

COMMISSION DECISION

of 22 February 2012

on the State aid SA.26534 (C 27/10 ex NN 6/09) implemented by Greece in favour of United Textiles S.A.

(notified under document C(2011) 9385)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2012/541/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to Article 108, paragraph 2, first quotation of the Treaty ⁽¹⁾, and having regard to these comments,

Whereas:

I. PROCEDURE

- (1) Following information that Greece planned to grant a State guarantee for new loans of EUR 35 million to finance United Textiles, the Commission asked the Greek authorities to comment on the specific measure by letters dated 11 September, 14 October, 20 October, 18 November and 4 December 2008. The Greek authorities provided incomplete answers by letters of 15 October and 10 November 2008.
- (2) For that reason, on 3 March 2009 the Commission issued an information injunction under Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (*) of the EC Treaty ⁽²⁾, requesting Greece to submit all information necessary to assess whether United Textiles had received State aid and to assess if that aid would be compatible with the internal market. Greece submitted the requested information by letter of 11 March 2009.
- (3) The Commission requested further information, regarding the State measure mentioned in recital 1 and

also several additional ones, in favour of United Textiles and its lending banks, by letters of 20 March 2009 and 8 February, 17 March, 19 July and 23 August 2010. The Greek authorities answered by letters of 7 April 2009 and 25 February, 26 March, 13 August and 30 August 2010.

- (4) At the request of the Greek authorities, a meeting was held on 7 July 2010. At that occasion, a draft new restructuring concept of United Textiles was submitted. The company acknowledged that the latter was not linked with previous restructuring actions taken in 2007, which had failed.
- (5) By letter dated 27 October 2010 the Commission informed Greece that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the following measures:
- (a) state guarantee of May 2007;
- (b) rescheduling of debts of 2009 for social insurance contributions;
- (c) state guarantee of June 2010.
- (6) Greece submitted its comments to the Commission's opening decision on 31 December 2010.
- (7) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the measures.

- (8) The Commission received comments from United Textiles on 7 and 9 February 2011. The comments were transmitted to Greece which was given the opportunity to comment on them. Its comments were received on 4 May 2011.

⁽¹⁾ OJ C 357, 30.12.2010, p. 18.

^(*) Subsequently Article 88 of the EC Treaty and from 1 December 2009 Articles 87 and 88 of the EC Treaty were replaced with the corresponding Articles 107 and 108 of the Treaty on the Functioning of the European Union.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

⁽³⁾ See footnote 1.

- (9) The Commission requested additional information from the Greek authorities on 28 July 2011, to which Greece replied by letter of 30 August 2011.
- (10) At the request of the Greek authorities, a meeting was held on 4 April 2011. In that meeting, the Greek authorities presented arguments as regards the alleged aid measures.

II. DETAILED DESCRIPTION OF THE ALLEGED AID

II(a) The potential beneficiaries

United Textiles

- (11) United Textiles is a large Greek textile company listed on the Athens Stock Exchange. It realised 45 % of its 2008 sales in Greece (38 % in 2007), 54 % in other EU countries (60 % in 2007) and 1 % to non-EU countries (2 % in 2007).
- (12) In 2009 it had total assets of EUR 201,7 million and a turnover of EUR 4,5 million (limited sales of stock). Previous years' sales were EUR 30,6 million in 2008 and EUR 74,7 million in 2007. At the end of 2009 it had 839 employees. The company has four subsidiaries in three countries: Albania, Bulgaria and the former Yugoslav Republic of Macedonia. Its main shareholder is an off-shore company named European Textiles Investments Ltd (Mauritius).
- (13) United Textiles' business is production of clothing, fibre and fabric. Its sales are realised in both wholesale and retail markets. It has 12 plants in several districts of Greece. The plants in question, as well as those of the subsidiaries mentioned in recital 12, have not been operating since 2008, because of lack of working capital.
- (14) The company's situation has constantly deteriorated at least since 2004, with gradually decreasing sales, negative Earnings Before Taxes and negative own equity since 2008. Because of the latter, the company could be dissolved, according to Greek Legislation⁽⁴⁾.
- (15) According to the company's annual report's, since 2001 lending banks' support to the company has been limited, with reduced credit lines and loans. Since June 2008, a large part of its operations has been stopped. Since

March 2009, production has almost completely stopped. In July 2008, the company's main shareholder decided not to participate in a scheduled capital increase. Since 2008, almost all its bank loans have been overdue. Since February 2010, trading of its shares in the Athens Stock Exchange has been suspended. According to the company's announcements, as published in its webpage⁽⁵⁾ as well the webpage of the Athens Stock Exchange⁽⁶⁾, its financial statements for 2010 were not published because of a work retention which was ongoing until 29 August 2011 (the last available announcement).

