

DECISIONS

COMMISSION DECISION (EU) 2020/394

of 7 October 2019

concerning the measures SA.39119 (2016/C) (ex 2015/NN) (ex 2014/CP) implemented by the Hellenic Republic in the form of interest subsidies and guarantees linked to the fires of 2007 (the present decision covers only the agricultural sector)

(notified under document C(2019) 7094)

(Only the Greek text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"), 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 invited interested parties to submit their comments, in accordance with the first subparagraph of Article 108(2) TFEU ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) On 22 July 2014, the Commission received a complaint regarding alleged aid granted by the Greek State to Sogia Ellas S.A. and its subsidiaries (hereby Sogia Ellas), which are active in the processing of agricultural products. The aid consisted in interest subsidies and State guarantees on existing loans that were to be renegotiated with a grace period, and on new loans.
- (2) By letter dated 25 July 2014, the Commission requested information from the Greek authorities regarding the alleged aids. The Greek authorities replied by letter of 17 November 2014 providing detailed information on the legal bases of the alleged aids. The Commission sent a second letter to Greece on 11 December 2015 to which the Greek authorities replied by letter dated 11 February 2016, registered on the same date. In their reply, the Greek authorities provided additional information on the legal bases, conditions for granting the aid and the beneficiaries.
- (3) In its letter of 11 December 2015 the Commission informed the Greek authorities that the initial examination of the information they had provided showed that the alleged aids had been granted without the Commission's approval. In addition, the alleged aid was not restricted to Sogia Ellas and its subsidiaries, but on the basis of Greek legislation it could have been granted to other beneficiaries as well. For this reason, the Commission decided to open a non-notified State aid case (Case SA.39119 (2015/NN)) and to extend the scope of its investigation to include the entire agricultural sector.
- (4) The Commission decision to initiate the procedure ('opening decision') was published in the *Official Journal of the European Union* on 16 September 2016 ⁽²⁾. The Commission requested the Greek authorities to provide the estimated number of beneficiaries of each scheme identified in the opening decision and the aid amounts involved. Otherwise, as stated in the opening decision, the Commission would adopt a decision on the basis of the information in its possession. The Commission invited interested parties to submit their comments on the measures concerned.

⁽¹⁾ Invitation to submit comments pursuant to Article 108(2) TFEU, State aid SA.39119 (2016/C) (ex 2015/NN) (ex 2014/CP) – Aid to Sogia Ellas SA et al. (OJ C 341, 16.9.2016, p. 23).

⁽²⁾ See note 1.

- (5) No interested parties submitted comments. The Greek authorities sent their observations on the opening decision on 23 September 2016. In their reply, the Greek authorities informed the Commission that they could not provide the information requested in the Opening decision.
- (6) The Commission repeated the requests to the Greek authorities to submit the missing information by letters dated 2 December 2016 and 15 January 2018. The Greek authorities submitted the requested information, respectively, by letters dated 9 March 2017 and 21 February 2018.
- (7) The present decision, like the opening decision, concerns only activities linked to the production, processing and marketing of agricultural products, i.e. products listed in Annex I to the TFEU with the exception of fisheries and aquaculture products, and to forestry, as defined by Eurostat. It is therefore without prejudice to possible aids granted to other sectors of the economy in accordance with the aid schemes in question.

II. DESCRIPTION OF THE MEASURES

1. Objective

- (8) The objective of the measures was to aid undertakings established and operating, irrespective of their registered seat, in the areas of Greece afflicted by the fires of 2007. According to the Greek authorities the broader aim was to restore the productive capacity, which had been gravely affected by the fires.

2. Legal Basis

- (9) The legal bases for the alleged aids are found in Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) of the Minister of Economy and Finance, as amended and supplemented by Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007), Decision No 46082/B.2123/24-10-2007 (OJHR 2139/B'/2-11-2007), Decision No 6391/B.342/8-2-2008 (OJHR 242/B'/14-2-2008), Decision No 34227/B.1123/23-7-2008 (OJHR 1548/B'/5-8-2008), Decision No 57198/B.2406/28-12-2012 (OJHR 3462/B'/28-12-2012), as well as Article 2, paragraph 7 of Law No 3816/2010 (OJHR 6/A'/26.1.2010) and Article 21, paragraph 5 of Law No 3867/2010 (OJHR 128/A'/3.8.2010).
- (10) The conditions under which the guarantee of the Greek State was granted under Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), were established in further detail in Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007) of the Minister of Economy and Finance. That decision was amended by Decision No 2/86490/0025/31.12.2007 (OJHR B' 2493/31.12.2007) of the Deputy Minister of Finance, Decision No 2/57144/0025/20.8.2008 (OJHR B' 1732/28.8.2008), Decision No 2/22475/0025/25.4.2012 (OJHR B' 1346/25.4.2012) of the Minister of Finance and Decision No 2/52027/0025/30.8.2012 (OJHR B' 2404/30.8.2012) of the Deputy Minister of Finance and Decision No 2/1755/0025/20.2.2013 (OJHR B' 465/27.2.2013) of the Deputy Minister of Finance. Decision No 2/1755/0025/20.2.2013 was further amended by Decision No 2/38310/0025/14.5.2014 (OJHR B' 1262/16.05.2014) and Decision No 2/43758/0025/29/06/2015 (OJHR B' 1289/29.06.2015), which are therefore relevant for the present decision.

3. Measures

- (11) On 25 August 2007 the Greek Minister of the Interior, Public Administration and Decentralization declared a state of emergency across the country by Ministerial Decision No 47870/25.8.2007 (OJHR 1706/B'/25.8.2007) due to the fires of July and August 2007, which broke out in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in the Prefecture of Achaia.
- (12) The Greek authorities submitted that the extent and magnitude of the destruction caused by the fires in those areas were huge and resulted in the loss of human lives and animal populations, and the devastation of the countryside, both forest and farmland, and infrastructure, with extremely serious effects on the local economy. The scale of the phenomenon was such as to be classified by the Greek authorities as a disaster within the meaning of Article 107(2) (b) TFEU, as shown in the relevant graphs of the Commission, to which the Greek authorities referred in their communication with that Institution ⁽³⁾.

⁽³⁾ Report No 10: 'JRC, Scientific and Technical Reports – Forest Fires in Europe 2009', Graph 13a: 'Burnt areas in Greece for the last 30 years', p. 29, available at http://forest.jrc.ec.europa.eu/media/cms_page_media/9/forest-fires-in-europe-2009.pdf; the presentation of burned areas in Greece in 2007, at Nuts 3 level, in accordance with the European Forest Fire Information System (EFFIS), European Commission – Joint Research Centre, available at: <http://forest.jrc.ec.europa.eu/effis/applications/fire-history>.

- (13) In order to address that situation, the Greek Minister of Economy and Finance adopted Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) ⁽⁴⁾, which was successively amended and supplemented. That Decision was entitled 'Loans for working capital and other credit facilities to businesses and professionals which were affected by the fires of year 2007 in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in [the Prefecture of] Achaia'.
- (14) The Decision established two State aid schemes ⁽⁵⁾, as follows:
- (a) a scheme providing for the arrangement of debts accrued until 25 August 2007, overdue or not ⁽⁶⁾ (referred to for the purposes of this Decision as 'scheme A'), which consisted of the capitalisation of debts that were subsequently turned into new loans and which involved granting of a 'grace period', interest subsidies and State guarantees;
 - (b) a scheme covering new loans for working capital, to be granted after 25 August 2007, for which interest subsidies and State guarantees could be granted ⁽⁷⁾ (referred to for the purposes of this Decision as 'scheme B').
- (15) In particular, Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) stated the following: 'The arrangement of debt and the granting of working capital to businesses and professions which are located and operate in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea, and in the Aigialeia district of the Prefecture of Achaia which were affected by the fires in 2007.'

