

Yale University

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Documents (Series 1)

[Browse by Media Type](#)

12-12-2014

The General Court confirms the Commission decision ordering the recovery of State aid granted by Portugal to Banco Privado Português

European Union: Courts: European Court of Justice (ECJ)

Follow this and additional works at: <https://elischolar.library.yale.edu/ypfs-documents>

Recommended Citation

European Union: Courts: European Court of Justice (ECJ), "The General Court confirms the Commission decision ordering the recovery of State aid granted by Portugal to Banco Privado Português" (2014). *YPFS Documents (Series 1)*. 13226.

<https://elischolar.library.yale.edu/ypfs-documents/13226>

This Document is brought to you for free and open access by the Browse by Media Type at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in YPFS Documents (Series 1) by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact elischolar@yale.edu.



Press and Information

General Court of the European Union
PRESS RELEASE No 176/14
Luxembourg, 12 December 2014

Judgment in Case T-487/11
Banco Privado Português, SA and Massa Insolvente do Banco Privado
Português, SA v Commission

The General Court confirms the Commission decision ordering the recovery of State aid granted by Portugal to Banco Privado Português

No restructuring or liquidation plan was submitted within the prescribed period

Banco Privado Português ('BPP') is a financial institution based in Lisbon (Portugal) providing private banking, corporate advisor and private equity services, notably in Portugal and Spain. BPP is wholly owned by a holding company (Privado Holding SGPS).

From September 2008 onwards, BPP developed liquidity difficulties owing to the deterioration of the global economic situation. In December 2008, the Portuguese authorities decided to grant BPP a State guarantee.¹ This guarantee related to a loan of €450 million that was to be granted to BPP by a consortium of six Portuguese banks.² The loan was intended exclusively to cover BPP's liabilities as registered in the balance sheet on 24 November 2008, and was to be used only to reimburse depositors and other creditors and not to cover liabilities of the holding company's other subsidiaries. The term of the loan was limited to a period of six months, renewable for a maximum period of 24 months.

On 5 December 2008, the Portuguese authorities notified to the Commission the grant of a State guarantee in favour of BPP. In March 2009,³ the Commission decided, as an emergency measure, not to raise objections to the grant of the State guarantee to BPP, on the ground that it was compatible with the internal market. However, the Portuguese authorities were required to submit a restructuring plan for BPP within six months (by 5 June 2009), and to notify the Commission of any extension of the State guarantee beyond the initial six-month period.

In June and December 2009, the Portuguese authorities informed the Commission of the extension of the State guarantee, but the Commission was not formally notified. They stated that the extension was intended to enable BPP to finalise a restructuring and reorganisation plan and to implement a solution to safeguard its clients' interests.

In the period from December 2008 to July 2009, BPP submitted a number of recovery plans to Banco de Portugal (Portugal's central bank), which were rejected without being notified to the Commission by the Portuguese authorities.

In November 2009,⁴ the Commission initiated a formal investigation procedure in respect of the grant of the State guarantee to BPP, and directed the Portuguese authorities to submit BPP's restructuring plan before 22 December 2009. The Commission reminded them that the aid in question had been considered unlawful since 6 June 2009.

¹ This guarantee was granted in accordance with Portuguese Law No 112/97 of 16 September 1997, that is outside the framework of the Portuguese guarantee scheme under Law No 60 A/2008 of 20 October 2008, as approved by the Commission in Decision C(2008) 6527 of 29 October 2008 on State aid NN 60/08 granted by Portugal — Guarantee scheme for credit institutions in Portugal (OJ 2009 C 9, p. 2).

² Namely Banco Comercial Português, Caixa Geral de Depósitos, Banco Espírito Santo, Banco BPI, Banco Santander Totta and Caixa Central — Caixa Central de Crédito Agrícola Mútuo.

³ Decision C(2009) 1892 final of 13 March 2009 on State aid NN 71/2008 — Portugal, Auxílio estatal ao Banco Privado Português — BPP (OJ 2009 C 174, p. 1; see also the Commission's [Press Release](#)).

⁴ Commission's Decision of 10 November 2009 (OJ 2009 C 56, p. 10; see also the Commission's [Press Release](#)).

On 15 April 2010, faced with the impossibility of restructuring or recapitalising BPP, Banco de Portugal revoked BPP's banking licence. Revocation took effect on 16 April. In the days following revocation, the creditor banks called for enforcement of the State guarantee, and the Portuguese State reimbursed the full amount of the loan covered by that guarantee. On 22 April 2010, Banco de Portugal requested the liquidation of BPP at the Lisbon Commercial Court.

By decision of 20 July 2010,⁵ the Commission declared the aid incompatible with the internal market as from 5 December 2008, and ordered Portugal to secure its immediate and effective recovery with effect from that date.⁶

In February 2011, in response to a request from the Portuguese authorities, BPP's liquidation committee recognised the Portuguese State's claim for the amount of the loan in respect of which it had a right of subrogation.⁷

BPP and Massa Insolvente do Banco Privado Português (representatives of the insolvency estate) claim that the General Court of the European Union should annul the Commission's decision.