Lending banks

- (16) The lending Greek banks of United Textiles, which are involved in the State aid measures under scrutiny, are the National Bank of Greece, Emporiki Bank, Agricultural Bank of Greece, Alpha Bank and Eurobank. They are all commercial banks, active in providing a full range of financial products and services. They all have presence, through subsidiaries, in other EU countries, in particular Bulgaria, Germany, France, Cyprus, Luxembourg, Netherlands, Poland, Romania and the United Kingdom⁽⁷⁾.

II(b) The measures under examination

- (17) In the period 2007-10, three State measures were taken in favour of the company United Textiles that could involve State aid elements, as follows in recitals 18 to 23.

Measure 1: The State guarantee of May 2007

- (18) On 30 May 2007, the National Bank of Greece, lending bank of United Textiles, was granted a State guarantee for a new loan to include: (a) a rescheduling of an existing loan of EUR 7,5 million; and (b) a new loan of EUR 12,5 million. The State guarantee covered 80 % the loan. This new loan had an interest rate of six-month EURIBOR, plus spread of 1,85 %⁽⁸⁾, equal to a total interest rate of 6,10 % on 30 May 2007. There was no premium for the State guarantee. According to the submitted rescheduling contract, the original existing loan was covered with a mortgage on a fixed asset. Also, according to the annual reports of United Textiles for 2007, 2008 and 2009, the above new loan was covered with the guarantee of the main shareholder and also envisaged to be covered with pledges on assets, however there is no reference to any realisation of the latter pledge.

⁽⁵⁾ <http://www.unitedtextiles.com/Alist.asp?catid=312§ion=0.08.00>.

⁽⁶⁾ http://www.ase.gr/content/gr/companies/ListedCo/Profiles/pr_press.asp?Cid=111&coname=%C5%CD%D9%CC%C5%CD%C7+%CA%CB%D9%D3%D4%CF%DB%D6%CD%D4%CF%D5%D1%C3%9%CD%1%2E%2E

⁽⁷⁾ As stated in the banks' financial reports and internet sites.

⁽⁸⁾ Including a tax of 0,6 %, applicable in all loans in Greece (except for mortgage and agricultural loans, where tax is 0,12 %).

⁽⁴⁾ According to Article 47 of Greek Law No 2190/1920, in case that a company's own equity falls below 50 % of its share capital, the company's shareholders must decide (within six months from the expiry of the relevant fiscal year) either to dissolve the company or to adopt other measures.

- (19) The guarantee was based on a Ministerial decision of 26 January 2007 (Decision 2/75172/0025/26.01.2007). The decision foresaw that State guarantees could be issued to existing loans of industrial, mining, livestock farming and hotel companies, located in the district of Imathia, Northern Greece (where part of United Textiles' operations is located). The scheme did not exclude firms in difficulty and did not foresee a premium for the State guarantee. The scheme did not foresee any kind of objective criteria for the selection of beneficiary companies. The Commission notes that the scheme has not been notified, in line with Article 108 TFEU, therefore the Commission reserves the right to investigate other State measures possibly granted on the basis of the scheme.
- (20) On the basis of the guarantee, the loan agreements were signed on 11 October 2007.
- Measure 2: Rescheduling of social insurance debts
- (21) On 25 May 2009 the Greek authorities rescheduled the company's overdue social insurance debts of the period 2004-09, amounting to EUR 14,57 million, to 96 monthly payments of EUR 0,19 million each. The rescheduling took place in the context of Law No 3762/2009⁽⁹⁾. The rescheduled amount partly included debts already arranged in previous reschedulings, which had not been respected. In addition, on the basis of the information submitted, it does not seem that United Textiles has paid any contributions so far.
- Measure 3: The State guarantee of October 2009 and June 2010
- (22) On 30 June 2010, with ministerial decision 2/35129/0025, the Greek State granted a guarantee to the lending banks of United Textiles. Those banks are the National Bank of Greece, Emporiki Bank, Agricultural Bank of Greece, Alpha Bank and Eurobank. The guarantee covered a new planned syndicated loan of EUR 63,6 million, separated in three sub-amounts for the purpose of the following:
- (a) EUR 36,6 million to reschedule loans granted to the company by its lending banks in the period August 2008-September 2009. According to the information available, the loans in question had interest rates between three-months and six-months EURIBOR, plus 1,25 % to 3 %. Also according to the information available, those loans were initially not covered by a State guarantee.
- (b) EUR 15 million to finance the payment of overdue debts of the company to the State, to suppliers and to its employees.
- (c) EUR 12 million to finance investments and operating expenses.
- (23) The underlying planned syndicated loan had duration of nine years. The ministerial decision 2/35129/0025 granting the guarantee did not specify any interest rate for the loans to be covered. It merely specified that the loans have to be at 'market' rate. The State guarantee covers 80 % of the loan. A yearly premium of 2 % on the loan's yearly average outstanding amount is foreseen for the State. Lending banks receive, in addition to the State guarantee, securities for the new loan in the form of pledged shares of the company for at least 25,9 % of its total shareholding and first rank mortgages on real estate assets of the company. The State does not receive any security for its guarantee; however, in case the guarantee is called, the securities will be transferred to the State.
- (24) The guarantee granted in June 2010 under ministerial decision 2/35129/0025 replaced (by revoking it) a previously granted one of 2 October 2009 (ministerial decision 2/71055/0025). The latter was granted for a new loan of EUR 40 million, also aiming at financing the rescheduling of the loans granted to the company in the period August 2008-February 2009 (see recital 22(a)). The loan of EUR 40 million, however, was never issued and therefore the October 2009 guarantee was not activated. Instead, the latter was replaced with the new guarantee of June 2010, which covered the syndicated loan of EUR 63,6 million. According to the Greek authorities, the reason for that replacement was that the extent of the loan of EUR 40 million was not sufficient anymore to cover the company's liquidity needs.
- (25) Despite the guarantee, the underlying loan has never been granted. In view of the company's acute difficulties, the banks refrained from signing the loan agreement and never paid out the loan.

III. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (26) In the opening decision of 27 October 2010, the Commission questioned whether the terms of the State guarantees of 2007 (Measure 1) and 2010 (Measure 3) were market conform and in line with the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁽¹⁰⁾ ('the Guarantee Notice').
- (27) As regards the measure of the rescheduling of overdue social insurance obligations (Measure 2), in the opening decision of 27 October 2010, the Commission questioned whether a private creditor in the given circumstances would have accepted any type of rescheduling of debts. Indeed, the possibility of obtaining a late repayment of the debt appeared restricted, since United Textiles was already in serious financial difficulties and had stopped most of its production.

⁽⁹⁾ FEK A' 75, 15.5.2009.

⁽¹⁰⁾ OJ C 155, 20.6.2008, p. 10.

(28) The Commission thus questioned whether the measures under investigation constituted illegal State aid in the meaning of Article 107(1) TFEU and whether the measures were compatible with the TFEU.

IV. COMMENTS FROM GREECE AND THE BENEFICIARY

(29) The information submitted by the Greek authorities and United Textiles (the beneficiary) on the measures in question can be summarised as follows:

IV(a) Measure 1: The State guarantee of May 2007

(30) With regard to Measure 1, the comments of Greece and the beneficiary overlap to a large extent, therefore the Commission will expose them together, as follows:

(31) Greece and the beneficiary acknowledge that at the time of the 2007 guarantee the company was in difficulty, allegedly due to international competition of lower cost countries. Greece also acknowledges having granted the above guarantees.

(32) Greece and the beneficiary also support that the 2007 guarantee does not constitute aid, as it was not selective to United Textiles: it was granted on the basis of a ministerial decision not only for United Textiles but also for other companies.

(33) Apart from the above, Greece and the beneficiary argue that the 2007 guarantee was granted pursuant to Greek Law No 2322/1995, which allowed the Minister of Finance to grant State guarantees to banking institutions for loans that reschedule debts or grant new working capital.

(34) Furthermore, Greece and the beneficiary claim that before having been granted the guarantee, the company had submitted to the Greek authorities a restructuring plan with financing from banks and without any State guarantee. Such a restructuring plan was never formally submitted to the Commission.

(35) Greece also argues that the 2007 guarantee was granted in line with the State aid rules in force in the EU. According to Greece's allegations, the guarantee had a maximum coverage of 80 % and was granted for loans with market interest rates. Also, Greece supports that the loan was properly securitised with pledged commodities and personal guarantees of shareholders and that it was granted for a specific transaction and duration.

(36) Moreover, Greece and the beneficiary support that the latter is one of the most significant textile companies in Greece, employing a significant number of staff and operating mainly in regions close to the border.

(37) Greece and the beneficiary also claim that the National Bank of Greece (the lending bank) has accepted to

decline the State guarantee and in its place to inscribe a mortgage on real estate assets of United Textiles, which will inactivate the guarantee.

(38) Finally, Greece and the beneficiary argue that the guarantee was incorporated in the guarantee of 2010, therefore there is a continuum in the settlement of the company's lending.

IV(b) Measure 2: Rescheduling of overdue public insurance debts

(39) Greece and the beneficiary argue that the measure is based on Law No 3762/2009, which is a general law, applicable to all companies with overdue or unpaid public insurance obligations, therefore the measure in question is not selective.

IV(c) Measure 3: The State guarantee of June 2010

(40) Greece acknowledges having granted the 2010 guarantee and argues that the latter was granted because the extent of the previous guarantee of 2009 (which has never been implemented) was not sufficient anymore to cover the company's liquidity needs, therefore the 2009 guarantee was incorporated into the 2010 guarantee.