A. Arrangement of debt

All debts, due and not due, up to 25 August 2007 of businesses and professionals affected by fires during the year 2007 shall be capitalised and turned into a new loan with a grace period of 28 months. The first instalment is payable on 31 December 2009. The rest of the loan shall be paid off in equal six-monthly instalments (amortisation of principal and interest). The entire duration of the loan arrangement shall be 10 years, including the grace period. The interest payable on the loan in the grace period shall be subsidised at 100 % by the account set up pursuant to Law 128/1975 and for the rest of the loan period at 50 %.

The interest rate of a debt arrangement shall be the rate of the last issue of twelve-month Greek Treasury bonds before the start of the interest period, increased by 70 % of the full contribution pursuant to Law 128/1975. The subsidy rate shall be rounded up/down to the nearest quarter of a point.

For the principal and interest on the above-mentioned loans, the guarantee of the Greek Government shall be provided in accordance with Law 2322/1995, as in force.

B. Granting of loans for working capital for businesses and professionals

Working capital may be granted by the credit institutions in accordance with the corresponding provisions governing needs and working capital of Act No 1955/2.7.1991 *of the Governor of the Bank of Greece, as in force. These loans will be subsidised by the account set up pursuant to Law 128/1975 as follows:*

- a. for loans of up to EUR 5 000, 100 % interest subsidy.
- b. for loans of up to EUR 20 000, 80 % interest subsidy.
- c. for loans of up to EUR 60 000, 50 % interest subsidy.
- d. for loans of up to EUR 90 000, 30 % interest subsidy.

The amount of the interest subsidy will be the same for the entire loan amount.

⁽⁴⁾ This decision was successively amended and supplemented, as explained above in recitals 9 and 10.

⁽⁵⁾ Where necessary the two schemes are distinguished in the present decision as 'scheme A' and 'scheme B'. Otherwise, the decision refers simply to 'the schemes'.

⁽⁶⁾ See below point A of the decision, recital 15.

⁽⁷⁾ See below point B of the decision, recital 15.

These loans will be granted up to a maximum amount of 35 % of the company's turnover for the year 2006 and will be for a duration of 60 months.

The interest rate for the above-mentioned loans shall be the rate of the last issue of twelve-month Greek Treasury bonds before the start of the interest period, increased by 70 % of the full contribution pursuant to Law 128/1975. The subsidy rate shall be rounded up/down to the nearest quarter of a point.

It should be noted that the turnover of businesses which made no sales in the previous year 2006 or which started operations from 1 January 2007 to 31 August 2007 will be determined by the purchases made during the first six months of operations in 2007 multiplied by two (2) and the amount will be established after taking into account a gross profit ratio of 45 %.

For the principal and interest on the above-mentioned loans, the guarantee of the Greek Government shall be provided in accordance with Law 2322/1995, as in force.'

- (16) Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007) amended the title and the body of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007). The new title read 'Loans for working capital and other credit facilities to businesses and professionals in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in [the Prefecture of] Achaia'. In other words, the phrase: '*which were affected by the fires of year 2007*', which referred to the beneficiaries of the aid schemes and thereby apparently restricted the scope of the aid schemes to beneficiaries actually affected by the fires, was deleted from the title of the legal basis.
- (17) Moreover, Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007) added a sentence, highlighted in the following extract, to the first sentence of Chapter A of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007): 'A. Arrangement of debt

All debts, due and not due, up to 25 August 2007 of businesses and professionals **in the aforementioned prefectures, which prefectures were affected by fires during the year 2007**, shall be capitalised and turned into a new loan with a grace period of 28 months. The first instalment is payable on 31 December 2009.' [emphasis added]

- (18) Those two amendments combined led to the requirement that the damage sustained by the beneficiaries should have been caused by the fires of 2007 not applying to the beneficiaries anymore, but simply to the Prefectures in which these were established and operating, irrespective of their registered seat. That conclusion is reinforced by the reply of the Greek authorities to a question asked by the Commission in its letter of 11 December 2015, namely whether the compensation to the beneficiaries was provided for damage suffered by them as a direct consequence of the fires. In their reply of 11 February 2016, the Greek authorities insisted on the universal and unprecedented nature of the fires that resulted in damage to undertakings simply because they had production activities in the affected areas.
- (19) The other Decisions and Laws referred to in recital (9) further amended and supplemented Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007). Decision No 46082/B.2123/24-10-2007 (OJHR 2139/B'/2-11-2007) amongst others provided that:

"a) The following paragraphs shall be added to the end of Chapter A [of Decision No 36579/B.1666/27-8-2007 (GG II 1740/30-8-2007)] 'Arrangement of debt':

'Credit institutions may implement the above-mentioned arrangements without the guarantee of the Greek State, up to the sum of EUR 25 000 000 per business. Commercial businesses and professionals may arrange sums of up to 100 000 euros.

Where businesses apply to arrange debts of over EUR 100 000 and up to EUR 25 000 000, a viability study must be provided to the credit institution in which they have most debts, for assessment by that credit institution.

The following are not governed by the provisions of Chapter A:

- loans of businesses/professionals already included in clauses of arrangements pursuant to Law 128/1975 as in force, unless those businesses or professionals have demonstrably suffered damage from the fire to buildings on their premises, to mechanical equipment, to raw materials or to their goods. To confirm this damage, they will have to produce certification from the competent authorities of their Prefectural Authorities,
- loans of businesses/professionals taken against transfer of the entitlement to an investment programme grant on the basis of State support schemes,
- loans of businesses/professionals which are included in a financing scheme, on the basis of which the investment is considered part of a State support scheme.'

b) The following two paragraphs are added to the end of Chapter B [of Decision No 36579/B.1666/27-8-2007 (GG II 1740/30-8-2007)] 'Granting of loans for working capital for businesses and professionals':

'The above provisions of Chapter B cover businesses and professionals who had been covered by investment programme grants under the State aid regime, provided that the investment project has been completed.

The above provisions of Chapters A and B cover both businesses and professionals located and operating in the municipal units of Aigio, Akrata, Diakopto, Sympoliteia, Erineos and Aigeira of the Aigialeia district of the Prefecture of Achaia and in the municipal units of Eleios-Pronnoi and Livathos in the Prefecture of Kefallinia."

- (20) Decision No 6391/B.342/8-2-2008 (OJHR 242/B'/14-2-2008) amended the amount (from EUR 100 000 to EUR 150 000) for which undertakings wishing to renegotiate their debts had to submit a viability study. It further extended the deadline for the submission of such requests from 31 December 2007 to 31 March 2008.
- (21) Decision No 34227/B.1123/23-7-2008 (OJHR 1548/B'/5-8-2008) extended the geographical scope of the schemes, as described in recital (25), and again extended the deadline for application to participate in the scheme to 31 August 2008.
- (22) Decision No 57198/B.2406/28-12-2012 (OJHR 3462/B'/28-12-2012) amended the schemes to allow beneficiaries which had not received the State guarantee to ask for the suspension of the repayment of their debt for the period between 1 January 2012 and 31 December 2012. The borrowers were liable for the interests accumulated during the suspension period. Beneficiaries could apply to the financial institutions in order to make use of that provision until 28 February 2013.
- (23) As to the conditions for the granting of the State guarantee, those were described in detail in Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007), whose relevant parts read as follows:

1) The Greek State will provide a guarantee of up to 80 % to arrange debts, whether due or not, up to 25 August 2007 from loans granted by the credit institutions to professionals and businesses established and operating, irrespective of the place where the business has its registered office, in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and in the Aigialeia district of the Prefecture of Achaia, municipalities which were affected by fires in 2007, into a new loan to be repaid in equal six-monthly instalments (amortisation of principal and interest), with a grace period from 25 August 2007 until 31 December 2009. The total duration of the loan under the arrangement will be ten (10) years including the grace period. The first instalment of this loan will be paid on 30 June 2010. The interest rate of the loan under the arrangement shall be subsidised and set in accordance with the terms of Decision No 36579/B.1666/27.8.2007 of the Minister for Economic Affairs and Finance.

