential distortions of competition resulting from the State aid are likely to be greatly reduced.

(191) In addition, the Commission notes that the sale of BVA's legacy business has been undertaken through an adequately open, transparent and non-discriminatory tender procedure that can be considered as a sufficient proxy for the establishment of a market price for the assets and liabilities taken over by the purchaser.

(192) As regards the sale of the legacy business to CaixaBank, it is necessary to assess whether the measures to limit the distortion of competition are sufficient in light of the characteristics of the market on which the beneficiary will operate.

(193) In that respect, the Commission considers that the distortions of competition due to the business' continued market presence are limited. BVA is a regional operator with a very limited market presence on the national Spanish market. In December 2011, BVA's market share in deposits at a national level represented [0-5]%. Even in its core region, Valencia, its market share in terms of deposits is limited to approximately [5-10]%.

(194) The Commission notes that one of the main provisions of the Restructuring Plan is the downsizing of the territorial presence of combined entity. The Commission considers that the downsizing planned by the Restructuring Plan is more than adequate since at least [80-90]% of the legacy network of BVA will be phased out. The Commission also takes note of the fact that the total number of former BVA's employees will be reduced by at least [40-50]%.

(195) In light of the above, the Commission considers that the scale and nature of measures proposed in the Restructuring Plan are sufficient and adequate to address the distortions of competition created by the aid.

(196) Taking into account that mix of measures and commitments and in view of the assessment above that the own contribution and burden-sharing are appropriate and go beyond what the Commission would normally require, the Commission considers that there are sufficient safeguards to limit potential distortions of competition despite the high amount of aid BVA has received and will receive.

5.10 Monitoring

(197) Pursuant to section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the Restructuring Plan is being implemented properly.

(198) In order to ensure a proper implementation of the restructuring plan and of the commitments it contains, the Spanish authorities will submit regular reports on the compliance measures taken. The first report will be submitted to the Commission no later than six months after approval from the date of notification of this decision and thereafter at six-monthly intervals. Spain commits that it will also report yearly as from the date of the sale on the evolution of the asset protection scheme as well as on the occasion of the termination of BVA as an independent entity.

5.11 Conclusions on the existence of aid and compatibility with the internal market

(199) The Commission concludes that the notified measures (measures C through E), namely the capital injection, the transfer of impaired assets to the AMC and the asset protection scheme constitute State aid in favour of BVA pursuant to Article 107(1) TFEU.

(200) The Commission finds that the restructuring aid in favour of BVA, namely measures A through E referred to above, is compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU, subject to compliance with the commitments of the Term Sheet (Annex).

6 CONCLUSION

- The Commission has accordingly decided:

  – to consider the aid to be compatible with the Treaty on the Functioning of the European Union.

- The Commission notes that Spain exceptionally accepts that the adoption of the present 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:

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European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

TERM-SHEET OF THE SPANISH AUTHORITIES' COMMITMENTS FOR THE APPROVAL OF THE RESTRUCTURING PLAN OF BANCO DE VALENCIA S.A. BY THE EUROPEAN COMMISSION

(CASE SA.34053)

1. BACKGROUND

1.1. This document (the "**Term Sheet**") sets out the terms for the restructuring of Banco de Valencia S.A. ("**BVA**"), which the Kingdom of Spain and BVA have committed to implement.

1.2. In accordance with the Memorandum of Understanding of July 2012, on specific measures to reinforce financial stability in Spain, and the subsequent Law 9/2012 (which replaced Royal Decree 24/2012) on restructuring and resolution of financial institutions, BVA has been categorized as Group 1 entity, which entails the requirement of submitting a resolution or restructuring plan to be approved by the European authorities in November 2012.

2. DEFINITIONS

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

AMC: Asset Management Company. Its legal name has already been established as Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria or SAREB.

The Buyer: The buyer of BVA, namely CaixaBank, S.A..

BVA: It is the short form of Banco de Valencia S.A., the subject of this term-sheet.

FTE: A full-time equivalent or FTE is a unit that indicates the workload of a person employed by BVA (including its fully-owned subsidiaries) who works full time.

Restructuring Plan: It is the document approved by the FROB that outlines the required restructuring of BVA in the context of the recapitalisation of the group by the FROB and is the base of this term-sheet. The Plan, in particular, defines the assets to be transferred by BVA to the AMC (or SAREB), the recapitalisation of BVA by FROB, the implementation of an asset protection scheme ,the burden sharing exercise and the sale of BVA to the Buyer.

