



URÍA MENÉNDEZ - PROENÇA DE CARVALHO

Banco Espírito Santo / Novo Banco / Banif:  
Briefing on the key aspects and on the latest developments.

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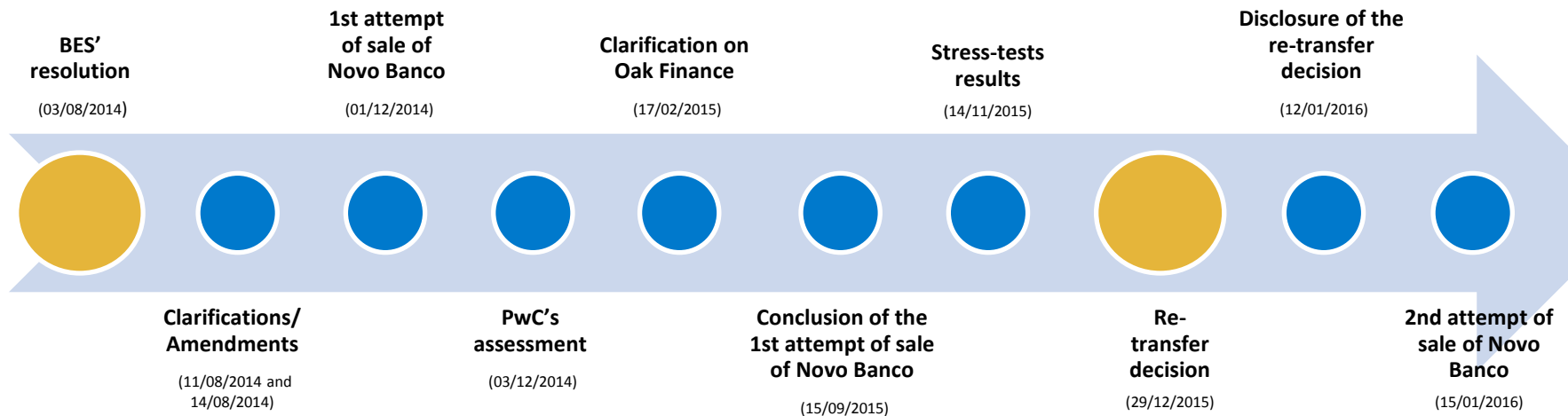
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# Banco Espírito Santo's / Novo Banco's case.



# Banco Espírito Santo's / Novo Banco's case.

## Timeline.



## Banco Espírito Santo's / Novo Banco's case.

### The re-transfer of the senior bonds.

- Which bonds?
- When?
- Why?

# The re-transfer of the senior bonds.

## Main arguments used to react against the re-transfer decision.

- Wrongful use of the re-transfer power.
- Violation of the *pari passu* principle.
- Breach of legitimate expectations of senior creditors.
- Violation of property rights of senior bondholders.
- Infringement of legal formalities on the decision-making procedure.
- Failure to state grounds in a clear, coherent and sufficient way.

## The re-transfer of the senior bonds.

### Wrongful use of the re-transfer power.

- The re-transfer power is not aimed for recapitalization.
- The re-transfer power is accessory or complementary to a resolution measure.
- Single Resolution Board to take up as resolution authority as from 1 January 2016.

## The re-transfer of the senior bonds.

Violation of the *pari passu* principle.

- The senior bonds form part of the “common credits” class.
- There is a large number of other “common credits” that stayed with Novo Banco and some are similar to the re-transferred bonds.
- All creditors in the same class must be treated in the same way.

## The re-transfer of the senior bonds.

### Breach of legitimate expectations of senior creditors.

- Bank of Portugal was bound by the criteria it has defined in the original resolution measure of 3 August 2014.
- Bank of Portugal was bound by a special duty of timeliness.
- Bank of Portugal created a reasonable belief that a measure such as the re-transfer decision was not at all to be expected.



# The re-transfer of the senior bonds.

## Latest developments.

- Several annulment claims were filed and (more recently) an interim relief request in respect of the re-transfer decision was also filed.
- A court granted a provisional interim relief regarding four (out of the five) senior bonds re-transferred to Banco Espírito Santo (lifted in the meantime).
- Banco Espírito Santo is about to enter into liquidation (the revocation of its licence by the ECB is on the way).
- The Bank of Portugal is about to disclose the NCWO evaluation report (made by Deloitte).
- Novo Banco reported that customer's deposits were down by €2.200M (an amount exceeding the €1.985M of the re-transferred senior bonds) in the first quarter of 2016 due (in part) to the re-transfer decision.

## Banif's case.



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# Banif's case.

## Timeline.

**Submission of the Recapitalization Plan to BdP**

(26/12/2012)

**DGComp opens in-depth investigation**

(24/07/2015)

**DGComp rejects the Restructuring Plan**

(16/11/2015)

**Rejection of the PT State and BdP solutions**

(08/12/2015)

**TVI's breaking news**

(13/12/2015)

**CMVM suspends Banif's shares**

(16/12/2015)

**Banif's resolution**

(19/12/2015 and 20/12/2015)

**Banif's recapitalization by the PT State – State aid (following DGComp approval)**

(16/01/2013)

**Last version of the Restructuring Plan sent to DGComp**

(18/09/2015)

**Solutions proposed by the PT State and BdP**

(03/12/2015 and 04/12/2015)

**Banif's voluntary sale process**

(12/12/2015 to 18/12/2015)

**Access to Emergence Liquidity Assistance**

(15/12/2015)

**Contacts with BdP, the PT State and the DGComp**

(17/12/2015 and 18/12/2015)

Banif's case.

The resolution decision.

- What was the decision of the Bank of Portugal?
- When?
- Why?

## The resolution decision.

### Some of the arguments used to react against the resolution decision.

- Violation of property rights of creditors.
- Infringement of legal formalities on the decision-making procedure.
- Infringement of the equal treatment principle.
- Infringement of the Portuguese Banking Law.
- Bank of Portugal applying resolution measures is unconstitutional.

## The resolution decision.

### Latest developments.

- All sorts of investors have lodged various forms of claims in connection with the resolution measure (e.g. annulment and compensation claims against the Bank of Portugal and criminal and civil claims against TVI).
- The Portuguese Parliament set up an inquiry committee to analyse Banif's resolution (which is on-going).
- Oitante is selling the assets transferred by the Bank of Portugal from Banif (e.g. Açoreana Seguros has recently been acquired by Apollo).



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