The guarantee of the Greek State will be applied to 80 % of the arranged debt and of the interest on those debts up to an amount of EUR 20 000 000,00 per business.

The guarantee of the Greek State will also be provided for [natural persons] commercial businesses, registered members of the Chambers of Commerce and the professionals of these Prefectures, whose debts to be restructured do not exceed the sum of EUR 100000,00.

The interest for the grace period is capitalised on 31 December 2009, while the first instalment of the loan will be paid on 30 June 2010.

In the event of non-payment of three successive amortisation instalments with the corresponding interest or three principal and interest instalments which come from the above arrangement, the full amount of the arranged debts shall become due and payable. In order to have their guaranteed claims settled by the State, after three months have passed since the third instalment, banks must submit the supporting documents referred to in Decision No 2/478/0025/4.1.2006 (GG II 16/13.1.2006) of the Minister for Economic Affairs and Finance.

2) *The Greek State shall provide an 80 % guarantee for the granting of loans for working capital lasting five years, including the grace period, to professionals and businesses, which are registered and operating, irrespective of the place where the business has its registered office, in the Prefectures of Messinia, Ilia, Laconia, Euboea and in the Aigialeia district of the Prefecture of Achaia, which were affected by fires in 2007.*

The interest rate of the above loans is subsidised and set in accordance with the terms of Decision No 36579/B.1666/27.8.2007 by the Minister for Economic Affairs and Finance.

These loans will be granted to all businesses in these Prefectures for up to a maximum of 35 % of the company's turnover for the year 2006 and a maximum loan amount of EUR 90 000,00 per business. *The turnover of businesses which did not make sales in the previous year 2006 or started operations between 1 January 2007 and 27 August 2007 will be determined by the purchases made during the first six months of operations in 2007 multiplied by two (2) and the amount will be established after taking into account a gross profit ratio of 45 %.*

These loans will be repaid in equal six-monthly principal and interest instalments, with a grace period for the capital from the date of the disbursement until 31 December 2009. The first instalment will be paid on 30 June 2010. The non-subsidised part of the interest in the grace period will be paid by the businesses.

These loans will be administered through a new, separate loan agreement. For the above-mentioned loans, the Greek State will provide a guarantee for 80 % of the capital and corresponding interest in the grace period and the normal period for all businesses.

[...]

Required supporting documents:

[...]

(v) Viability study together with the proposed physical collateral (only for businesses applying for a debt arrangement for an amount over EUR 100 000,00).

The study in question should include the following:

- (a) the company's total liabilities after settlement of its debt to the credit system, its suppliers, insurance funds, the government and general market as well agreements on arrangements for the repayment of those liabilities;
- (b) the company's published accounts for the past three years (companies that keep type B accounts must submit forms E3 and E9 for the past three years);
- (c) the company's cash flow schedule for the next three years (receipts and payments);
- (d) the company's estimated revenue and profits for the next three years;
- (e) the working capital required to run the business and sources of funding;
- (f) existing collateral, proposed restructuring of existing collateral covering settled debt, and proposed new physical collateral for debts to be settled (only if the debts exceed EUR 100 000,00).

B. Companies and professionals in the above prefectures who only apply for a new loan for working capital following the forest fires must submit their applications to the State General Accounts Office, Directorate 25, Section D, accompanied by the following supporting documents:

- (a) the company's published accounts for the past three years (companies that keep type B accounts must submit forms E3 and E9 for the past three years);
- (b) the company's cash flow schedule for the next three years (receipts and payments);
- (c) the company's estimated revenue and profits for the next three years;

- (d) a certificate of registration with the Chamber of the Prefecture in which the company is established (professionals and livestock farmers must submit a commencement of activity certificate from the local tax office);
- (e) the relevant form, filled in and signed, of the State General Accounts Office for 'Assessment of the viability of businesses applying for a Greek government guarantee' which is available on its website (www.mof-gl.gr).

The provision of physical collateral is not required to cover new loans for working capital for all categories of businesses.

Applications and viability studies will be evaluated by the Board of Management and Assessment of the responsibility for guarantees of the Greek State (Article 37 of Law 3458/2006, GG I 94/8.5.2006), prior to final approval of the provision of the guarantee pursuant to the provisions set out in national and Community legislation (Articles 87 and 88 of the EC Treaty) together with the existing and proposed collateral, which will fully cover the debt to be arranged (where necessary).

- (24) Article 2, paragraph 7 of Law No 3816/2010 (OJHR 6/A/26.1.2010), as amended by Article 21, paragraph 5 of Law No 3867/2010 (OJHR 128/A/3.8.2010) gave the right to beneficiaries of the loans taken on the basis of Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007) to ask until 30 August 2010, retroactively since 1 January 2010 for a 2-year suspension of the payment of the amortising repayment of the capital with a corresponding extension of the contractual term of the loan and with interest payments during the suspension in accordance with the frequency of interest payment provided for in the contract. Persons liable for payment of interest were the borrowers. Decision No 2/22475/0025/25.4.2012 (OJHR B' 1346), as amended by Decision No 2/52027/0025/30.8.2012 (OJHR B' 2404) and Decision No 2/1755/0025/20.2.2013 (OJHR B' 465/27.2.2013), allowed for an extension of that suspension from 1 January 2012 to 31 December 2012 on the basis of a request to that effect submitted until 28 February 2013 to the financial institution. Decision No 2/38310/0025/14.5.2014 (OJHR B' 1262/16.5.2014) allowed for a further suspension from 31 December 2013 to 31 December 2014 whilst Decision No 2/43758/0025/29.6.2015 (OJHR B' 1289/29.6.2015) allowed for another suspension for loans ending after 1 January 2017 from 31 December 2013 to 31 December 2016.

4. Geographical scope of the measures

- (25) The aid schemes initially applied to the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in the Prefecture of Achaia. They were subsequently extended to apply further to the municipalities of Aigio, Akrata Diakoptou, Sumpoliteias, Erineou kai Aigeiras in the area of Aigeira in the Prefecture of Achaia, as well as to the municipalities of Eleiou-Pronon kai Leivathous of the Prefecture of Kefallinia, according to Decision No 46082/B.2123/24-10-2007 (OJHR 2139/B/2-11-2007) and specifically for the State guarantees according to Decision No 2/86490/0025/31.12.2007 (OJHR B' 2493/31.12.2007), and to the municipalities of Argalasti and Afeton, and the settlements of Agia Paraskevi, Zormiaddon, Porou and Toulou of the municipality of Skiathos in the Prefecture of Magnisia, according to Decision No 34227/B.1123/23-7-2008 (OJHR 1548/B/5-8-2008) and specifically for the State guarantees according to Decision No 2/57144/0025/20.8.2008 (OJHR B' 1732/28.8.2008).

5. Duration

- (26) Ministerial Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B/30-8-2007) of the Minister of Economy and Finance which established the State aid schemes (with further amendments) was published on 30 August 2007 and is still in force according to the submission of the Greek authorities.
- (27) The Greek authorities indicated that the beneficiaries had to submit their applications until 31 December 2007, whilst for Argalasti, Afeton and the settlements of Agia Paraskevi, Zormiaddon, Porou and Toulou of the municipality of Skiathos in the Prefecture of Magnisia the applications had to be submitted by 31 October 2008. The duration of the loans under scheme A (see recital (14)) was 10 years and under scheme B (see recital (14)) 5 years. The loans were granted by 31 December 2010. The State guarantees were linked to the specific financial transactions (i.e. either to loans related to the arrangement of debt under scheme A and the above-referred duration of 10 years or to the working capital loans under scheme B and the above-referred duration of 5 years).

