



Frequently Asked Questions about BES

[last update: 4 January 2016]

A. Intervention mechanisms for distressed credit institutions

1. In the event of financial distress involving a credit institution, which intervention measures may be implemented?

In the event of financial distress involving a credit institution, and when a solution based on private capital cannot be found in a timely manner, the following forms of intervention are available under Portuguese law:

- a) Application of a resolution measure;
- b) Recapitalisation with recourse to public funding;
- c) Nationalisation;
- d) Judicial liquidation.

Resolution

Resolution measures were introduced in the Portuguese legal framework in 2012 and are applicable when the deterioration in the financial and prudential situation of an institution has the potential to jeopardise the stability of the national financial system.

A resolution measure consists in isolating the institution's problem assets, for future liquidation, and placing the institution's core activity with a fully capitalised entity. This solution provides continuity of service, protecting customers, taxpayers and public funds (see questions 2, 3 and 4).

The costs incurred in connection with a resolution measure are first borne by the shareholders and creditors of the institution under resolution, in accordance with the hierarchy of claims and a level playing field within each class and, subsequently, by the Resolution Fund. This Fund is capitalised by the financial sector. As such, it does not entail additional costs to taxpayers (see Section C).

Recapitalisation with recourse to public funding

Banco de Portugal may propose a mandatory recapitalisation operation with recourse to public funding.

The decision on the mandatory recapitalisation operation and the establishment of its terms and conditions are incumbent on the Minister of Finance, which shall set a deadline for public disinvestment and grant the credit institution's shareholders the right to purchase any shares that the State may hold as a result of the recapitalisation operation with recourse to public funding.

Should a resolution measure be applied, this option, which may produce benefits, for instance, in the event of widespread financial instability, carries, however, risks to public funds.



Nationalisation

On principle, nationalisation makes it possible to contain systemic disruptions associated with financial difficulties of a credit institution, given that it helps prevent default.

However, nationalisation may only be approved by the Portuguese Parliament, and its costs are borne solely by the State and, consequently, taxpayers.

In this scenario, the State assumes full responsibility for all liabilities of the institution under resolution and for its management. If the institution has a positive net worth, the nationalisation forces the State to compensate the bank's shareholders. Furthermore, in the event of negative developments after the nationalisation, for instance, unexpected losses, it is exclusively incumbent on the State to restore the institution's solvency levels.

Judicial liquidation

Should the authorisation of a credit institution be withdrawn, it becomes insolvent, which is followed by the judicial liquidation of the institution.

Given that this implies the immediate suspension of payments and the interruption of all financial services provided to the real economy by that bank, the liquidation of credit institutions under the insolvency scheme has proven inadequate for this type of institution.

Furthermore, liquidation implies that all unsecured creditors are exposed to losses (including depositors not covered by the Deposit Guarantee Fund or whose deposit exceeds the limits of the guarantee). In the case of systemically important institutions, such widespread losses could have the potential to seriously disrupt the financial system and, consequently, the real economy.

2. What are resolution measures?

Resolution measures are legal instruments that may be used by Banco de Portugal to intervene in institutions with potential or actual financial imbalances, with a view to safeguarding the stability of the financial system and the interests of depositors.

There are two types of resolution measures:

1. (Total or partial) sale of the business to another credit institution authorised to carry on the activity in question;
2. Setting-up of one or more bridge bank(s) and (total or partial) transfer of the business of the distressed institution to the new bank(s).

Legal regime

The resolution regime is laid down in the Regime Geral das Instituições de Crédito e Sociedades Financeiras – RGICSF (Legal Framework of Credit Institutions and Financial Companies) (approved by Decree-Law No 298/92 of 31 December 1992, in the wording introduced by Decree-Law No 31-A/2012 of 10 February), regulating the adoption of resolution measures (see Articles 145-A to 153-A) and,



together with Executive Order No 420/2012 of 21 December 2012, the operation of the Resolution Fund (see Articles 153-B to 153-U of RGICSF).

3. To which institutions may resolution measures be applied?

Resolution measures may be applied to the following institutions:

- a) Credit institutions having their head office in Portugal;
- b) Parent undertakings having as a subsidiary one or more credit institutions or investment firms carrying out the following activities: execution, on behalf of customers, of orders in relation to one or more of financial instruments, and dealing on own account in one or more financial instruments;
- c) Investment firms carrying out the activities of execution, on behalf of customers, of orders or dealing on own account in one or more financial instruments, or which are included in the same perimeter of supervision on a consolidated basis of a credit institution;
- d) Branches of credit institutions having their head office in non-European Union countries;
- e) Branches of financial institutions having their head office in non-European Union countries carrying out the following activities: execution, on behalf of customers, of orders in relation to one or more of financial instruments, and dealing on own account in one or more financial instruments;
- f) Relevant companies for payment systems subject to the supervision of Banco de Portugal.

4. In which situations is the application of resolution measures justified?

A resolution measure may be applied to an institution when the latter does not meet (or is at serious risk of not meeting) its authorisation requirements, in particular when one of the following situations occurs, or sufficient reasons exist to consider that in the short run, one of the following situations may occur:

- a) The institution has losses that will exhaust its capital stock;
- b) The institution's assets become lower than the liabilities;
- c) The institution is not able to meet its obligations.

Resolution measures are applied when the institution does not seem to be able, in an appropriate time frame, to take the necessary actions to return to adequate solvency conditions and to properly comply with all prudential requirements.

The legislation in force only allows for the implementation of a resolution measure where there is no other procedure, less onerous, that will achieve the same goals (need principle). Furthermore, the implementation of this measure should be proportional to its final goals (proportionality principle).

Purposes of a resolution measure:

The implementation of a resolution measure shall be crucial to the pursuance of at least one of the following purposes:

- a) To safeguard depositors' confidence, thus preventing a "deposit run", typically associated with a breakdown in that confidence, which would affect other institutions within the system and, consequently, would make it impossible for institutions to meet their commitments to depositors and would result in a credit crunch impacting on real economy;



- b) To prevent systemic contagion, i.e. the possibility that the situation of a distressed institution will have negative implications for the national financial system as a whole or impact on economic activity;
- c) To minimise costs to taxpayers and the State, thus preventing the use of public funds to compensate for bank failures not associated with public management;
- d) To ensure the continuity of essential financial services, namely the opening of deposit accounts, lending, provision of collateral, provision of payment services and portfolio management.