By today's judgment, the General Court dismisses the action brought by BPP and Massa Insolvente do Banco Privado Português.

The Court points out that the Commission was consistent and coherent in its assessment of the State guarantee as an aid measure, since BPP enjoyed an advantage deriving from State resources. Without the State guarantee, that is to say, under normal market conditions, BPP would not have been in a position to obtain the loan on the financially advantageous terms granted by the creditor banks. Furthermore, the pricing of the State guarantee as such was significantly below the level generally regarded as appropriate for banks in difficulty.

According to the Court, **the Commission correctly concluded that the risk of BPP's returning to the market and of the distortion of competition and disruption of trade between Member States did not disappear until 16 April 2010 when the banking licence was actually revoked.** The Court also notes that, in the absence of evidence to the contrary, BPP actually carried out, in the period from 24 November 2008 to 16 April 2010, at least reduced commercial activities that consisted of offering or managing certain financial products or services, the continuity of the operation having been made possible by the loan and by the State guarantee. The aid thus strengthened BPP's economic position in relation to other undertakings competing in intra-Community trade and, moreover, temporarily freed it of the costs it would normally have had to pay in connection with the day-to-day management of its assets or its day-to-day commercial business. The granting of the advantage which the aid represented was therefore liable to affect trade between Member States and to distort conditions of competition.

According to the Court, **the Commission did not err in finding that, given that no restructuring or liquidation plan had been submitted by 5 June 2009, the State guarantee and its extension beyond that date had to be declared incompatible with the internal market.** The Commission faithfully followed the rules applicable in this area.⁸ Those rules require in particular (i) that the emergency rescue measure aimed at keeping the insolvent institution afloat be followed up by the notification of a restructuring or liquidation plan; (ii) that rescue aid in the form of guarantees come to an end within a period of not more than six months.

⁵ Commission Decision 2011/346/EU of 20 July 2010 on the State aid C 33/09 (ex NN 57/09, CP 191/09) implemented by Portugal in the form of a State guarantee to BPP (OJ 2011 L 159, p. 95; see also the Commission's [Press Release](#)).

⁶ The amount to be recovered is € 23 497 475. To that must be added interest actually accrued as at the date of its actual repayment, that is € 965 446.24.

⁷ In the context of those liquidation proceedings, the Tribunal do Comércio de Lisboa (Lisbon Commercial Court) submitted a request for a preliminary ruling to the Court of Justice on 16 December 2013 (Case [C-667/13](#)). The questions referred concern the validity of the Commission's decision of 20 July 2010.

⁸ Communication from the Commission — 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' (OJ 2008 C 270, p. 8) and Communication from the Commission — 'Community guidelines on State aid for rescuing and restructuring firms in difficulty' (OJ 2004 C 244, p. 2).

The Court declares that the order for the recovery of the aid is justified by the need to re-establish the situation existing on the market prior to the grant of the guarantee by virtue of which BPP enjoyed an economic advantage liable to affect trade between Member States and to distort competition. The Court also states that the Commission was entitled to order the recovery of the economic advantage conferred by the State guarantee during the period from 5 December 2008 to 5 June 2009 (the period in which the aid had been provisionally authorised by decision of 13 March 2009). The reversible nature and the purpose of rescue aid (which is designed only to enable undertakings in difficulty to bridge a short period of crisis) necessarily requires the repayment of the economic advantage which the guarantee entailed for the recipient throughout the period that it was granted. The mere annulment of the State guarantee from the date of adoption of the decision of 20 July 2010 is not, therefore, sufficient for that purpose.

The Court confirms, moreover, that **the Commission did not err in calculating the amount to be recovered. Nor did it breach the principle of legitimate expectations.**

Lastly, **the Court states that there has been no breach of the principle of equal treatment.** In particular, BPP's situation is not comparable to that of Banco Português de Negócios (BPN), the subject of a Commission Decision in March 2012.⁹ The Court points out that, unlike in the present case, the Portuguese authorities had in fact submitted to the Commission a plan for restructuring BPN, even if that plan was submitted late. Furthermore, in the case of BPN, the formal investigation procedure was conducted not because there was no restructuring plan at all, but because the restructuring plan submitted initially had become obsolete owing to the sale of BPN and, moreover, the submission of a revised plan had to be assessed subsequently by the Commission.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

Unofficial document for media use, not binding on the General Court.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

⁹ Decision 2012/660/EU of 27 March 2012 on the measures SA. 26909 (2011/C) implemented by Portugal for the restructuring of Banco Português de Negócios (BPN) (OJ 2012 L 301, p. 1; see also the Commission's).