6. Estimated amount of alleged aid

- (28) The Greek authorities informed the Commission that the total interest subsidies granted to beneficiaries amounted to EUR 192 771 140,81. In particular one of the beneficiaries, Sogia Ellas and its subsidiaries received an interest subsidy amounting to EUR 8 293 527,92 and no State guarantee was granted to that undertaking. As regards State guarantees, the Greek authorities indicated that the total amount of loans was EUR 146 969 403,78 and the total guaranteed by the Greek State amounted to EUR 117 575 523,04. The Greek authorities informed the Commission that the credit institutions already sent requests for a call on the guarantee of 396 loans (corresponding to 298 beneficiaries) amounting to a total of EUR 55 233 316,43. The Greek authorities noted that out of 76 calls, which were assessed at the time of submitting the information in February 2018, the State guarantee was activated in 62 cases and the Greek State therefore paid to credit institutions an amount of EUR 6 836 810,80. These calculations are provisional, given that the Greek authorities are still processing information for the purpose of confirming the final beneficiaries and amounts.

7. Beneficiaries

- (29) The aid schemes appear to be open, *inter alia* ⁽⁸⁾, to all undertakings active in the production, processing and marketing of agricultural products as listed in Annex I TFEU, and in forestry, to the extent that they are established and operating, irrespective of their registered seat, in one of the areas to which the aid schemes are applicable (see recital (15)).
- (30) The Greek authorities provisionally estimated the number of beneficiaries of interest subsidies at 3773 undertakings (including Sogia Ellas and its subsidiaries) and the number of beneficiaries of State guarantees at 746 undertakings.

8. Eligible costs

- (31) The eligible costs seem to have been operational costs of undertakings established and operating, irrespective of their registered seat, in one of the areas to which the aid schemes are applicable. If these undertakings did not perform economic activities, they were excluded from the schemes. Where the undertakings had more than one production unit, they could receive aid under the schemes in relation to the activities of those production units that were established and operating in the affected areas. In particular, with regard to scheme B, beneficiaries could receive loans up to 35 % of the turnover of their production unit established and operating in the affected areas, irrespective of the registered seat of the undertaking.

9. Form of the aid and aid intensity

- (32) The aid is granted in the form of State guarantees and interest subsidies. The State guarantees applied to 80 % of the loan including the respective interests. As to the interest subsidies, for the renegotiated loans, the aid amounted to 100 % during the grace period and 50 % for the remainder of the duration of the loan. For the new loans, the interest subsidies varied between 30 % and 100 %, as described in recital (15).

III. Doubts raised by the Commission in the opening decision

1. Existence of aid within the meaning of Article 107(1) TFEU

- (33) In order to proceed in a structured manner with the assessment whether the schemes in question fulfilled the conditions of Article 107(1) TFEU, the Commission analysed the two instruments used in each of them separately: the interest subsidy on the one hand, and the guarantee of the State on the other hand.

⁽⁸⁾ The legal bases did not provide for any limitation to the agricultural sector.

Interest subsidy

- (34) The interest subsidy granted by the Greek State on the basis of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), as it was successively amended and supplemented, fulfilled all conditions of Article 107(1) TFEU. That subsidy was granted by the Greek State and conferred a clear advantage, as it made the cost of the loan much cheaper and in some cases and for some periods of time even interest-free, as described in detail in recital 15.
- (35) In addition, the selectivity condition was equally fulfilled, since the beneficiaries were limited to undertakings having establishments in the geographical areas affected by the fires of 2007, as provided for in recital 25.
- (36) Concerning the condition of distortion of competition, according to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition. ⁽⁹⁾ In the present case, the competitive position of the recipients was strengthened by the economic benefit of the national measure, and thus the measure was liable to distort competition. Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Union trade. ⁽¹⁰⁾ The beneficiaries of the aid at issue operated in the highly competitive market of agricultural products and in forestry. Further, according to the case law of the Court, there is no threshold or percentage below which trade between the Member States can be regarded as not having been affected – even a relatively small amount of aid or the relatively small size of the undertakings does not *a priori* mean that trade between the undertakings may not be affected. ⁽¹¹⁾ There is substantial intra-Union trade in agriculture and in forestry. Therefore, the present measure was liable to affect trade between Member States.
- (37) It therefore appeared that as concerned the interest subsidy, all conditions of Article 107(1) TFEU were fulfilled.

State guarantee

- (38) With Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), as successively amended and supplemented, the Greek State also decided to grant its guarantee to undertakings having establishments in the geographical areas affected by the fires of 2007. The conditions under which this guarantee was granted were established in further detail by Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007), as successively amended and supplemented. As stated in Section 2.1 of the Commission Notice on Guarantees ⁽¹²⁾, the general criteria of Article 107(1) TFEU apply equally to guarantees. Guarantees given directly by the State may indeed constitute State aid. The benefit of a State guarantee is that the risk associated with the guarantee is carried by the State. That risk should normally be remunerated by an appropriate premium. When the State forgoes such a premium, there is both a benefit for the undertaking to whom the State guarantee is granted and a drain on the resources of the State. The guarantee in the present case was therefore granted through State resources. The Commission Notice on Guarantees further specifies that even if it turns out that no payments are ever made by the State under a guarantee State aid may nevertheless exist.
- (39) The benefit received from the guarantee under the schemes is evident. As indicated in Section 2.3 of the Commission Notice on Guarantees, when the borrower does not need to pay the premium, or pays a low premium, it obtains an advantage. In addition, compared to a situation without guarantee, the State guarantee enables the borrower to obtain better financial terms for loans than those normally available on the financial markets.

⁽⁹⁾ See, *inter alia*, judgment of the Court of Justice of 19 September 2000, *Germany v Commission*, Case C-156/98, EU:C:2000:467, para. 30; judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, Case C-730/79, EU:C:1980:209.

⁽¹⁰⁾ Judgment of the Court of Justice of 13 July 1988, *French Republic v Commission*, Case C-102/87, EU:C:1988:391.

⁽¹¹⁾ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans GmbH*, Case C-280/00, EU:C:2003:415, para. 81.

⁽¹²⁾ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 1. This Notice replaced the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees 2000/C 71/07, which was applicable until 31 December 2009.

