State aid: Commission approves Portuguese restructuring plan and support for sale of Novo Banco, completing 2014 resolution of Banco Espírito Santo

Commissioner Margrethe **Vestager**, in charge of competition policy said: "*Portugal has decided to sell Novo Banco to a new private owner, who will restructure the bank to return it to viability. We have approved Portugal's plans to grant State aid to Novo Banco under EU rules, based on the bank's far-reaching restructuring plan and measures taken to limit distortions to competition. Now it is important that the new owner successfully enacts the plan, so that that the bank can support the Portuguese economy*."

In August 2014, Portugal decided to put the bank Banco Espírito Santo (BES) into resolution under the Portuguese resolution framework and determined the strategy for its resolution. To enable an orderly resolution, Portugal designed a number of support measures, including State aid for the transfer of certain BES assets to a bridge bank – Novo Banco.

In this context, the Commission approved these support measures under EU State aid rules, in particular the Commission's 2013 Banking Communication. BES shareholders and subordinated debt holders contributed fully (almost €7 billion) to the costs of the resolution in line with burden-sharing requirements, limiting the amount of State capital needed by the bridge bank. Another aspect that enabled the Commission to approve the aid was Portugal's commitment to sell the bridge bank Novo Banco to limit distortions to competition. This means that the sale of Novo Banco, concerned by today's decision, completes the 2014 resolution of BES.

More specifically, in its decision today, the Commission has assessed three issues under EU State aid rules: a) the competitiveness of the sales process of the bridge bank; b) Portuguese plans to grant additional State aid to finalise the BES resolution and bridge bank sale; and c) the viability of the entity resulting from the sale of the bridge bank.

a) Competitiveness of sales process

Under the 2014 Decision, Portugal committed to carry out an open and competitive sales process for the bridge bank Novo Banco. The sales process itself and the choice of the best bid were entirely the responsibility of Portugal.

In March 2017, Portugal announced that it had signed a share purchase agreement with private equity fund Lone Star with contingent aid measures. The Commission has now verified that Portugal's process for the sale of the bridge bank Novo Banco was indeed **open** and **competitive**, offering the same conditions to all bidders, and that Portugal had selected the best available bid, that of Lone Star.

b) Additional measures to finalise the resolution of BES and support the sale of its bridge bank Novo Banco

The private buyer, Lone Star, negotiated and agreed with Portugal on the conditions for the sale of the bridge bank Novo Banco. In particular:

- Lone Star would inject €1 billion in capital into Novo Banco and committed to implement an in-depth restructuring of the bank. In addition, Novo Banco plans to raise €400 million on the market by means of issuing Tier 2 capital instruments.
- In turn, the Portuguese Resolution Fund agreed that:

– if and when the capital ratio falls below a threshold due to losses on a legacy asset portfolio, it would inject capital of up to €3.89 billion;

– if the issuance of Tier 2 capital instruments cannot be completed successfully from private means, it will subscribe the remainder (the amount of which is offset against its commitment to inject capital).

- Finally, only to the extent that capital needs arise under severe adverse circumstances, which cannot be addressed by Lone Star or other market players, Portugal will provide limited, additional capital.

A decision to grant State aid lies entirely with the Member State concerned. The Commission's role is limited to assessing the compatibility with EU State aid rules of such planned support, notified by Portugal to the Commission.

The Commission's assessment showed that BES' shareholders and subordinated debt holders already contributed fully to the costs of the BES resolution as required by **burden-sharing** rules. Furthermore, Portugal and Lone Star submitted a far-reaching **restructuring plan** for Novo Banco, including several measures to **limit distortions of competition**, such as by divesting non-core business activities and other downsizing, as well as commitments to prevent distortive commercial behaviour by the bank. Finally, Novo Banco's senior management is subject to a **salary cap** (covers the total remuneration package and corresponds to 10 times the average salary of the bank's employees), as required under EU State aid rules.

On this basis, the Commission concluded that the Portuguese support measures are in line with EU State aid rules.

c) Viability of the resulting entity

EU State aid rules provide that the viability of the entity resulting from the sale of a bridge bank has to be assessed by the Commission.

Under its restructuring plan, Novo Banco will further advance its operational restructuring to focus on its core business activities and pursue strict efficiency targets. It will also improve its credit risk management to strengthen the bank's solvency and resilience. Taken together, the Commission concluded that the restructuring plan and the commitments **restore the viability of the bank** and enable the bank to overcome its legacy burden.

Background on applicable EU rules

Under EU law, if a bank enters into resolution, it is the responsibility of the competent resolution authority to determine the resolution strategy. It is for the Member State to decide whether or not to grant State aid, and in what form. The role of the Commission is to ensure that any measures proposed by the authorities are in line with EU law, including State aid rules.

It has been the Commission's consistent practice to apply the same set of rules to a bank in resolution from start to finish. The resolution of BES was designed and carried out by the Portuguese authorities under the national legal framework in place in August 2014, prior to the entry into force of the Bank Resolution and Recovery Directive (BRRD). Since the resolution, the creation of a bridge bank and its subsequent sale was part of the resolution strategy initiated in 2014, the sales process of the bridge bank is governed by Portugal's national resolution framework, while the Commission's assessment rests on EU law applicable at the time when BES was put in resolution, i.e. EU State aid rules (the 2013 Banking Communication).

This was the only case and there are no other cases of banks that were put into resolution under the national resolution framework before the BRRD entered into force, in relation to which the resolution process is still ongoing. Today's decision addresses BES' legacy burden and aims to return some of its assets to viability. This is important in parallel to the ongoing work to complete the Banking Union and create a genuine level playing field in the European banking sector.

Background on the sale of Novo Banco

Under the Commission's August 2014 decision, Novo Banco was set up as a bridge bank with a limited lifetime. Portugal carried out a first sales process but did not accept the binding offers it received.

At the request of Portugal, in December 2015, the Commission approved a one-year prolongation of the deadline to sell Novo Banco, so as to allow sufficient additional time for Portugal to carry out a second sales process. The second sales process resulted in Portugal signing a share purchase agreement with private equity fund Lone Star in March 2017, which the Commission has today approved under EU State aid rules.

Separately, the Commission approved the acquisition of Novo Banco by Lone Star under the EU Merger Regulation on 10 July 2017.

The non-confidential version of today's decision under EU State aid rules will be made available under the case number SA.49275 in the State Aid Register on the competition website once any confidentiality issues have been resolved.