B. Resolution measure applied to Banco Espírito Santo, S.A.

1. Why was a resolution measure applied to Banco Espírito Santo, S.A.?

On 30 July 2014, Banco Espírito Santo, S.A. announced losses largely above the foreseeable values in the light of information disclosed until then by Banco Espírito Santo, S.A. and its external auditor.

The results disclosed on 30 July 2014 reflect the practice of management acts seriously detrimental to the interests of Banco Espírito Santo, S.A. and the violation of determinations of Banco de Portugal that prohibited an increase in the exposure to other entities of the Grupo Espírito Santo. These facts occurred under the former management of Banco Espírito Santo, S.A.. Acts committed when the replacement of the former management had already been announced, led to an additional loss of around €1.5 billion compared with the losses that were to be expected after Banco Espírito Santo, S.A. communication to the market on 10 July 2014.

This situation had several consequences:

- 1. Led Banco Espírito Santo, S.A. to cease to comply with the minimum solvency ratios in force (Common Equity Tier 1 ratio of 5 per cent, i.e. 2 percentage points below the minimum level required by Banco de Portugal and total solvency ratio of 6.5 per cent, below the minimum regulatory level of 8 per cent.).
- 2. Led to the decision to suspend the access of Banco Espírito Santo, S.A. to monetary policy operations and therefore to the liquidity provided by the Eurosystem.
- 3. Generated increasing pressure on Banco Espírito Santo, S.A. cashflows.
- 4. Deteriorated further the public perception of the Banco Espírito Santo, S.A., as shown by the strongly negative performance of its securities, undermining depositors' confidence. This negative public perception led to the suspension of transactions on Friday afternoon, 1 August 2014, with the risk of contaminating the perception regarding the other institutions of the Portuguese banking system.
- 5. Aggravated uncertainty about the balance sheet of Banco Espírito Santo, S.A. making a private capitalisation solution unfeasible in the short run.

Against this background, problems arose regarding the continuity of the activity of Banco Espírito Santo, S.A.. Considering the importance of the institution in the Portuguese banking system and in the financing to the economy, these problems endangered the stability of the national payment and financial systems.

The situation described prompted an imperative and very urgent intervention by Banco de Portugal.

This measure ensures the continuity of the institution's activity, being the best to protect the depositors and other customers of the institution and financial stability.



2. Why was the capital buffer of Banco Espírito Santo, S.A. not sufficient to accommodate the losses recorded in the first half of 2014? How did Banco de Portugal react to this situation?

On 11 July 2014, Banco de Portugal made public that, taking into account the information reported on 10 July by Banco Espírito Santo, S.A. and its external auditor (KPMG & Associados - Sociedade de Revisores Oficiais de Contas, S.A.), Banco Espírito Santo, S.A. held a sufficient capital buffer to accommodate possible negative impacts arising from its exposure to the non-financial arm of Grupo Espírito Santo, without jeopardising compliance with the required minimum capital ratios.

According to information disclosed by Banco Espírito Santo, S.A. on 30 July 2014, losses arising from the exposure to Grupo Espírito Santo, calculated and recognised in the financial statements as at 30 June 2014, remained within the limits anticipated and consistent with a provision of €2 billion required by Banco de Portugal for this exposure.

However, ensuing facts, only identified by the external auditor in the second fortnight of July, increased by around €1.5 billion the value of the losses to be recognised in the profit and loss account of the first half of 2014, jeopardising the compliance with the minimum solvency ratios in force.

Among the operations that most contributed to these developments, the following were particularly important:

- a) The issue of two comfort letters by Banco Espírito Santo, S.A. addressed to creditors of Banco Espírito International, which led to the recognition of a loss in the accounts of Banco Espírito Santo, S.A. amounting to €267 million, as at 30 June 2014;
- b) The placement of securities, the consolidation of vehicles and other contingencies associated with issuance by Banco Espírito Santo, S.A., held by retail customers, led to losses recognised in the accounts for the first half of the year, amounting to €1,249 million, as at 30 June 2014.

These extremely serious acts committed in June and July 2014 before the appointment of the new members of the Executive Board point to the practice of management acts seriously detrimental to the interests of Banco Espírito Santo, S.A. and overtly non-compliant with the determinations issued by Banco de Portugal that prohibited an increase in the exposure of Banco Espírito Santo, S.A. to the non-financial arm of Grupo Espírito Santo. The acts in question were not reported to Banco de Portugal by any member of the management or supervisory boards of Banco Espírito Santo, S.A. on the date they occurred.

Upon becoming aware of these acts at the time of the disclosure of the first-half accounts for 2014, Banco de Portugal immediately ordered:

- a) A capital increase to be made by Banco Espírito Santo, S.A., instructing its board to submit a capitalisation plan, so as to ensure that in the short run its capital is increased to adequate solvency levels;
- b) Suspension of the voting rights attached to the qualifying holding of Espírito Santo Financial Group, S.A. and Espírito Santo Financial (Portugal) - SGPS, S.A. in Banco Espírito Santo, S.A.;
- c) Suspension, with immediate effect, of the members of the management bodies responsible for audit, compliance and risk management, as well as the members of the supervisory board;
- d) Appointment of an audit commission composed of senior officials of PricewaterhouseCoopers & Associados – Sociedade de Revisores Oficiais de Contas, Lda., until the shareholders replace the members of the Audit Committee.



Additionally, the on-going forensic audit commissioned by Banco de Portugal will assess individual responsibilities, including those of the former CEO, former CFO and other members of the Executive Board who have resigned in the interim from their posts. Should the practice of illicit acts be confirmed, the relevant administrative or even criminal actions will be pursued.