- (40) The fact that beneficiaries in scheme A had to provide collaterals if their renegotiated debt exceeded EUR 100 000,00 (see above recital 23), did not change the assessment that there was an aid element in the State guarantee granted even in these cases. The relevant observations made by the Commission in its Decision 2012/320/EU ⁽¹³⁾, which were upheld by the General Court in its judgment in Case T-150/12 ⁽¹⁴⁾, applied also to the present case. Thus, even when the beneficiaries had provided for collaterals, the State guarantee constituted aid since it depended on the discretion of the State whether to make use of the rights granted by the collateral agreements, should the beneficiaries have failed to pay back the loans. This was the case, as there seemed to be no provision in the legal basis of the schemes that provided for the automatic activation of the collateral agreements if the beneficiaries failed to pay the loans. Lastly, it was unclear whether the collateral had to secure in all cases the full amount of the loan. It was also unclear whether the collateral played any role in the calculation of the applicable premium (if any).
- (41) Section 3.4 of the Commission Notice on Guarantees provides a list of conditions, the cumulative fulfilment of which would rule out the presence of State aid. It seemed that the measure in question did not fulfil all of these conditions. In particular, the schemes appeared not to be closed to borrowers in financial difficulty, as required by point (a) of Section 3.4 of the Commission Notice on Guarantees. The Greek authorities submitted that firms in difficulty were excluded from the schemes, since undertakings had to submit viability studies prior to receiving the State guarantee. However, on the basis of the wording of Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007) the obligation to submit a viability study only applied to undertakings, which applied for a debt rearrangement for an amount over EUR 100 000,00, as quoted in recital 23. Therefore, it seemed that there was no exclusion of firms in difficulty for other beneficiaries under scheme A nor for all beneficiaries under scheme B. In addition, on the basis of its reasoning in recitals 88 and 89 of Commission Decision 2012/307/EU ⁽¹⁵⁾, the Commission could not accept this argument in the light of the aforementioned Ministerial Decision. That Decision stated that the viability study will include *'The company's total liabilities after settlement of its debt to the credit system, its suppliers, insurance funds, the government and general market as well agreements on arrangements for the repayment of those liabilities'*. Thus, it could not be excluded that aid was granted to firms in difficulty, since the viability study itself factored in the debt restructuring on the basis of scheme A. In other words, the viability study focused on the viability prospects of the beneficiaries post-restructuring of their debt on the basis of scheme A. This implies that applicants could have been in difficulty at the time of the study, but may nevertheless have been admitted to scheme A because a potential return to viability was predicted after receiving the aid.
- (42) Moreover, with respect to point (d) of Section 3.4 of the Commission Notice on Guarantees, it was unclear whether the beneficiaries paid any premium and if they did, on what basis that premium was calculated in order to reflect a market-oriented price for each guarantee. There are no references to a calculation in the legal bases of the schemes whilst the Greek authorities did not refer in their letters referred to in recital 2, to an obligation to pay a premium as a condition for the granting of the State guarantees. Thus, it was doubtful that the terms of the scheme were based on a realistic assessment of the risk so that the possible premiums paid by the beneficiaries would make it, in all probability, self-financing.
- (43) Therefore, it seemed that there was no proper and progressive evaluation of the self-financing aspect of the scheme nor an annual review of the adequacy of the level of the premiums – if there were any – nor a potential adjustment thereof so as for the schemes to continue being self-financing. The legal bases of the schemes were silent thereon as well. Therefore, the condition in point (e) of Section 3.4 of the Commission Notice on Guarantees were not fulfilled either.

⁽¹³⁾ Commission Decision 2012/320/EU of 25 January 2012 concerning the aid granted by Greece to cerealproducing farmers and cereal-collecting cooperatives (SA 27354 (C 36/10) (ex NN 3/10, ex CP 11/09) (OJ L 164, 23.6.2012, p. 10).

⁽¹⁴⁾ Judgment of the General Court of 9 April 2014, *Greece v Commission*, Case T-150/12, EU:T:2014:191, paragraphs 82–85.

⁽¹⁵⁾ Commission Decision 2012/307/EU of 19 October 2011 regarding State aid schemes implemented by Greece in the Kastoria, Evia, Florina, Kilkis, Rodopi, Evros, Xanthi and Dodecanese Prefectures, and the islands of Lesbos, Samos and Chios (debt restructuring) (Nos C 23/04 (ex NN 153/03), C 20/05 (ex NN 70/04) and C 50/05 (ex NN 20/05) (OJ L 153, 14.6.2012, p. 16).

- (44) Furthermore, it was again doubtful that, if there had been premiums charged for State guarantees under those schemes, these premiums covered, in line with point (f) of Section 3.4 of the Commission Notice on Guarantees, the normal risks associated with granting the guarantee, the administrative costs of the scheme, and a yearly remuneration of an adequate capital, even if the latter was not at all or only partially constituted. It was therefore questionable that the premiums were in line with market prices.
- (45) Moreover, it appeared that the schemes did not determine the eligible undertakings in terms of rating, which is a condition of transparency under point (g) of Section 3.4 of the Commission Notice on Guarantees.
- (46) There was no element at the stage of the opening decision showing whether the options provided in Section 3.5 of the Commission Notice on Guarantees for the use of safe-harbour premiums in guarantee schemes for SMEs or the use of single premiums in guarantee schemes for SMEs were applicable to the schemes in question. It could not be excluded that SMEs benefited from these schemes.
- (47) Therefore, the Commission could not rule out the presence of State aid on the basis of the conditions of Section 3.4 of the Notice on Guarantees. On the contrary, the State guarantees of the measures at hand constituted State aid, since they fulfilled the relevant conditions of Article 107(1) TFEU.
- (48) Regarding imputability of the measures to the State, it was clear that the State guarantees were provided by the Greek State.
- (49) In the opening decision the Commission observed that under Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007) the Board of Management and Assessment of the responsibility for guarantees of the Greek State was responsible for evaluation of all the applications before the granting of the State guarantees ⁽¹⁶⁾. Thus, its action was imputable to the State and the Greek authorities could not argue that the State guarantees could be revoked *ex tunc*, because some of the conditions for their granting was not present at the time of their granting.
- (50) Regarding the involvement of State resources, the State guarantees allowed for the risks associated with the guarantees to be carried by the State. Therefore, the State guarantees at hand put State resources at risk, as their call was to be paid through the State budget. Moreover, any guarantee that was not properly remunerated implied a loss of financial resources for the State. The legal bases for the provision of the State guarantees did not provide for any premium to be paid by the beneficiaries. On the basis of the information available to the Commission at the time of the opening decision, it appears that no premium was paid by the undertakings benefiting from the guarantees, which were thus not properly remunerated.
- (51) Since, on the basis of the information available, the undertakings benefiting from the guarantees did not have to pay a premium (if any) equal to what a market economy operator could have required in order to provide such guarantee, they received an advantage. Furthermore, it could not be excluded that some beneficiaries were not able or would not have been able to receive any guarantee or loan in the market (at any premium or interest rate), in which case their advantage was or would have been the amount effectively covered by the State guarantee.
- (52) Regarding selectivity, distortion of competition and effect on trade the same considerations applied as those described in recitals 35 and 36. Thus, these conditions are fulfilled as well.
- (53) At the time of the opening decision, it appeared therefore that for the State guarantee to the loans, the conditions of Article 107(1) TFEU were fulfilled.

2. Unlawfulness of the aid schemes

- (54) In view of the fact that the measures had already been implemented without having been notified to the Commission, the aid granted under the schemes was unlawful aid within the meaning of Article 1 (f) of Council Regulation (EU) 2015/1589 ⁽¹⁷⁾.

⁽¹⁶⁾ This was restated by the Greek authorities in their letter of 11 February 2016.

⁽¹⁷⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

3. Compatibility of the aid with the internal market

- (55) Having established that the schemes constituted State aid within the meaning of Article 107(1) TFEU, it was necessary to assess whether the aid could be found to be compatible with the internal market pursuant to Article 107(2) or 107(3) TFEU.
- (56) Greece invoked the possible compatibility pursuant to Article 107(2)(b) TFEU.
- (57) The geographical applicability of the schemes is limited to areas affected by extensive fires, which according to the Greek authorities qualify as a natural disaster. The Commission has considered wild fires of natural origin as natural disasters whilst it has found that fires which result in widespread loss constitute exceptional occurrences. This distinction did not have any consequence for the assessment since both natural disasters and exceptional occurrences are to be assessed under the same derogation in Article 107(2)(b) TFEU as aid to make good the damage caused by natural disasters or exceptional occurrences.
- (58) Since the aid schemes in question were non-notified aid, it was essential in order for the derogation in Article 107(2)(b) TFEU to apply that they complied with the rules on State aid in place at the time the aid was granted. According to information provided by the Greek authorities, the schemes in question had been running from 25 August 2007. The compatibility of the schemes in question with the internal market was therefore examined in the light of the rules on State aid applicable during that period. These were the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013 ('the Guidelines 2007-2013')⁽¹⁸⁾, and in particular Section V.B.2 for agriculture and Section VII for forestry.
- (59) In light of the doubts raised in recital 40 about whether the schemes in question excluded firms in difficulty, the Commission made a clarification at the stage of the opening decision. Aid for firms in difficulty could only be deemed compatible if it fulfilled the conditions of the Commission Guidelines on Rescue and Restructuring aid (hereinafter 'R&R Guidelines'),⁽¹⁹⁾ which were applicable at the time aid under the schemes in question was granted. The only exception for aid for firms in difficulty was aid to make good damage caused by natural disasters or exceptional occurrences, to which the R&R Guidelines did not apply, as stated in points (19) and (20) of the R&R Guidelines. It follows from this that the following section on *Aid to make good damage caused by natural disasters or exceptional occurrences* examines all companies irrespective of their viability at the time the aid was granted, while the section on *Aid to promote or facilitate the development of certain economic areas* is divided between healthy firms on the one hand and firms in difficulty to which the R&R Guidelines apply on the other hand.

