

EXTRAORDINARY MEETING OF THE BOARD OF DIRECTORS OF BANCO DE
PORTUGAL

19 December 2015

6.00 p.m.

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On 19 December 2015, at 6.00 p.m., at an extraordinary meeting of the Board of Directors of Banco de Portugal, chaired by the Governor, Carlos da Silva Costa, also attended by the Vice-Governors Pedro Duarte Neves and José Ramalho and by Directors João Amaral Tomaz, António Varela and Hélder Rosalino, the following deliberation was adopted regarding agenda item “Beginning of the process to apply a resolution measure to BANIF – Banco Internacional do Funchal, S.A.”:

DELIBERATION

Under Article 146 (1) of the Legal Framework of Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras* – RGICSF), approved by Decree-Law No 298/92 of 31 December, and in view of the urgent need of the measures now taken to safeguard the continuity of the provision of the essential financial services ensured by BANIF – Banco Internacional do Funchal, S.A., as well as to preserve the stability of the Portuguese financial system, this deliberation is deemed urgent under the terms and for the purposes of the provisions of Article 124 (1) (a) of the Administrative Procedures Code (*Código do Procedimento Administrativo*), with no prior hearing of the interested parties.

The minutes of this deliberation are approved, with a view to its immediate implementation, under the terms of Article 34 (4) and for the purposes of Article 34 (6) of the Administrative Procedures Code.

Whereas:

1. In January 2013 the European Commission temporarily approved a State aid [State aid No SA.36123 (2015/C) (ex 2013/N) – Recapitalisation of Banif] to the amount of one billion, one hundred million euros, under the form of a recapitalisation operation with public investment, to enable BANIF – Banco Internacional do Funchal, S.A. (BANIF) to comply with the minimum legal and regulatory own funds requirements.

The final decision of the European Commission on the compatibility of this State aid with the internal market and with the principles, rules and guidelines of the European Union regarding State aid became dependent on the presentation, by the Portuguese State, of a restructuring plan ensuring the viability of the bank, while containing adequate burden sharing measures and measures aimed at limiting distortions of competition.

2. On 24 July 2015, the European Commission informed the Portuguese State that, after analysing the various versions of the restructuring plan, decided to open an in-depth investigation procedure to assess whether the State aid received by BANIF was compatible with the internal market. In view of a number of shortcomings identified in the restructuring plan, the Commission had doubts whether it provided a sound basis to guarantee the viability of BANIF as a whole within the restructuring period and whether it was in a position to reimburse or remunerate the State aid in a proper manner.
3. With respect to this decision, on 18 December 2015 the European Commission published in the Official Journal of the European Union (2015/C 426/03) the non-confidential version of the said decision and invited the interested parties to issue their opinion on said aid, under the terms of Article 108 (2) of the Treaty on the Functioning of the European Union, by 18 January.
From that date onwards the European Commission may declare that the aid was illegal and approve an injunction addressed to the Portuguese Republic, demanding its restitution.

Considering that the aid may be declared illegal, the shareholders of BANIF and its Board of Directors started a process to sell their shareholder position in the institution.

4. On 16 December 2015 the Minister of Finance communicated to Banco de Portugal that given the succession of circumstances and developments occurred in the voluntary sale process, namely considering the inability to find a medium-term viability scenario for BANIF that could be accepted by the European Commission, there seemed to be no choice but for the resolution of BANIF in a context in which the voluntary sale solution would fail.
5. On 17 December 2015 the Minister of Finance communicated to Banco de Portugal that in line with the clear and explicit position of the European Commission, and failing the sale of BANIF within a voluntary process, its activity should be sold by applying a resolution measure.
6. On 17 December 2015 the Minister of Finance also informed Banco de Portugal of the European Commission's opposition to a compulsory capitalisation operation through public investment.
7. On 18 December 2015 the European Commission (through the Directorate-General for Competition) clarified that a voluntary sale would not be possible if it implied the granting of a State aid, which was the case of the acquisition bids of which the European Commission had become aware until that moment. The European Commission further informed that, in accordance with the provisions of Directive 2014/59/EU, if was required extraordinary public financial support, the supervisory authority or the resolution authority should declare that BANIF was "failing or likely to fail". Finally, the European Commission communicated that, in its opinion, the sale solutions that were being analysed could only be viable in a resolution scenario.
8. On 19 December 2015 the Minister of Finance informed Banco de Portugal, on the basis of information that had been transmitted to him by BANIF's Board of Directors, that the sale of this institution's assets and liabilities under the voluntary sale process had not hitherto been done.
9. BANIF's reimbursement of the State aid, as a consequence of it being declared illegal by the European Commission, would lead to a very