3. Which resolution measure has Banco de Portugal decided to apply to Banco Espírito Santo, S.A.?

Banco de Portugal has decided to apply to Banco Espírito Santo, S.A. a resolution measure consisting in the transfer of most of its business to a bridge bank, the so-called Novo Banco, S.A., specifically set up for this purpose. This measure aims:

- a) To minimise the deterioration of the institution's value;
- b) To protect private and corporate deposits held in Banco Espírito Santo, S.A.;
- c) To protect credit granted by Banco Espírito Santo, S.A., in addition to other assets;
- d) To safeguard the continuity of the financial services provided by Banco Espírito Santo, S.A. to its customers and the general public;
- e) To maintain stability and confidence in the Portuguese financial system;
- f) To safeguard the interests of taxpayers and public funds.

Legal framework

The framework applicable to bridge banks essentially results from the provisions of Articles 145-G to 145-I of the Regime Geral das Instituições de Crédito e Sociedades Financeiras – Legal Framework of Credit Institutions and Financial Companies (approved by Decree-Law No 298/92 of 31 December 1992, as amended by Decree-Law No 31-A/2012 of 10 February), and of Notice of Banco de Portugal No 13/2012. The Commercial Companies Code also applies to bridge banks, with the necessary adaptations to the purposes and nature of these institutions. In addition to this legal framework, the bridge bank will be also governed by its by-laws, which were approved by the deliberation of the Board of Directors of Banco de Portugal establishing the application of the resolution measure.

4. Why did Banco de Portugal choose this resolution measure?

The situation of Banco Espírito Santo, S.A. has led to the urgent intervention of Banco de Portugal (see question B1). Among the resolution measures, the setting-up of a bridge bank to which the main business will be transferred is the only solution that makes it possible to swiftly ensure (i) the protection of deposits and customers, (ii) continuity of the financial services provided by Banco Espírito Santo, S.A. and (iii) the maintenance of stability and confidence in the Portuguese financial system.

5. What does Novo Banco being a bridge bank mean?

A bridge bank is a credit institution with the status of a bank, taking the form of a public limited company (sociedade anónima). It is established specifically to receive and manage assets, liabilities, assets under management and off-balance-sheet items transferred from a credit institution with a financial imbalance.

As a bank, Novo Banco may carry out all bank-related activities, under the management mandate set out by Banco de Portugal. It should also comply with all the rules, including prudential requirements, imposed on banks operating in the market.



The transfer of business to a bridge bank does not depend on prior consent of the parties involved in contracts related to the assets, liabilities, assets under management and off-balance-sheet items to be transferred.

6. Who holds Novo Banco's share capital?

The share capital of Novo Banco, to the amount of €4.9 billion, is fully underwritten by the Resolution Fund.

7. Is Novo Banco a 'bad bank'?

No. A 'bad bank' is an institution exclusively set up to receive the so-called problematic assets (notably those whose recovery may be difficult) of one or more credit institutions.

A bridge bank, on the contrary, is set up to receive quality assets. Novo Banco is thus a duly capitalised bank with a sound financial situation.

8. Who was appointed to Novo Banco's corporate bodies?

On 3 August 2014, upon a proposal of the Resolution Fund's Management Committee, the Board of Directors of Banco de Portugal appointed the Board of Directors and the Board of Auditors of Novo Banco, S.A.

The members appointed to the Board of Directors were: Vítor Augusto Brinquete Bento as Chair, José Alfredo Almeida Honório as Vice-Chair, and João de Almada Moreira Rato, João Eduardo Moura da Silva Freixa, Jorge Alberto Carvalho Martins and João Maria de Magalhães Barros de Mello Franco as the other members of this Board.

The members appointed to the Board of Auditors were: José Manuel de Oliveira Vitorino as Chair and José António Noivo Alves da Fonseca and José Francisco Claro as the other members of this Board.

On 14 September 2014, following the decision announced by Vítor Bento, José Honório and João Moreira Rato to resign as members of the Board of Directors of Novo Banco, S.A., the Resolution Fund and Banco de Portugal invited Eduardo Stock da Cunha to take over the chairmanship of the Board of Directors of Novo Banco, with a mandate to form and lead an experienced team, motivated for the development process and the creation of value for the bank.

Following a proposal advanced by Eduardo Stock da Cunha as CEO, the new Board of Directors of Novo Banco includes Jorge Freire Cardoso as CFO, and also Vítor Fernandes and José João Guilherme. The remaining members of the former Board of Directors will not be part of this new Board of Directors of Novo Banco, S.A..

9. What consequences does the application of this resolution measure have for Banco Espírito Santo, S.A.?

The majority of the business and property of Banco Espírito Santo, S.A. was transferred to Novo Banco. S.A. Business transferred to Novo Banco, S.A. will continue to be carried out as usual.



This notwithstanding, Banco Espírito Santo, S.A. will continue to play a key role in ensuring the efficiency of the resolution measure applied by Banco de Portugal. Banco Espírito Santo, S.A. is legally required to provide all information requested by Novo Banco, S.A.

In addition, Banco de Portugal has applied the following corrective measures to Banco Espírito Santo, S.A.:

- a) Prohibition to grant credit and invest funds in any types of assets, except to the extent that this investment of funds proves to be necessary for the preservation and valuation of its assets;
- b) Prohibition to take deposits;
- c) Waiver, for the period of one year, of compliance with the prudential rules applicable and the timely fulfilment of previously contracted obligations, except if this fulfilment is indispensable to the preservation and valuation of its assets, in which case Banco de Portugal may authorise the operations required for the purpose.

Therefore, Banco Espírito Santo, S.A. is no longer carrying out any activity, and Banco de Portugal will eventually withdraw its authorisation for exercising activity. This decision will result in an insolvency declaration that will in turn initiate Banco Espírito Santo, S.A.'s judicial liquidation proceedings. These liquidation proceedings will only focus on those liabilities and assets that have not been transferred to Novo Banco, S.A. The costs associated with these proceeding are those resulting from an insolvency proceeding and will be borne by the insolvent estate.