(41) Greece argues that the 2010 guarantee is in line with the communication from the Commission — community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾ ('Rescue and restructuring guidelines') and that it does not confer an advantage to United Textiles. Moreover, it claims that there is no infringement of the 'one time last time' principle as enshrined in the Rescue and restructuring guidelines, since the 2010 guarantee replaces the 2009 guarantee and changes several provisions of the 2007 guarantee (see Measure 1 in recital 18). Therefore, the 2010 guarantee embodies the totality of the clauses of the company's loans in a single text with unified provisions. Greece also states that the guarantee is not valid yet, because the Ministry's competent service has not approved it yet.

(42) Finally, Greece informed the Commission that the 2010 guarantee has not yet been activated, as the company has not signed any loan contract with any bank and no loan payment has taken place. Also, the Greek authorities have drawn the Commission's attention to the fact that the granting ministerial decision 2/35129/0025/28.06.2010 foresees that the loan's first two sub-loans (EUR 36,6 million + EUR 15 million) had to be paid until 28 July 2010 and this date has expired, therefore the guarantee actually cannot be activated.

(43) United Textiles argues that the underlying loan contract has not been signed yet, therefore there is no interest rate defined yet. When this is done, the interest rate will be market conform.

⁽¹⁾ OJ C 244, 1.10.2004, p. 2.

- (44) Regarding the restructuring plan of 2010 (see recital 4), United Textiles supports that it foresees a drastic reduction of production, therefore the forecasted return to viability does not distort competition.

(Section V(a)). Secondly, the Commission will assess the presence of aid in the measures under scrutiny, in order to conclude if there is aid or not (Section V(b)). Thirdly, where a measure indeed involves aid, the Commission will assess its compatibility with the internal market (Section V(c)).

V. ASSESSMENT OF THE AID

- (45) On the basis of the above facts and also of the arguments of Greece and United Textiles, the Commission will assess the measures in question in this section. First, the Commission will assess the status of United Textiles at the time of the measures under scrutiny, in order to conclude if the company was in difficulty or not

V(a) Status of the company

- (46) As shown in recitals 14 and 15 and set out in more detail in Table 1 below, the company's operating and financial performance deteriorated significantly in the period 2004-09.

Table 1

United Textiles' key financial data (million EUR)

	2004	2005	2006	2007	2008	2009
Turnover	154,3	97,5	64,6	74,7 (*)	30,6	4,5
EBT	-89,6	-61,3	-49,3	-38,5	-62,4	-60,6
Accumulated losses	264,1	316	378,3	418,7	481	520,3 (**)
Registered capital	276,3	283,3	280,8	288,9	290,4	290,4 (**)
Own equity	95,2	35,7	32,9	4,6	-49,1	-111,5
Debt/equity	281 %	692 %	829 %	6 243 %	-561 %	-280 %

Data from 2004-09 financial statements.

(*) Increase because of increased funds that allowed more factories to operate.

(**) September 2009.

- (47) On the basis of these financial figures, the Commission concludes that the company has been in difficulty in the meaning of point 10 of the Rescue and restructuring guidelines at the time of the granting of the measures under scrutiny (the period 2007-10). The Commission equally considers that the company is in difficulties at present.

of capital or the capitalisation of losses, which would wipe out the registered capital. It appears that only the latter case would be feasible for United Textiles, due to its critical financial situation (see Table 1) and its difficult access to finance (see recital 15). On the basis of the above, the Commission considers that the company lost more than half of its registered capital.

- (48) More specifically, with regard to point 10(a) of the Rescue and restructuring guidelines, the company's registered capital, as appearing in its financial statements of years 2004-09, was not lost but increased in the period 2004-09. However, the Commission notices that in the same period the company's own equity was reduced to minimal (2007) or negative level (2008 and 2009). At the same time, the company did not adopt appropriate measures in order to tackle the decrease of its own equity, as foreseen by Greek legislation⁽¹²⁾. If adopted, those measures would be either the increase

- (49) Furthermore, concerning point 10(c) of the Rescue and restructuring guidelines, since 2008 the company fulfilled the criteria under Greek law for being the subject of collective insolvency proceedings⁽¹³⁾.

- (50) Finally, as regards point 11 of the of the Rescue and restructuring guidelines, the usual signs of a firm being in difficulty, such as increasing losses, diminishing turnover and mounting debt, have been present since at least 2004.

⁽¹²⁾ See footnote 4 above.

⁽¹³⁾ See footnote 4 above.

V(b) Presence of aid in the meaning of Article 107(1) TFEU

- (51) Article 107(1) TFEU states that 'Save as otherwise provided in the Treaties, any aid granted by Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (52) The Commission will assess whether the measures under scrutiny in favour of United Textiles constitute State aid in the sense of Article 107(1) TFEU.