Aid to make good damage caused by natural disasters or exceptional occurrences

- (60) With regard to aid granted in agriculture, the Commission had to verify the existence of the natural disaster or exceptional occurrence invoked to justify the granting of aid and whether the following cumulative conditions in Section V.B.2 of the Guidelines 2007-2013 were met:
- (a) the damage for which the compensation was granted was a proven direct consequence of the natural disaster or exceptional occurrence;
 - (b) aid did not result in overcompensation of damage and only made good the damage caused by the natural disaster or exceptional occurrence, to which end the damage should have been assessed as precisely as possible whilst the therefrom stemming compensation should have been calculated at the level of the individual beneficiary and while any payments due, for example under insurance policies, should have been deducted from the amount of aid.

⁽¹⁸⁾ OJ C 319, 27.12.2006, p. 1.

⁽¹⁹⁾ Communication from the Commission, Community Guidelines on State aid for Rescuing and Restructuring Firms in difficulty (OJ C 244, 1.10.2004, p. 2). Validity first extended until 9 October 2012 (OJ C 156, 9.7.2009, p. 3) and then until 31 July 2014 (OJ C 296, 2.10.2012, p. 3).

- (61) The legal basis of the schemes under examination identifies areas affected by fires. Since the Commission has consistently taken the view in its State aid legal instruments that wild fires of natural origin constitute natural disasters whilst fires which result in widespread loss are exceptional occurrences within the meaning of Article 107 (2)(b) TFEU ⁽²⁰⁾, undertakings that suffered damage from the fires in question, irrespective of their legal assessment as natural disasters or exceptional occurrences, could qualify as beneficiaries of aid for the damage suffered as a direct consequence of the same events.
- (62) However, the schemes in question did not lay down any definition of damage and did not establish any link between the aid and the damage suffered as a result of the fires. Rather, the only link between the beneficiaries and the fires was the fact that the former were established and operating, irrespective of their registered seat, in one of the geographical areas affected by the fires. This was deduced from the reply of the Greek authorities quoted in recital 18. Therefore, beneficiaries might have not suffered damage at all and if so, the legal basis of the aid schemes did not require such damage to have been directly caused by the fires ⁽²¹⁾.
- (63) Additionally, the following amendment to Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) by Decision No 46082/B.2123/24-10-2007 (OJHR 2139/B'/2-11-2007) was indicative of the lack of a direct link between the damage suffered, if any, and the fires, as a condition for the granting of the aid as follows from the relevant excerpt quoted in recital 19. That amendment excluded existing loans which had already been arranged in the past, from the application of Chapter A of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), namely the arrangement of debt with an interest subsidy. It only set an exception for undertakings that *'ha[d] demonstrably suffered damage from the fire to buildings on their premises, to mechanical equipment, to raw materials or to their goods. To confirm such damage, they w[ould] have to produce certification from the competent authorities of their Prefectural Authorities'*. However, if there had been a direct link between the damage and the fires in the general framework of the scheme, this excerpt would have no meaning since all beneficiaries would by definition have had to have suffered damage caused directly by the fires. Thus, *a contrario*, the only logical conclusion that could be drawn from that amendment was that not all beneficiaries had to have suffered damage caused by the fires.
- (64) Furthermore, the legal bases of the schemes did not appear to contain any method for an as precise as possible assessment of the damage suffered by the undertakings as a direct consequence of the fires. Nor did they determine the eligible costs on the basis of such damage. It has already been established in recital 62 that there is no direct link made by the schemes between the fires and the damage actually caused by them to the beneficiaries. Rather, as quoted in recital 15, the amount of the aid was ultimately determined by the amount of the loan for which the interest subsidy and the State guarantee were granted. However, the amount of the loan itself was left open in the case of scheme A. In the case of scheme B it was determined on the basis of the turnover of each undertaking.
- (65) In addition, the schemes did not seem to provide for any mechanism to monitor the cumulation of aid under these schemes with aid under other schemes in order to prevent any overcompensation for the damage suffered by individual recipients as a result of the fires in question. Moreover, in the cases where an undertaking indeed suffered damage caused by the fires, the schemes did not include provisions excluding aid for payments due, for example under insurance policies, for the same damage.
- (66) With regard to aid granted in forestry, a distinction was made between State aid for conservation, improvement, development and maintenance of forests on account of the ecological, protective and recreational functions of forests, and State aids for forests used for commercial purposes. As regards the former, Section VII of the Guidelines 2007-2013 sets out the possibility to approve State aid for restoring forests damaged, among others, by fire. In line with that policy, point 174(c) of the Guidelines 2007-2013 stated that no aid was to be accepted for commercially viable felling or restocking after felling or establishing and maintaining any plantation with no demonstrated environmental or recreational benefit. *A contrario*, the compatibility of aid for forests used for commercial purposes had to be assessed directly pursuant to Article 107(2)(b) TFEU, as there were no applicable guidelines of the Commission in that regard.

⁽²⁰⁾ The notion of 'fires which result in widespread loss' was defined as an 'exceptional occurrence' in point 122 of the Guidelines 2007-2013.

⁽²¹⁾ See in this regard judgment of the Court of Justice of 29 April 2004, *Greece v Commission*, Case C-278/00, EU:C:2004:239, where the Court ruled that: 'only economic disadvantages directly caused by natural disasters or by exceptional occurrences qualify for compensation as provided for in that provision' (para. 82) and 'a provision with so broad a scope cannot be regarded as aid to make good the damage caused by natural disasters or exceptional occurrences' (para. 85).

- (67) As to aid for forests not used for commercial purposes, in accordance with point 175(a) of the Guidelines 2007-2013 it had to be demonstrated that the aid directly contributed to maintaining or restoring ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem. This may be the case if the aid is granted in order to plan and undertake the restoration of forests damaged by fire, where the primary objective of such measures is to contribute to maintaining or to restoring forest ecosystem and biodiversity or the traditional landscape. However, no aid may be granted for felling, the primary purpose of which is the commercially viable extraction of timber or for restocking where the felled trees are replaced by equivalent ones. Due to the lack of a link between the aid and the damage caused by the fires, the Commission had doubted whether these conditions were fulfilled in all cases of aid under these schemes granted for forests not used for commercial purposes. The Commission had also doubts whether the primary aim of such aid was the restoration of the forest ecosystem and biodiversity or the traditional landscape, given that the legal bases of the aid schemes did not contain anything to this effect.
- (68) As indicated, aid for forests used for commercial purposes has to be assessed directly pursuant to Article 107(2)(b) TFEU. In line with the Commission's decisional practice ⁽²²⁾, the damage for which aid is granted must be a proven direct consequence of the damage. Aid must not result in overcompensation of damage; it should only make good the damage caused by the natural disaster or exceptional occurrence. The aid in all the forms per beneficiary is limited to material damage occurred. Still, the assessment of the fulfilment of these conditions in recitals 62-65 for the agricultural sector applied to the forestry sector *mutatis mutandis*. The Commission had also doubts about the existence of a direct link between the damage and the fires, as well as about the prevention of overcompensation. Lastly, the legal bases of the schemes did not seem to limit the aid to material damage occurred.
- (69) In the light of those observations, in the opening decision (see recital 67 of the opening decision) the Commission considered that the information provided by the Greek authorities did not support the argument that the schemes under examination were, by virtue of their nature and operational arrangements, designed to make good the damage caused by natural disasters or exceptional occurrences. Thus, the Commission had serious doubts that they were compatible with Article 107(2)(b) TFEU.