10. What is transferred from Banco Espírito Santo, S.A. to Novo Banco?

Assets, liabilities, off-balance-sheet items and assets under management of BES recorded in the accounts will be transferred to Novo Banco, S.A., according to the following criteria:

- a) All assets, licences and rights, including property rights of BES, will be transferred in full to Novo Banco, S.A. with the exception of:
 - i. Shares representing the capital of Banco Espírito Santo Angola, S.A.;
 - ii. Shares representing the capital of Espírito Santo Bank (Miami);
 - iii. Shares representing the capital of Aman Bank (Libya);
 - iv. Own shares of Banco Espírito Santo, S.A.;
 - v. Credit claims on Espírito Santo International and its shareholders, the shareholders of Espírito Santo Control, the entities which are in a control or group relationship, in accordance with the provisions of Article 21 of the Código dos Valores Mobiliários (Portuguese Securities Code), with Espírito Santo International and credit claims on the entities which are in a control or group relationship, in accordance with the provisions of Article 21 of the Portuguese Securities Code, with Espírito Santo Financial Group (hereinafter called Grupo Espírito Santo), with the exception of (A) credit claims on Espírito Santo Financial Group, secured by a financial pledge over all shares of Companhia de Seguros Tranquilidade, S.A., (B) credit claims on entities included in the perimeter of consolidated supervision of Banco Espírito Santo, S.A. (hereinafter called Grupo BES), and (C) credit claims on insurance undertakings supervised by the Instituto de Seguros de Portugal (Insurance and Pension Funds Supervisory Authority), namely: Companhia de Seguros Tranquilidade, T-Vida-Companhia Seguros, Europ Assistance and Seguros Logo;
 - vi. Assets to the amount of €10 million, to enable the Management of Banco Espírito Santo, S.A., to take the steps required to recover and value its assets and to pay its tax or administrative liabilities.



- b) BES responsibilities to third parties that are liabilities or off-balance-sheet items will be transferred in full to Novo Banco, S.A., with the exception of the following (“Excluded Liabilities”):
- i. Liabilities to (a) the respective shareholders, whose participation is equal to or higher than 2% of the share capital or to persons or entities which in the two-year period preceding the transfer held a participation equal to or higher than 2% of the capital of BES; members of the management or supervisory boards, certified auditors, audit firms or persons with similar status in other companies in a control or group relationship with the institution, (b) persons or entities that have been shareholders, performed the functions or provided the services referred to in the foregoing subparagraph in the four years before the establishment of Novo Banco, S.A., and whose action or failure to act caused the financial difficulties experienced by the credit institution or which helped to aggravate that situation, (c) the spouses, relatives by consanguinity or by affinity in the first degree or third parties acting on behalf of the persons or entities referred to in the foregoing subparagraphs, (d) persons responsible for facts related to the credit institution, or that have profited from these facts, directly or through a third party, which have caused its financial difficulties or helped to aggravate that situation, due to action or failure to act in the performance of their functions, according to Banco de Portugal’s understanding;
 - ii. Any obligations towards entities that are part of Grupo Espírito Santo, which are subordinated claims under the terms of Articles 48 and 49 of the Código da Insolvência e da Recuperação de Empresas (Insolvency and Corporate Recovery Code), except the entities that are part of Grupo BES whose liabilities to Banco Espírito Santo have been transferred to Novo Banco, S.A., without prejudice, as regards such entities, to the exclusion envisaged in subparagraph (v).
 - iii. Any obligations towards or guarantees provided to third parties regarding any type of liabilities of entities that are part of Grupo Espírito Santo, except the entities that are part of Grupo BES whose holdings have been transferred to Novo Banco, S.A.;
 - iv. All liabilities resulting from the issue of instruments that are or at some point have been eligible for the calculation of Banco Espírito Santo’s own funds and whose conditions have been approved by Banco de Portugal;
 - v. Any liabilities or contingencies, namely those resulting from fraud or the breach of regulatory, criminal or administrative provisions or determinations;
 - vi. All liabilities or contingencies of Banco Espírito Santo related to shares, instruments or contracts from which subordinated claims arise towards Banco Espírito Santo;
 - vii. All obligations, guarantees, liabilities or contingencies related to the trading, financial intermediation and distribution of debt instruments issued by entities that are part of Grupo Espírito Santo, without prejudice to any unsubordinated claims resulting from contractual provisions, prior to 30 June 2014, provided that such provisions can be evidenced through documents stored in Banco Espírito Santo’s archives, in terms that allow the control and verification of the decisions taken.
- c) BES liabilities that are not transferred will be maintained within the legal framework of BES;
- d) All the other off-balance-sheet items of BES will be transferred in full to Novo Banco, S.A., except those related to Banco Espírito Santo Angola, S.A., Espírito Santo Bank (Miami) and Aman Bank (Libya);
- e) The assets under management of BES will be assets under management of Novo Banco, S.A.;
- f) All employees and service providers of BES will be transferred to Novo Banco, S.A.;
- g) Any guarantee related to any obligation transferred to Novo Banco, S.A. is also transferred to Novo Banco, S.A. Any guarantee related to any obligation that is not transferred to Novo Banco, S.A. will not be transferred to Novo Banco, S.A. either.

11. Who has decided what to transfer to Novo Banco?

Banco de Portugal, in the exercise of its powers, has selected the assets, liabilities, off-balance-sheet items and assets under management of Banco Espírito Santo, S.A. to be transferred to Novo Banco.



12. Are the national and international entities belonging to Grupo BES also affected by this resolution measure?

The entities belonging to Grupo BES continue to exist and the relationship between those entities and their customers do not undergo any changes due to the resolution measure now adopted. Direct or indirect shareholding held by Banco Espírito Santo, S.A. with the other entities of Grupo Espírito Santo, except those held with Banco Espírito Santo Angola, S.A., Aman Bank and Espírito Santo Bank, integrate the assets being transferred to Novo Banco, and are now therefore property of Novo Banco.