V(b)(1) Measure 1: State guarantee of May 2007

Aid to United Textiles

(a) State resources

- (53) The Commission notes that the State guarantee in question indeed involves State resources, as it has been granted directly by the State. The decision has been made by the responsible minister; therefore, the measure is also imputable to the State. Thus, the criterion of State resources is fulfilled.

(b) Advantage

- (54) Greece and the beneficiary claim that the National Bank of Greece (the lending bank) has accepted to decline the State guarantee and in its place to inscribe a mortgage on real estate assets of United Textiles, which will deactivate the guarantee. To demonstrate their claim, Greece and the beneficiary submit a letter of the National Bank of Greece, dated 24 December 2010 (replying to a letter of United Textiles dated 23 December 2010).
- (55) The Commission cannot accept the above. Indeed, in the submitted letter of the National Bank of Greece, it is only stated that the bank would be willing to examine the proposed exchange of securities, mainly under the conditions that the bank would choose the assets to be pledged and that the exchange would be accepted by all concerned parties. Thus, the Commission considers that the National Bank of Greece has not actually accepted the proposed exchange of securities.
- (56) Greece also argues that the 2007 guarantee was granted in line with the State aid rules that are in force in the EU. According to Greece's allegations, the guarantee had a maximum coverage of 80 % and that it was granted for loans with market interest rates.
- (57) The Commission cannot accept the above argumentation and considers that the 2007 guarantee has indeed procured an undue advantage to United Textiles.

According to the Guarantee Notice, points 2.2 and 3.2, when the borrower does not pay a market-oriented price for the guarantee, it obtains an advantage. In some cases, the borrower, as a firm in financial difficulty, would not find a financial institution prepared to lend on any terms, without a State guarantee.

- (58) In the case at hand, the 2007 guarantee was granted for loans of a firm in difficulty and did not foresee a premium for the guarantor (State). In the light of points 3.2 and 4.2 of the Guarantee notice, the Commission notes the significant deterioration of the company's financial situation in the period 2004-07, the overdue situation of its loans and the fact that already since 2001 its lending banks' support had been limited, with reduced credit lines and loans. The Commission considers that, since at the time that the measure was taken United Textiles was in serious difficulty, it must be classified in the credit category 'bad'.

- (59) In addition to the above, the Commission notes that, according to the company's annual reports of 2007, 2008 and 2009, the guaranteed loan was still envisaged to be securitised with assets of the company, therefore that securitisation was apparently not realised yet (see recital 18). In addition, the Commission notes that the National Bank of Greece (the lending bank) was proposed in December 2010 to decline the State guarantee and in its place to inscribe a mortgage on real estate assets of United Textiles (see recital 37). The Commission considers this proposal to be a clear indication that indeed the securitisation in question was not realised. On this issue, the Greek authorities submit that the 2007 guarantee was securitised with commodities of the company and personal guarantees of its shareholders (see recital 35), however the facts of the case only verify the shareholders' personal guarantees. Thus, the Commission considers that the underlying loan was not securitised.

- (60) On the basis of the above, the Commission doubts that any private guarantor would have offered such a guarantee and that any private bank would have accepted to finance the company without a State guarantee at all, as in a similar situation it would appear extremely difficult for such company to be able to repay the loan and for the guarantor to avoid to honour the guarantee. Thus, the Commission considers that the aid amount stemming from the 2007 guarantee amounts up to the whole amount of the guaranteed loan, i.e. EUR 16 million (80 % of EUR 20 million).

(c) Selectivity

- (61) Greece and the beneficiary also support that the 2007 guarantee does not constitute aid, as it was not selective to United Textiles: it was granted on the basis of ministerial decision 2/75172/0025/26.01.2007 which concerned not only United Textiles but also other companies.

(62) The Commission notes that the ministerial decision on which the guarantee was based targeted certain sectors of a specific geographical area, i.e. the Imathia district. In addition, in the case at hand, the Greek authorities had a wide range of manoeuvre in granting a guarantee in favour of United Textiles, as there were no objective criteria set for deciding whether to grant the guarantee or not. In the absence of such objective criteria, the measure was indeed selective, because the authorities applied it individually on a discretionary basis⁽¹⁴⁾. According to established case-law⁽¹⁵⁾, where the public body granting financial assistance enjoys a degree of latitude which enables it to choose the beneficiaries or the conditions under which the financial assistance is provided, that assistance cannot be considered to be general in nature. Thus, the criterion of selectivity is indeed fulfilled.