Aid to promote or facilitate the development of certain economic areas

- (70) In the opening decision (see recital 68 of the opening decision), it could not be excluded that undertakings received aid under the schemes in question without having been affected by the fires, and that such aid was therefore not compatible with State aid rules under Article 107(2)(b) TFEU. Therefore, compatibility had to be analysed also in the light of Article 107(3)(c) TFEU.
- (71) Under Article 107(3)(c) TFEU aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Greek authorities did not argue that the State aid schemes at issue fell under Article 107(3)(c) TFEU.
- (72) For healthy firms, at the stage of the opening decision, there did not seem to exist any suitable State aid legal basis under Article 107(3)(c) TFEU. Aid granted under the State aid schemes seemed to be operating aid, which was incompatible with the TFEU.

⁽²²⁾ See e.g. State aid N 235a/2010 – Poland, Aid scheme for compensation for damage caused by the floods in Poland in May and June 2010 (outside the field of Annex I TFEU and the part of the forestry sector not covered by the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013) (OJ C 283, 20.10.2010, p. 2).

- (73) With specific regard to firms in difficulty, given the doubts raised in recital 40 whether some of the beneficiaries were firms in difficulty, the Commission examined whether the aid could be found compatible under the applicable instrument of Union law at the date of the granting. According to point (145) of the Guidelines 2007-2013 as well as points (19) and (20) of the R&R Guidelines, aid for rescuing and restructuring firms in difficulty in the agricultural and forestry sectors will be assessed in accordance with the R&R Guidelines. The assessment was not limited to aid schemes for SMEs for the same reasons as the ones stated in recital 46.
- (74) According to point 15 of the R&R Guidelines, rescue aid offers a short respite, not exceeding six months, to a firm in difficulty. The aid schemes in question seemed to last 10 years for scheme A and 5 years for scheme B, as stated for in recital 15. Therefore, aid granted under them could not be considered to constitute rescue aid.
- (75) According to point 17 of the R&R Guidelines, restructuring will be based on a feasible, coherent and far-reaching plan to restore a firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of the R&R Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.
- (76) According to point 35 of the R&R Guidelines, the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions, and restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.
- (77) According to points 38 and 39 of the R&R Guidelines, in order to ensure that the adverse effects on trading conditions are minimised as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken. Those measures may comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned.
- (78) According to point 45 of the R&R Guidelines, to limit the distortive effect, the amount of the aid or the form in which it is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process, and none of the aid should go to finance new investment that is not essential for restoring the firm's viability.
- (79) At the stage of the opening decision, there did not seem to be any restructuring plan (within the meaning of the R&R Guidelines) linked to any of the measures, and therefore it was impossible to analyse the compliance with the R&R Guidelines. Assuming that some of the measures were granted to undertakings in difficulty, the measures seemed to be pure financial aid designed to make good past losses without tackling the reasons for those losses.
- (80) Taking into account all these elements, the Commission had in the opening decision doubts concerning the compliance of the aid schemes with the R&R Guidelines (see recital 78 of the opening decision). The Commission thus entertained doubts concerning the compatibility of the aid schemes with Article 107(3)(c) TFEU both for healthy undertakings and firms in difficulty.

Possible compatibility with other derogations in Article 107 TFEU

- (81) At the stage of the opening decision (see its recital 79) the Commission considered that the beneficiaries, the eligible costs and the aid intensities of the assessed State aid measures did not appear to fall within the ambit of Commission Regulation (EU) No 702/2014 (the 'Agricultural Block Exemption Regulation'), according to which certain categories of aid would be compatible with the internal market in application of Articles 107 and 108 TFEU ⁽²³⁾.
- (82) As regards the applicability of the other derogations provided for in the TFEU, the Commission took the view that the aid did not qualify for the derogation in Article 107(2)(a) TFEU as it was not aid having a social character or aid covered by Article 107(2)(c) TFEU. The same applied to the exemptions provided for in Article 107(3)(a), (b) and (d) TFEU, given that the aid in question was neither intended for the promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, nor was intended for projects of common European interest or to remedy a serious disturbance in the economy or for the promotion of culture and heritage conservation.

Final considerations

- (83) Lastly, it should be noted that in accordance with the Deggendorf principle set out in the judgment of the General Court in Joined Cases T-244/93 and T-486/93, the payment of any aid under the schemes to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, will be suspended until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest. ⁽²⁴⁾ The legal bases of the aid schemes did not provide for this suspension. It was therefore doubtful that they excluded undertakings which had received aid declared incompatible in the past but not yet recovered at that time.

IV. OBSERVATIONS BY GREECE

- (84) In their letter of 23 September 2016, the Greek authorities submitted observations challenging some of the findings included in the opening decision. The Greek authorities argued that there was no State aid involved in the case at hand. In addition, if it were to be found that there was State aid, that aid was compatible with State aid rules. In addition, they suggested that if the State aid should be found incompatible, it was absolutely impossible to recover it. Lastly, they indicated that they were working in the direction of finding information regarding the beneficiaries of the schemes but had not succeeded in finding them at that point in time.

1. Existence of aid within the meaning of Article 107(1) TFEU

- (85) The Greek authorities argued that there was no State aid in the first place because the conditions of granting of an economic advantage, selectivity, distortion of competition and effect on trade were not fulfilled. They did not challenge the existence of the remaining cumulative conditions for the existence of State aid.
- (86) The Greek authorities argued that the conditions of granting an economic advantage, selectivity, distortion of competition and effect on trade were not fulfilled because the schemes in question were put into force to compensate for damage caused by an extraordinary and exceptional occurrence, namely the fires in specific areas.
- (87) With regard to the existence of an economic advantage, the Greek authorities argued in particular that there was none since the damage did not constitute normal charges and the situation at hand was not a normal market condition. On the contrary it was rather an extraordinary and exceptional occurrence.

⁽²³⁾ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 193, 1.7.2014, p. 1.

⁽²⁴⁾ Judgment of the General Court of 13 September 1995, *Textilwerke Deggendorf v Commission*, Joined Cases T-244/93 and T-486/93, EU: T:1995:160, paragraphs 51-60.

- (88) The Greek authorities further argued that the case at hand was not about providing a selective treatment to some undertakings, as opposed to others that are in the same factual and legal situation, but rather that it was about addressing an exceptional circumstance which affected undertakings in some areas. This resulted in those undertakings finding themselves in a special and highly unfavourable situation in comparison with other undertakings of their sectors. In addition, the conditions for addressing that exceptional occurrence were established in a transparent and objective manner and had the aim of restoring the financial balance of the affected areas. The adopted schemes were therefore necessary to serve a public interest objective.
- (89) As to the distortion of competition and effect on trade, the Greek authorities insisted that the schemes aimed at addressing an exceptional occurrence. The schemes did not improve the competitive position of the beneficiaries but restored the latter to their condition prior to the natural disaster.