3. GENERAL

3.1. The Kingdom of Spain is to ensure that the Restructuring Plan ("the Restructuring Plan") for BVA submitted on 26 November 2012 is correctly and fully implemented.

3.2. The Kingdom of Spain is to ensure that the commitments listed below ("Commitments") are fully observed during the implementation of the Restructuring Plan.

3.3. The restructuring period will end on 31 December 2015. The Commitments apply during the restructuring period, unless otherwise provided.

4. ADJUSTMENT TO THE CURRENT PERIMETER OF THE BANK

The Restructuring Plan includes the execution of the following adjustments to the current perimeter of BVA:

4.1. The transfer and/or contribution to the AMC of BVA real estate exposure falling within the following parameters defined by FROB:

a) all the loans to developers exceeding a net book value of €250,000

b) the foreclosed real estate assets exceeding a net book value of €100,000 and,

c) the corporate controlling holdings in real estate companies.

The gross value of these assets at BVA amounts to EUR [5-10] billion and the transfer value amounts to EUR [0-5] billion as of June 2012.

The above mentioned figures on the impact of the assets transferred to the Asset Management Company (SAREB) are an estimate based on the situation of those assets as of 30 June 2012. Although this estimate can be considered as rather accurate, the final impact could differ from this as it could be affected by the events happening during the interim period from 30 June 2012 to the date when the assets transfer will become effective, such as changes in accounting classification and assets inflows and outflows.

5. RESTRUCTURING OF BVA: SALE OF THE BANK

5.1. The Restructuring Plan consists in particular of the sale of BVA to the Buyer with a significant downsizing of the transferred activities.

(i) The activities of BVA will be reduced before the end of 2015 as follows by at least [40-50]% in terms of branches and by at least [40-50]% in terms of FTEs. To reach these targets, CaixaBank may indistinctly either reduce CaixaBank's branches and employees or BVA's in those territorial areas where BVA is present. The net result is that after the business combination, in terms of current figures, at least [80-90]% of the BVA branches and [40-50]% of BVA FTE will be reduced.

No other undertakings will apply to the Buyer as a consequence of the transfer.

6. BURDEN SHARING MEAURES

6.1. The FROB, as majority shareholder of BVA will approve an audited balance sheet of BVA as of 30.10.2012 (with negative own funds after adjustments), a reduction and simultaneous increase of capital. The capital reduction will result in a reduction of […]% of the nominal value of the shares (from a unitary nominal value of EUR 0.2 to a unitary nominal value of EUR […]).

6.2. Holders of preference shares, perpetual and dated subordinated debt will be subject to a Liability Management Exercise ("LME"). The preference shares and subordinated debt instruments will be bought back at prices implying haircuts of […]% and […]% on their nominal values, respectively, requiring the holders of the instruments to invest the residual value received in shares of Banco de Valencia bearing a nominal of EUR 0.01. Holders of dated retail subordinated debt of a total amount of EUR 100 million will also be subject to a haircut of […]% but will be required to invest the amounts received into compulsory convertible bonds with zero coupon of at least the same maturity as the original instrument. The mandatory conversion will occur in 2014 at the earliest.

As a result of the operations described in 6.1 and 6.2, old non-FROB shareholders and converted former preference share and non-retail subordinated debt holders will hold approximately […]% shares, the value of which is estimated to be substantially lower (presently estimated at EUR […] million).

7. MONITORING

In order to ensure a proper implementation of the restructuring plan and of the commitments it contains, the Spanish authorities will submit regular reports on the compliance measures taken. The first report will be submitted to the Commission not later than six months after approval from the date of notification of the Decision and thereafter at six-monthly intervals. Spain commits that it will also report yearly as from the date of the sale on the evolution of the APS as well as on the occasion of the termination of BVA as an independent entity.

8. ASSET PROTECTION SCHEME GRANTED OVER CERTAIN ASSETS OF BVA

The following commitments are made regarding the functioning of the Asset Protection Scheme ("APS"):

i. Upon the entry into force of the APS, the auditor of the APS shall be appointed by the FROB. The appointed auditing firm can be neither the auditing firm responsible for the annual accounts of the Buyer or BVA.

ii. In order to ensure that the assets covered by the APS ("APS Assets") are managed with the same degree of diligence as any other assets of the Buyer, the Buyer shall define an incentive policy for its personnel responsible for managing the APS Assets, so as to maximise the net present value of the APS Assets. This incentive policy shall be agreed by the Buyer with the FROB and submitted for approval to the Commission by March 1, 2013. Such incentive policy will be implemented and brought into practice along 2013.