(d) Distortion of competition and affectation of trade between Member States

(63) United Textiles is active in a sector whose products are widely traded among Member States and who is subject to intense competition. At the time of the granting of the aid measures, United Textiles was an undertaking which realised most of its sales to other Member States (see recital 11). Also, the aid measure in question granted United Textiles an advantage over its competitors (see recitals 45, 46 and 47). According to established case-law⁽¹⁶⁾, when State aid strengthens the position of an undertaking compared with other undertakings competing in trade between Member States, those other undertakings must be regarded as affected by that aid. Thus, the criterion of distortion of competition and affectation of trade between Member States is indeed fulfilled.

Aid to the lending bank

(64) Regarding the bank lending the underlying loan of the 2007 guarantee (the National Bank of Greece), the investigation has shown that it did not benefit from the guarantee in question. Indeed, the guarantee was granted in the context of a new loan contract, with a new duration of 10 years. According to point 2.3.1 of the Guarantee Notice, if a State guarantee is given *ex post* in respect of a loan, without the terms of this loan being adjusted, then there may also be aid to the lender; in the case at hand, however, the terms of the existing loan were changed, through the change of the loan's duration. Therefore the Commission considers that the 2007 guarantee did not constitute aid to the lender.

(65) At the same time, the 2007 guarantee merely resulted in the bank not seeking immediately to collect its loan.

However, the bank would be able to recover the existing loan through liquidation procedures. In this regard, the Commission notes that the 2007 loan was already covered with a mortgage on a fixed asset⁽¹⁷⁾.

Conclusion on the existence of aid in Measure 1

(66) On the basis of the above, it is concluded that the State guarantee of May 2007 (Measure 1) constitutes unlawful State aid in favour of United Textiles in the meaning of Article 107(1) TFEU.

(67) The Commission considers that the State guarantee of May 2007 did not constitute State aid in favour of the lending bank the National Bank of Greece in the meaning of Article 107(1) TFEU.

V(b)(2) *Measure 2: Rescheduling of overdue social insurance obligations*

(a) State resources

(68) The Commission notes that the aim of social insurance contributions is to finance the budget of Social Security Organisations, which constitute public legal entities under the State's supervision. Therefore the non-collection of such contributions deprives the State of resources. Thus, this criterion is fulfilled.

(b) Advantage

(69) The Commission notes that United Textiles was effectively granted a delay of eight years to the payment of a financial obligation, at the time of severe financial difficulty and high probability of default. According to well-established case-law⁽¹⁸⁾, in order to establish whether a selective advantage is conferred by non-enforcement of debts and whether the advantage could be classified as State aid for the purposes of Article 107(1) TFEU, it must still be established that United Textiles could not have obtained such an advantage under normal market conditions. In this regard the essential question to be asked is whether the behaviour of the State as creditor in the given circumstances could be compared to the behaviour of a diligent private creditor.

(70) According to the Greek authorities, previous rescheduling agreements had not been respected by United Textiles. At the same time, the company was effectively granted an extension of eight years for the payment of a financial obligation of EUR 14,57 million (see recital 16), at the

⁽¹⁴⁾ See Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3. See also decision of the Court of 26 September 1996 in case C-241/94 *France v Commission* (Kimberly Clark Sopalin) [1996] ECR I-4551.

⁽¹⁵⁾ Judgement of the Court of First Instance (now General Court) of 11 July 2002 in case T-152/99, *Hamsa v Commission*, 2002 ECR 3049, paragraphs 156-157.

⁽¹⁶⁾ Judgement of the Court of 17 September 1980 in case 730/79, *Philip Morris v Commission*, paragraph 11, 1980 ECR 2671, Greek special version 1980/III, p. 13.

⁽¹⁷⁾ It is also noted that, in principle, banks in Greece usually accept as securities only assets whose 'fire sale' value (around 75 % of the market value) is at least equal to the loan.

⁽¹⁸⁾ See e.g. Judgement of the Court of 29 April 1999 in C-342/96 *Spain v Commission*, Rec.1999, p. I-2459; Judgement of the Court of First Instance (now General Court) of 11 July 2002 in T-152/99 *HAMSA v Commission*, Rec.2002, p. II-3049; Judgement of the Court of 29 June 1999 in C-256/97 *DM Transport*, Rec.1999, p. I-3913.

time of severe financial difficulty and high probability of default. Such an extension would not have been granted by a market economy creditor, especially since previous reschedulings had already failed.

(71) For the above-stated reasons, the Commission considers that the behaviour of the Greek authorities could not be compared to that of a diligent private creditor, since the rescheduling of 2009 was applied in spite of previous failed rescheduling agreements and the company was already in serious financial difficulties and had stopped most of its production, thus the perspective of obtaining a repayment of the debt appeared unlikely.

(72) Thus, the Commission considers that the 2009 rescheduling of the company's public insurance debts has conferred an advantage within the meaning of Article 107(1) TFEU on the company.