13. After the implementation of the resolution measure, which banking institutions continue to be under the supervision of Banco de Portugal?

The subsidiaries of credit institutions under the supervision of Banco de Portugal having their head office in third countries are subject to supervision on an individual basis by the supervisory authority of those countries.

Where the supervisory authority is responsible for consolidated supervision, Banco de Portugal cooperates with those authorities in the performance of supervisory tasks, on a reciprocal basis.

Novo Banco's banking subsidiaries established in third countries are subject to supervision on an individual basis by local supervisory authorities, and consolidated supervision by Banco de Portugal at Novo Banco level:

- Banque Espírito Santo et de la Venetie (supervised by Autorité de Contrôle Prudentiel et de la Résolution);
- BES Cabo Verde (by Banco de Cabo Verde);
- Banco Espírito Santo do Oriente (by the Monetary Authority of Macao);
- BES Investimento do Brasil (by Banco Central do Brasil);
- BIC International Bank Limited (by Cayman Islands Monetary Authority);
- Bank Espírito Santo (International) Limited (by Cayman Islands Monetary Authority).

As a result of the resolution measure, BES's banking subsidiaries located in third countries which have not been transferred to Novo Banco – Espírito Santo Bank Miami, Aman Bank for Commerce and Investment Stock Company Líbia and Banco Espírito Santo Angola – ceased to be included in consolidated supervision by Banco de Portugal. The authorities responsible for supervising these entities are the Federal Reserve System – Atlanta, the Central Bank of Libya and Banco Nacional de Angola respectively.

On 30 June 2014, Banco de Portugal had already ceased to exercise its consolidated supervision at the ESFG level (holding located in Luxembourg), exercising it only at BES level. This change was due to the fact that the shareholdings held by ESFG in the share capital of BES were no longer sufficient to ensure BES control by ESFG.

On 30 June, following BES decline in supervisory level, the three ESFG's subsidiaries (that were not part of Grupo BES) – ES Bank Panama, ES Bankers Dubai and Banque Privée Espírito Santo (Switzerland) – ceased to be included in the perimeter of consolidated supervision by Banco de Portugal. The authorities responsible for the supervision of the mentioned ESFG's subsidiaries in Panamá, Dubai and Switzerland are Superintendencia de Bancos de Panama, Dubai Financial Services Authority and Financial Market Supervisory Authority respectively.



14. Which is the destination of the property of Banco Espírito Santo, S.A. that has not been transferred?

The property of Banco Espírito Santo, S.A. which has not been transferred will be managed by the members of the management board appointed by Banco de Portugal and will subsequently be part of the insolvency estate in the respective legal winding-up proceeding.

15. Who has been appointed for the boards of Banco Espírito Santo, S.A.?

Management Board:

Chair – Luís Augusto Máximo dos Santos

Member – César Bento Nunes de Brito

Member – Miguel Morais Alçada

Audit commission:

Chair – José Vieira dos Reis

Member – Rogério Manuel Fernandes Ferreira

Member – Vítor Manuel G. Pimenta e Silva

C. Costs of applying the resolution measure

1. Who bears the costs of applying a resolution measure?

One of the main objectives behind the creation of the resolution system was to minimise the impact of a financial imbalance in a credit institution on the public funds.

In the case of Banco Espírito Santo, S.A., the resolution costs were primarily borne by the institution's shareholders and subordinated creditors.

Secondarily, should the final costs of the resolution measure come to be greater than the burden borne by shareholders and subordinated creditors, the costs will be borne by the financial sector through the Resolution Fund. Therefore this operation will eventually involve no costs for public funds. This applies even in exceptional cases, such as this one, in which the State is called upon to provide temporary financial support to the Resolution Fund, as that support will later be repaid (and remunerated through payment of interest) by the Fund.

2. What is the Resolution Fund? How is it funded and who manages it?

The Resolution Fund is a public-law legal person designed to provide financial support to the application of the resolution measures ordered by Banco de Portugal. It is fully funded by the financial sector through initial and periodical contributions from member institutions and the revenue arising from the contribution over the banking sector.

The Resolution Fund is managed by a Management Committee comprising three members: (i) the Chairman, who is a member of the Board of Directors of Banco de Portugal; (ii) a member appointed by the member of the Government responsible for Finance and (iii) a member appointed by agreement between Banco de Portugal and the member of the Government responsible for Finance.

The Resolution Fund's activities are overseen by the Board of Auditors of Banco de Portugal, which ensures observance of the laws and regulations and issues its opinion on the Fund's annual accounts. By



31 March of each year, the Fund presents the annual report of 31 December of the prior year for the approval of the member of the Government responsible for Finance, accompanied by the opinion of the Board of Auditors of Banco de Portugal. The Fund's accounts are also subject to successive auditing by the Court of Auditors.

3. What role does the Resolution Fund play in the resolution of Banco Espírito Santo, S.A.?

The Resolution Fund plays an essential role in the resolution of Banco Espírito Santo, S.A.:

- a) Novo Banco's equity capital is held in full by the Resolution Fund;
- b) The Resolution Fund's Management Committee proposes the appointment of members of the management and supervisory boards of Novo Banco, S.A. to Banco de Portugal, under the terms of the applicable legal framework.

4. What amounts have been provided by the Resolution Fund?

The Resolution Fund has provided €4.9 billion to pay in the share capital of Novo Banco.

Of this, €377 million is from financial own funds of the Resolution Fund, consisting of contributions already paid by member institutions and the contribution over the banking sector.

The remaining sum needed for financing the resolution measure now adopted comes from a loan granted by the State, which will be repaid subsequently and remunerated by the Resolution Fund (see Question C6).

5. Can the Resolution Fund recoup the amounts provided?

When Novo Banco is sold, the proceeds from the sale will be returned to the Resolution Fund in the first instance.

6. Will the Portuguese State have to financially support the application of this resolution measure for Banco Espírito Santo, S.A.?