serious capital shortage which BANIF would not be able to recover, given its weak capital situation.

10. On the other hand, BANIF's liquidity situation deteriorated noticeably and at a very fast pace in the last few days, translated into substantial outflows of deposits, leading to a serious and grave risk of non-compliance with its obligations and, hence, regarding its ability to continue providing essential financial services. The frustration of expectations as to the outcome of the voluntary sale process would certainly deteriorate its liquidity situation, with immediate risk of payments suspension.

11. The facts described in the foregoing paragraphs led BANIF to become unable to comply with the requirements regarding the maintenance of the authorisation to take up its business activity, consequently going into liquidation, and show that BANIF is "failing or likely to fail".

12. Under the present circumstances and considering the alternatives available, Banco de Portugal deems that the application of a resolution measure is the only solution to protect depositors and to ensure continuity of the essential financial services provided by BANIF (in particular in the Autonomous Regions of the Azores and Madeira), safeguarding the stability of the financial system with fewer costs for the public purse.

13. If a resolution measure had not been urgently taken, BANIF would have inevitably headed towards a suspension of payments and withdrawal of its authorisation, with the consequent winding up under normal insolvency proceedings, which would represent a very high systemic risk and a serious threat to financial stability and the public interest.

14. The set of resolution measures applicable by Banco de Portugal to a credit institution, in the exercise of its powers as resolution authority conferred on it by Article 17-A of Banco de Portugal's Organic Law, is laid down in Article 145-E (1) of RGICSF.

15. Among the measures envisaged in RGICSF, the total or partial sale of the institution's business is the most appropriate for this particular situation, taking into account the existence of potential interested buyers in purchasing part of BANIF's activity, as already made clear under the voluntary sale process.

Given the urgency of the above situation, it is not possible for Banco de Portugal to promote a sale process with a wide number of prospective purchasers. Negotiations for the sale must, therefore, be conducted with institutions that have participated in the negotiations envisaging a voluntary sale.

Among the institutions that have shown interest in purchasing the State's equity holding in BANIF under the voluntary sale process and that meet the requirements of the Portuguese State's Letter of Commitment, as regards the profile of the purchasing institution, Banco Popular Español, S.A., and Banco Santander Totta, S.A., are the two largest credit institutions, and have greater financial capacity. By conducting this procedure with both institutions, it is possible to reconcile competitive tension with the adherence to the tight timetable for the application of the above-mentioned resolution measure,

The Board of Directors of Banco de Portugal, pursuant to Article 145-M (1), (3), (5) and (9) of RGICSF, has decided to:

- (a) Declare that BANIF – Banco Internacional do Funchal, S.A., is “failing or likely to fail”, according to and for the purposes of Article 145-E (2) (a) of RGICSF;
- (b) Start the process for the application of a resolution measure as envisaged in Article 145-E (1) (a) of RGICSF to BANIF – Banco Internacional do Funchal, S.A.;
- (c) Take the steps required towards the sale of the business of BANIF – Banco Internacional do Funchal, S.A., with Banco Popular Español, S.A., and Banco Santander Totta, S.A.;
- (d) Approve the content of the documents to be sent to the potential purchasers (as well as to Banco Santander, S.A.), with the description of the sale process and guidelines on the content and submission of the bid offers, attached to this Deliberation;

(e) Give to the potential purchasers (as well as to Banco Santander, S.A.) access to relevant information on the financial and asset position of BANIF – Banco Internacional do Funchal, S.A.

The Board of
Directors

The
Secretary to
the Boards