(c) Selectivity

(73) The Greek authorities and the beneficiary claim that the rescheduling was based on a general national law⁽¹⁹⁾, applicable to all companies in Greece, therefore the measure was not selective.

(74) The Commission cannot accept the above argument. Indeed, in the case at hand, the Greek authorities had a wide range of manoeuvre in the treatment of United Textiles' social insurance debts, as there were no objective criteria set for deciding whether to grant the rescheduling or not. In the absence of such objective criteria, the measure was indeed selective, because the authorities applied it individually on a discretionary basis⁽²⁰⁾. Also, according to established case-law, where the public body granting financial assistance enjoys a degree of latitude which enables it to choose the beneficiaries or the conditions under which the financial assistance is provided, that assistance cannot be considered to be general in nature⁽²¹⁾. Thus, the criterion of selectivity is indeed fulfilled.

(d) Distortion of competition and affectation of trade between Member States

(75) Finally, the criterion of distortion of competition and effect on trade between Member States is fulfilled in the same way as in recital 63.

(e) Conclusion on the existence of aid in Measure 2

(76) On the basis of the above, the Commission concludes that the 2009 rescheduling of overdue social insurance

obligations constitutes State aid in favour of United Textiles in the meaning of Article 107(1) TFEU.

(77) The amount of aid equals to EUR 14,57 million, granted to the company at the moment of the overdue debts' rescheduling on 25 May 2009, as the total amount of the rescheduled debts.

V(b)(3) Measure 3: State guarantee of June 2010

(78) The Commission notes that the company stopped operations already in 2009 and did not even publish financial statements since then (see recital 15). The guarantee was not sufficient to obtain any fresh funding and the undertaking did not resume its activities while it was valid. Under these circumstances, the Commission considers that the guarantee did not distort or threaten to distort competition. Therefore, it does not constitute State aid.

V(c) Compatibility of the aid measures with the Internal Market

V(c)(1) General

(79) Inasmuch as Measures 1 and 2 constitute State aid within the meaning of Article 107(1) TFEU, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.

V(c)(2) Company in difficulty

(80) As shown in recitals 46 to 50, the company's operating and financial performance deteriorated significantly in the period 2004-09. On this basis, the Commission concludes that the company has been in difficulty in the meaning of points 10 and 11 of the Rescue and restructuring guidelines at the time of the granting of the measures under scrutiny (the period 2007-10), as also acknowledged by Greece and the beneficiary. The Commission equally considers that the company is in difficulties at present because the situation has not improved since.

V(c)(3) Exemptions under Article 107(2) and (3) TFEU

(81) The derogations laid down in Article 107(2) and Article 107(3), points (d) and (e), are clearly not applicable and have not been invoked by the Greek authorities.

(82) Article 107(3)(a) states that 'aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment' may be declared compatible with the internal market. United Textiles is located in an assisted area under Article 107(3)(a), therefore it could potentially be eligible for regional aid.

⁽¹⁹⁾ Law No 3762/2009, FEK A'75 15.5.2009.

⁽²⁰⁾ See footnote 14 above.

⁽²¹⁾ See footnote 15 above.