The financial support needed for the purposes of applying resolution measures as a rule must be provided exclusively by the Resolution Fund after absorption of losses by the shareholders and subordinated creditors. The ordinary revenues of the Resolution Fund do not include any sums from public funds (aside from the contribution paid by the banking sector, which is exclusively paid by the credit institutions and is allocated to the Resolution Fund in the State Budget).

However, should the Fund's own funds be insufficient to meet its responsibilities, by law the Fund may make use of loans, in particular from the Portuguese State, which may also provide guarantees to the Resolution Fund for the securing of financing.

The Resolution Fund only began operations in 2012, and as such is not yet fully funded for the purposes of a resolution measure for Banco Espírito Santo, S.A.. For this reason, the Fund had to obtain a loan from the Portuguese State in accordance with the law. This loan is expected to be relatively short-term, being replaced by loans from credit institutions.



In any case, the amounts lent by the Portuguese State will later be repaid, plus an amount derived by applying an interest rate, as the Resolution Fund accumulates revenues.

Thus by the end of the operation, the State will not have borne any costs for the resolution of Banco Espírito Santo, S.A..

7. What is the difference between the Resolution Fund and the Deposit Guarantee Fund?

While the two entities contribute towards the protection of depositors and the support of confidence in the banking system (thereby safeguarding stability in the financial system), there are important differences between the Resolution Fund and the Deposit Guarantee Fund:

Resolution Fund:

- **Mission:** the Resolution Fund provides financial support to the application of resolution measures adopted by Banco de Portugal.
- **Participation in the resolution regime:** it is compulsory to make use of the Resolution Fund when transferring the activity of an institution to a bridge bank, with a view to paying in share capital.

Deposit Guarantee Fund:

- **Mission:** the Deposit Guarantee Fund ensures that deposits held in credit institutions that are authorised to receive deposits from the public and that take part in the Deposit Guarantee Fund are repaid, for eligible depositors up to a maximum of €100,000 per depositor.
- **Participation in the resolution regime:** the Deposit Guarantee Fund may provide financial support to the transfer of deposits held at a credit institution in difficulty to a bridge bank, where the value of assets transferred is lower than the deposits covered.

D. BES customers

1. What are the consequences of this resolution measure for the customers of Banco Espírito Santo, S.A.?

Depositors. The resolution measure applied by Banco de Portugal ensures the safety of the deposits that had been made with Banco Espírito Santo, S.A.. Hence, the customers' legal or contractual rights remain unchanged. Deposits are transferred in full to Novo Banco, with the exception of deposits made by persons having a direct relationship with Banco Espírito Santo, S.A. (see questions D5 and D6).

The balance of deposits remains unchanged and available for movements, with no additional restriction (except those existing towards Banco Espírito Santo, S.A.).

Therefore, without prejudice to any legal or contractual provision stipulating otherwise, customers' deposits with Novo Banco will have exactly the same characteristics they had towards Banco Espírito Santo, S.A.: in particular, the same balance, maturities and conditions to move the accounts.

Also, the deposits transferred continue to benefit from the guarantee offered by the Deposit Guarantee Fund, under the terms and in line with the limits set out in the law.



Deposits opened with Banco Espírito Santo de Investimento, S.A., BEST – Banco Eletrónico de Serviço Total, S.A. and Banco Espírito Santo dos Açores, S.A. are also safeguarded and shall not be affected, to the extent that the shareholdings held by Banco Espírito Santo, S.A. in those institutions were transferred to Novo Banco.

Borrowers/Debtors. Contractual conditions of credit granted by Banco Espírito Santo, S.A. transferred to Novo Banco remain unchanged.

As a consequence, the periodical repayments (principal and interest) continue to be made by the borrowers as they did to Banco Espírito Santo, S.A..

2. As a customer of Banco Espírito Santo, S.A., who shall I liaise with from now on? What shall I do? Will I bear any costs?

The customers of Banco Espírito Santo, S.A. whose deposits, other credit claims or loans were transferred to Novo Banco (see D5 and D6) will henceforth deal with Novo Banco, no further action being required. This transfer will be cost free for the customers.

3. May I continue to use the branch of Banco Espírito Santo, S.A. where I usually do business?

Yes. The branches of Banco Espírito Santo, S.A. are now the property of Novo Banco and are operating normally.

4. As a customer of Banco Espírito Santo de Investimento, Banco BEST, Banco Espírito Santo dos Açores or any other entity of Grupo BES, who shall I liaise with from now on?

The relationships between those entities and their customers are unchanged as a result of the resolution measure now adopted.

The transfer of the business of Banco Espírito Santo, S.A. carries no consequences for the entities in Grupo BES, which continue to exist.

5. Which deposits have been transferred?

Deposits opened with Banco Espírito Santo, S.A. have been transferred for their full balances, and have therefore been generally protected, namely:

- a) Demand deposits;
- b) Deposits redeemable at notice;
- c) Time deposits;
- d) Deposits not allowing early withdrawal;
- e) Deposits under a special system;
- f) Housing savings deposits;
- g) Emigrants' deposits;
- h) Retirement savings deposits;
- i) Condominium savings deposits;
- j) Other savings deposits;
- k) Certificate of deposit accounts;
- l) Compulsory deposits.



All protected deposits continue to benefit from the guarantee of the Deposit Guarantee Fund, under the terms and up to the legally ceilings set out in the law, as well as from preferential rights.

6. Which deposits have not been transferred?

Most deposits opened with Banco Espírito Santo, S.A. have been transferred for their full balance. Only the following deposits made by persons directly related to Banco Espírito Santo, S.A. have not been transferred:

- a) Deposits made by the respective shareholders, whose participation is equal to or higher than 2% of the share capital or to persons or entities which in the two-year period preceding the transfer held a participation equal to or higher than 2% of the capital of Banco Espírito Santo, S.A., members of the management or supervisory boards, certified auditors, audit firms or persons with similar status in other companies in a control or group relationship with Banco Espírito Santo, S.A.;
- b) Deposits made by persons or entities that have been shareholders of Banco Espírito Santo, S.A., performed the functions or provided the services referred to in the foregoing subparagraph in the four years before the establishment of Novo Banco, S.A., and whose action or failure to act caused the financial difficulties experienced by Banco Espírito Santo, S.A. or which helped to aggravate that situation;
- c) Deposits made by the spouses, relatives by consanguinity or by affinity in the first degree or third parties acting on behalf of the persons or entities referred to in the foregoing subparagraphs;
- d) Deposits made by persons responsible for facts related to the Banco Espírito Santo, S.A., or that have profited from these facts, directly or through a third party, which have caused its financial difficulties or helped to aggravate that situation, due to action or failure to act in the performance of their functions, according to Banco de Portugal's understanding.

In order to confirm that the right to the funds deposited by the persons or the entities referred to in subparagraph c) above actually belongs to them, Novo Banco, S.A. shall take into account, among other relevant circumstances, the professional activities of the persons in question, their degree of dependence on the persons referred to in subparagraphs (a) and (b) above, their income level and the deposited amount. This demonstration of evidence shall be supported by documents and stored so that the decisions taken can be controlled and verified.

7. How do I find out if my investment is a deposit?

Credit institutions must inform customers regarding the characteristics of their products. Prior to offering deposits for sale, institutions must provide the customer with the following:

- a) In the case of simple deposits, a standardised information sheet;
- b) In the case of indexed or dual deposits, an information leaflet.

The deposit agreement, which must be provided to the customer, shall include all the characteristics indicated in the abovementioned documents.



8. Have the certificates of deposit been transferred?

Yes. The certificates of deposit issued by Banco Espírito Santo, S.A. have also been transferred, where they were not included in any of the exclusions referred to in the reply to question D6.

9. Have the deposits expressed in foreign currency been transferred?

Yes. Deposits expressed in foreign currency have also been transferred, where they were not included in any of the exclusions referred to in the reply to question D6.

10. Will the interest on the deposits transferred be paid by Novo Banco?

Yes. The interest on deposits transferred was also included in the transfer of business from Banco Espírito Santo, S.A. to Novo Banco. It is calculated according to the interest rate agreed with Banco Espírito Santo, S.A..

Therefore, without prejudice to any legal or contractual provision stipulating otherwise, depositors will have no losses, given that no changes will be made to the interest rates agreed between the depositors and Banco Espírito Santo, S.A..

11. Do I have to do anything to continue using the banking services provided by Banco Espírito Santo, S.A.?

No. You may continue using all banking services previously provided by Banco Espírito Santo, S.A.. The only difference is that, following the transfer of the business of Banco Espírito Santo, S.A., those banking services are now provided by Novo Banco. It is with this institution that from now on you must establish all relationships regarding the transferred deposits and credit.

Bank accounts that had been opened with Banco Espírito Santo, S.A. and that have been transferred to Novo Banco continue to operate as usual, i.e. with no further restrictions (except those restrictions already in place in accounts held with Banco Espírito Santo, S.A.). Hence, the holders of these accounts may:

- a) Make payments, debit and credit movements, bank transfers and all other usual banking operations;
- b) Use debit and credit cards issued by Banco Espírito Santo, S.A., which from now on are associated with the corresponding bank accounts with Novo Banco;
- c) Use cheques supplied by Banco Espírito Santo, S.A. before the adoption of the resolution measure to conduct payments, regardless of whether it has already been written.

Written and blank cheques. If a cheque supplied by Banco Espírito Santo, S.A. has not been written yet it may be used to conduct payments as usual, taking as reference the balance on bank accounts held with Novo Banco. If a cheque has been written but not yet deposited in the beneficiary's account, the latter may deposit it as usual, since all other credit institutions should accept the deposit of cheques in this situation.



Maintenance of the NIB (Bank Identification Number) and IBAN (International Bank Account Number).

To avoid any disturbance for customers, the NIB and IBAN of all bank accounts with Novo Banco are identical to those assigned by Banco Espírito Santo, S.A.. Hence, all banking operations conducted following the transfer of the account continue to have as a reference the NIB and IBAN of accounts opened with Banco Espírito Santo, S.A..

Home banking. You may continue to use the home banking service as usual.

12. Does the transfer of my deposit to Novo Banco have an impact on direct debits authorised through my bank account with Banco Espírito Santo, S.A.?

The transfer of business from Banco Espírito Santo, S.A. to Novo Banco does not have any impact on direct debits. Direct debits authorised before application of the resolution measure remain valid and for that reason it is not necessary for the respective holders to take any additional measure. Payments authorised under direct debit operations will continue to be processed as usual, with no disturbance.

13. Does my deposit's transfer to Novo Banco have any effect on receipts in my bank account (e.g. receipt of my wage)?

No. All credit movements usually processed in such bank accounts, namely the receipt of wages, will continue to take place as usual, and account holders will not have to take any measure. The bank accounts' NIB will remain the same.

14. What happens to the loan Banco Espírito Santo, S.A. granted me? How will I pay the outstanding principal and interest on those loans?

There is no change in the contractual conditions agreed with Banco Espírito Santo, S.A.. This means that on each instalment's maturity date the borrowers' bank accounts will be debited for the due amount.

For all legal and contractual purposes, Novo Banco should be considered the successor of the rights and obligations transferred from Banco Espírito Santo, S.A.. Novo Banco will hold the credit claims of Banco Espírito Santo, S.A. with the respective borrowers in loan agreements. Hence, Banco Espírito Santo, S.A.'s borrowers will now liaise directly with Novo Banco and should pay principal and interest to this institution, under the exact same terms as agreed with Banco Espírito Santo, S.A..

15. May I request a new loan or the renewal of my credit lines?

Yes. Novo Banco will carry out its business in normal conditions.

E. Other creditors

1. What are the consequences of this resolution measure for other claimholders in Banco Espírito Santo, S.A.?

Holders of credit claims transferred to Novo Banco (e.g. bondholders) will maintain the same rights as prior to the implementation of the resolution measure, given that the content of contractual relationships between the bank and its counterparties has not been affected. As such, and without



prejudice to any other legal or contractual provision, credit claims in Novo Banco will have exactly the same characteristics as they had before with Banco Espírito Santo, S.A.