- (83) The Guidelines on regional aid 2007-2013 ⁽²²⁾ ('Regional aid guidelines'), which were applicable at the time of application of the 2007 guarantee and the 2009 debt rescheduling (Measures 1 and 2), set out the conditions for the approval of regional investment aid.
- (84) The Regional aid guidelines clearly exclude firms in difficulty from their scope. United Textiles was already in difficulty at the time when Measures 1 and 2 were granted, therefore it was not eligible for regional aid. On this basis, the Commission concludes that the aid cannot be declared compatible on the basis of the Regional aid guidelines.
- (85) The Commission will also assess the compatibility of the measures in question under the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the EC Treaty (General block exemption Regulation) ⁽²³⁾. The Commission notes that aid to firms in difficulty is excluded from the scope of the general block exemption Regulation. United Textiles was already in difficulty at the time when Measures 1 and 2 were granted, therefore the aid granted to United Textiles is not compatible under the general block exemption Regulation.
- (86) The Commission has also to assess whether any of the measures concerned could be compatible under the crisis rules enshrined in the Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis ⁽²⁴⁾ (hereinafter 'Temporary Framework'). However, the Commission notes that United Textiles was clearly a company in difficulties before 1 July 2008 and therefore not eligible for aid under the Temporary Framework.
- (87) Since United Textiles was a firm in difficulty at the time of the granting of the measures, the compatibility of the aid measures can only be assessed in the light of the Rescue and restructuring guidelines, i.e. under Article 107(3)(c) TFEU.
- (88) First, the Commission considers that the measures in question cannot be found compatible as rescue aid. Indeed, the guarantee does not have a limited duration of six months, as foreseen in point 25(c) of the Rescue and restructuring guidelines, and the debt rescheduling, which could be comparable to a loan, also goes beyond a six-month period admissible as rescue aid. Also, the measures are not restricted to the minimum necessary amount, as foreseen in point 25(d) of the Rescue and restructuring guidelines and stemming from the formula set out in the Annex to those guidelines.
- (89) Second, none of the measures could be found compatible as restructuring aid either. Greece and the beneficiary claim that before having been granted the 2007 guarantee, the company had submitted to the Greek authorities a restructuring plan with financing from banks and without any State guarantee. However, such a restructuring plan was never officially submitted to the Commission, therefore, the grant of these measures was made in the absence of a restructuring plan; however, such a restructuring plan is the condition for ensuring the restoration of a firm's long-term viability. In fact, based on the evidence of the investigation, no such plan existed, and all restructuring efforts in this period have failed, to the point that the company practically ceased to operate and was taken off the stock exchange. Despite this failure to restructure, the State continued to provide working capital to United Textiles, through the 2007 State guarantee. Thus, the Commission considers that Measures 1 and 2 constituted mere operating aid without any underlying credible restructuring.
- (90) Finally, no compensatory measures in the sense of points 38 to 42 of the Rescue and restructuring guidelines have been officially submitted.
- (91) As regards United Textiles' eligibility to receive restructuring aid, the Commission notes that the company has been granted operating aid since at least 2007, at a time when it was already in difficulty. The Commission considers that the above fact is an infringement of the 'one time last time' principle, as it demonstrates that the company's difficulties are of a recurrent nature and that the aid measures in the company's favour have distorted competition contrary to the common interest. In addition, the beneficiary argues that the 2007 guarantee was incorporated in the guarantee of 2010, therefore there is a continuum in the settlement of the company's lending. However, the Commission considers that there are no elements suggesting that the restructuring should be considered to form a continuum, as the aid measures of 2007, 2009 and 2010 were granted over several years and were not granted on the basis of a single restructuring project or concept capable of restoring the company's viability.
- (92) On the basis of the above, the Commission considers that the 'one time last time' principle is not respected.
- (93) Finally, as United Textiles was in difficulty at the time of the granting of the measures, the Commission cannot conceive of another set of State aid rules that could make the alleged aid measures compatible with TFEU.

⁽²²⁾ OJ C 54, 4.3.2006, p. 13.

⁽²³⁾ OJ L 214, 9.8.2008, p. 3.

⁽²⁴⁾ OJ C 16, 22.1.2009, p. 1, as modified by the Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 303, 15.12.2009, p. 6.

V(c)(4) *Conclusion on compatibility*

- (94) In the view of the above, the Commission concludes that Measures 1 and 2 are incompatible with TFEU.

VI. RECOVERY

- (95) On the basis of the foregoing, the Commission concludes that the 2007 State guarantee and the 2009 rescheduling of overdue social insurance obligations constitute State aid which is incompatible with the internal market. The Commission has also come to the conclusion that the 2010 State guarantee does not constitute State aid.
- (96) Article 14 of Regulation (EC) No 659/1999 lays down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.
- (97) Thus, given that the measures at hand are to be considered as unlawful and incompatible aid, the amount of aid must be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Recovery shall be hence affected from the time when the advantage occurred to the beneficiary, i.e. when the aid was put at the disposal of the beneficiary and shall bear recovery interest until effective recovery.
- (98) The incompatible aid element of the 2007 State guarantee (Measure 1) is calculated as amounting up to the total of the guaranteed loan. The Commission estimates that the aid thus granted to United Textiles amounts up to EUR 16 million.
- (99) The incompatible aid element of Measure 2 is calculated as the total amount of the rescheduled debts, thus the amount of aid granted to United Textiles is EUR 14,57 million. Payments made other than the amounts paid under the agreement may be deducted from the sum to be recovered as unlawful and incompatible aid.
- (100) The exact recovery amount and the recovery interest to be applied on these amounts have to be calculated by Greece,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid granted by Greece in breach of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of United Textiles S.A., in the form of a 2007 State guarantee and a rescheduling of overdue social insurance obligations in 2009, is incompatible with the internal market.
2. The 2010 State guarantee does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

1. Greece shall recover the aid stipulated in Article 1, paragraph 1, from the beneficiary.
2. The sums to be recovered shall bear interest generated from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽²⁵⁾.
4. Greece shall cancel all outstanding payments under the aid stipulated in Article 1, paragraph 1, with effect from the date of notification of this decision.

Article 3

1. Recovery of the aid referred to in Article 1, paragraph 1, shall be immediate and effective.
2. Greece shall ensure that this decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Greece shall submit the following information to the Commission:
 - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and planned to comply with this Decision;
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid stipulated in Article 1, paragraph 1, has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary

Article 5

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 22 February 2012.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽²⁵⁾ OJ L 140, 30.4.2004, p. 1.