Credit claims that were not transferred to Novo Banco will remain in Banco Espírito Santo, S.A. and will be included in the insolvent estate of Banco Espírito Santo, S.A. in the context of its judicial winding up.

2. What are the consequences of the application of this resolution measure for bondholders and holders of other debt securities issued by Grupo Espírito Santo?

All bonds and other securities representing debt not issued by Banco Espírito Santo, S.A. shall be repaid by the respective issuers, which are the debtors of the claims on such securities or bonds.

Under the terms of the deliberation of the Board of Directors of Banco de Portugal of 14 August 2014, the commercial treatment of the retail customers holding this type of instrument issued by Grupo Espírito Santo, of which Novo Banco, S.A. is not a debtor, and which are deemed relevant to maintain customers' confidence relationships, shall be defined by the Board of Directors of Novo Banco, S.A. The latter will approve the conditions applicable to any payment of compensation, provided that such conditions ensure a positive or at least neutral impact as regards results, solvency ratios and liquidity position of Novo Banco, S.A.

No payment of compensation shall be made before Banco de Portugal assesses the content of an exhaustive inventory, duly updated, describing the payment operations to be carried out and their impact. These payments can only be made to retail customers that are non-qualified investors, who have originally purchased the debt securities through an entity that is currently part of the Novo Banco group, prior to 14 February 2014. In turn, these operations cannot be carried out with the persons and entities mentioned in Question B10 (b) (i) to (iii).

F. BES Staff

1. Will Novo Banco continue to carry on the activities of Banco Espírito Santo, S.A.? What will happen to the staff of Banco Espírito Santo, S.A.?

Yes. The staff of Banco Espírito Santo, S.A. will be transferred to Novo Banco. After the transfer of activities from Banco Espírito Santo, S.A., Novo Banco shall be considered as the legal successor of the transferred rights and obligations. Novo Banco will continue to carry on the activities of Banco Espírito Santo, S.A., ensuring the continuity of financial services that were provided by Banco Espírito Santo, S.A. to its customers and the general public.

The law also establishes that Banco Espírito Santo, S.A., as well as any company belonging to Grupo Espírito Santo and that provides services to Banco Espírito Santo, S.A. related to the activity transferred, shall:

- a) Provide all information requested by Novo Banco;
- b) Ensure to Novo Banco access to information systems related to the activity transferred;
- c) Continue to provide the services that Novo Banco deems necessary for the normal course of business of the activity transferred, by means of a remuneration agreed between the parties.



2. What will the situation be regarding the staff's Pension Fund?

There will be no change to the Pension Fund of Banco Espírito Santo, S.A., which will continue to ensure, as it currently does, the pension rights of the Bank's staff covered by the Fund.

G. Suppliers of BES

1. Is the contract for the supply of goods or services that my company or myself have signed with Banco Espírito Santo, S.A. still valid with Novo Banco?

The implementation of this resolution measure does not jeopardise the maintenance of contracts for the supply of goods and services nor their content, and is not, per se, a sufficient ground for an interruption in the supply of goods and services.

Service provider to Grupo Espírito Santo. Where an entity of Grupo Espírito Santo provides services to Banco Espírito Santo, S.A. that Novo Banco deems relevant for the smooth operation of the transferred activity, that provision of services should be maintained, unless otherwise provided by law or the contract.

H. BES shareholders

1. What are the consequences of applying this resolution measure for shareholders of Banco Espírito Santo, S.A.? Are the shareholders of Banco Espírito Santo, S.A. going to receive any compensation?

The shareholders of Banco Espírito Santo, S.A. primarily bear the burden of losses arising from the financial imbalance of Banco Espírito Santo, S.A..

The fact that certain assets and liabilities of Banco Espírito Santo, S.A. have been transferred does not alone award its shareholders the right to any compensation.

Given that the business of Banco Espírito Santo, S.A. that has not been transferred to Novo Banco will form part of the judicial liquidation proceedings, any rights that shareholders may have must be exercised within the liquidation proceedings of Banco Espírito Santo, S.A. under the terms of the law.

2. Are the shareholders of Banco Espírito Santo, S.A. being expropriated?

The resolution measure is not an expropriation. When situations threatening the stability of the financial system occur, the law empowers Banco de Portugal to reallocate a credit institution's assets, with legally defined limits and conditions.

In this case, the shareholders of Banco Espírito Santo, S.A. are no longer able to own assets and liabilities that have been transferred to Novo Banco, for the reasons and purposes given in response to Question A4.

By law, the shareholders may only be paid through judicial liquidation proceedings for the Banco Espírito Santo, S.A. business that has not been transferred to Novo Banco. Furthermore, under the subordination hierarchy resulting from the applicable legal and contractual provisions, this can only happen after all the other credits over the insolvency have been settled.



3. Shouldn't the shareholders have had the chance to make Banco Espírito Santo, S.A. viable and find a way to recoup the capital invested?

Before the decision to apply this resolution measure, Banco de Portugal asked the management board of Banco Espírito Santo, S.A. to present a capitalisation plan bringing its own funds up to adequate solvency levels in the short-term through private financing. However the deterioration of the financial position of Banco Espírito Santo, S.A. and the uncertainty over its balance sheet made a capitalisation solution through private financing unviable in the short term (see Question B1).

4. Can shareholders oppose the transfer? Can they contest Banco de Portugal's decision?

Under the legislation in force, the decision to transfer part of the business of Banco Espírito Santo, S.A. does not depend on prior consent from shareholders. However, the decision to apply the resolution measure is contestable, and shareholders may appeal this decision.

I. Contact details for further clarifications

For further clarifications on the resolution measure applied to Banco Espírito Santo, S.A., please contact Banco de Portugal:

- Helpline: 707 201 409; 9am - 6pm, every weekday (Charges: €0.10 per minute from fixed lines and €0.25 per minute from mobile networks, charged by the second after the first minute);
- Email address: info@bportugal.pt