Specific additional observations on the lack of State aid with regard to the State guarantees

- (90) The Greek authorities described again briefly the legal basis of the State guarantees as well as the personal scope of application of the schemes in questions. They noted that the guarantees were linked to specific financial transactions for a fixed maximum amount, that they were limited in time and that they did not cover more than 80 % of the outstanding loans of the beneficiaries.
- (91) Furthermore, the Greek authorities argued that the schemes were not open to firms in financial difficulty. They pointed out that the viability of all beneficiaries was assessed by the Board of Management and Assessment of the responsibility for guarantees of the Greek State on the basis of the required supporting documents submitted by the beneficiaries. Those requirements included the submission of a viability study in cases of undertakings which applied for a debt rearrangement for an amount over EUR 100 000,00 under scheme A. That was not the case for all other undertakings under scheme A and all undertakings under scheme B. The Greek authorities explained that the requirement to submit a viability study did not apply for those latter undertakings because the amount of aid was limited and the specific information could already be found in the relevant form of the State General Accounts Office for 'Assessment of the viability of businesses applying for a Greek government guarantee', whilst it could be deduced from the other supporting documents that had to be submitted by the interested undertakings. For those reasons the schemes were open only to viable undertakings.
- (92) The Greek authorities also reasoned that the conditions of the schemes in question differed from those in the schemes assessed by Decision 2012/307/EU, thereby challenging the relevant finding of the opening decision quoted in recital (40).
- (93) According to the legal bases of the schemes assessed by Decision 2012/307/EU, undertakings could benefit from the schemes if they were expected to become viable after the granting of the aid. On the contrary, in the schemes in question in this case the viability of the beneficiaries after the granting of the aid is only one factor taken into account for the better understanding of their cashflow, for their overall prediction table for the coming three years, and for the assessment of the financial data referred to therein.
- (94) The Greek authorities also suggested that the State guarantee was given on the basis of collaterals which were considered sufficient to protect the interest of the Greek State in case of failure of the beneficiaries to repay their loans. Those collaterals are the same that banks accept for other borrowers and are in accordance with banking criteria and common banking practice. In any case, according to Article 11 paragraphs 1 and 2 of Law 2322/1995, the State fully replaces the bank in its rights against the debtor. Furthermore, pursuant to Decision No 2/478/0025/4.1.2006 (GG II 16/13.1.2006), the tax authorities are obliged to take all necessary legal actions in order to collect the amounts paid by the State under the guarantee. What is more, the relevant civil law provisions for the guarantee contracts apply, safeguarding the interest of the Greek State in this case. For these reasons the Greek authorities argued that the State guarantees in question did not offer a benefit to the undertakings and that no State resources were used since the interests of the State were fully safeguarded in that the State could ask from the beneficiaries that had failed to repay their loans for the payments the State was forced to make under the guarantee.

- (95) The Greek authorities further challenged the observation of the opening decision, quoted in recital 39, that, compared to a situation without guarantee, the State guarantee enables the borrowers to obtain better financial terms for loans than those normally available on the financial markets. They argued that the schemes in question simply determine the conditions for granting the State guarantees and do not influence the conditions for receiving a loan in the market. They added, that in any case, it makes no sense to compare this situation to one without guarantee, because in order to receive a loan in the market, a borrower always needs a guarantor. Thus, the State did not embark on an uncommon practice, which would provide an advantage in the case at hand also in light of the extraordinary and exceptional occurrences.
- (96) The Greek authorities challenged the observation of the opening decision, quoted in recital 49. The Commission noted in that recital that since the Board of Management and Assessment of the responsibility for guarantees of the Greek State evaluated all the applications before the granting of the State guarantee, the Greek authorities could not subsequently argue the *ex tunc* revocation of these guarantees because some of the conditions for their granting were not present at the time those were granted. The Greek authorities alleged that despite the role of that Board, State guarantees may be revoked *ex tunc*, if the conditions of their implementation are not fulfilled subsequently by the relevant financial institution.

2. Compatibility of the aid with the internal market

- (97) The Greek authorities argued that, should the Commission conclude that the schemes in question granted State aid, it was compatible with the internal market pursuant to Article 107(2)(b) TFEU. Alternatively, they argued that the aid schemes could be found compatible with the internal market pursuant to Article 107(3)(b) TFEU.
- (98) The Greek authorities pointed out that the Guidelines are not binding legal rules, but indicative assessment rules, which have to be interpreted in accordance with the binding provisions of Union law. According to the Greek authorities the Guidelines should, therefore, be interpreted in a way that does not conflict with the logic of Article 107(2)(b) TFEU, which provides an automatic derogation from the prohibition of Article 107(1) TFEU. The Greek authorities described the severity of the fires that caused the damage, which was compensated with the aid schemes in question. On that basis they suggested that the intensity of the occurrence was such that all undertakings active in the areas affected by the fires suffered damage that was linked to the fires. The Greek authorities considered that this was the case even where the undertakings themselves did not suffer damage to their assets, because the damage was so extensive that their own damage was certain and evident.
- (99) The Greek authorities also challenged recital 61 of the opening decision quoted in the present decision in recital 63. It has to be recalled that the scheme excluded existing loans, which had already been arranged in the past from the application of Chapter A of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), namely the arrangement of debt with an interest subsidy. The only exception was for undertakings that could prove they had suffered damage from the fires. The Commission found that, given the fact that only that exception required the beneficiaries to prove a direct link between the damage and the fires, it could be deduced that no such requirement existed for the rest of the beneficiaries under the schemes. The Greek authorities argued that that exception only shows that for those particular cases additional proof was required from the beneficiaries.
- (100) Alternatively, the Greek authorities argued that the schemes are compatible pursuant to Article 107(3)(b) TFEU, because they contributed to remedy a serious disturbance in the economy of the country caused by the fires.

3. Absolute impossibility to recover

- (101) The Greek authorities suggested that, should the State aid be found incompatible with the internal market, there is an absolute impossibility to recover it because it is impossible to calculate the amount to be recovered. That impossibility stems from the fact that the direct and indirect damage caused by the fires will have to be deducted from the recovery amount. This is impossible, according to the Greek authorities, due to the long time that has elapsed since the occurrence of the natural disaster whilst on the basis of national law the beneficiaries had no obligation to retain the relevant documents proving the existence of damage and its exact amount.

- (102) What is more, the Greek authorities asked the Commission not to order the recovery, since it is impossible for them to implement the recovery and they cannot be asked to do the impossible. In that respect they referred to recitals 149 and 150, 152 and 156 of Commission Decision (EU) 2016/195 ⁽²⁵⁾.

4. Difficulty in providing the requested additional information in the opening decision

- (103) Lastly, with regard to the requests made to Greece in the conclusion of the opening decision, the Greek authorities indicated that they were trying to find the beneficiaries of the schemes in question but this was difficult notably because of the high number of beneficiaries. They also noted that they did not need to notify individually the beneficiaries of the launch of the formal investigation procedure, but that those were informed thereof and had the opportunity to make their observations following the publication of the opening decision in the *Official Journal of the European Union*.
- (104) By subsequent submissions of 9 March 2017 and 21 February 2018, the Greek authorities provided the missing information on the estimated number of beneficiaries of the schemes and the estimated amounts involved.

V. LEGAL ASSESSMENT

1. Existence of aid within the meaning of Article 107(1) TFEU

- (105) According to Article 107(1) TFEU, save as otherwise provided in the Treaties, any aid granted by a 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.
- (106) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: the measure must be imputable to the State and financed through State resources; it must confer an advantage on its recipient; that advantage must be selective; and the measure must distort or threaten to distort competition and affect trade between Member States.
- (107) In the context of the examination procedure the Commission found that, in respect of the aid schemes in question, those conditions were fulfilled.
- (108) As a preliminary remark, the Commission observes that the definition of State aid in Article 107(1) TFEU has an objective character. Its interpretation and the determination of the existence of the conditions only take into account the effects of the examined measures and not their causes, objectives or aims ⁽²⁶⁾. Thus, the general interest or even a legitimate public policy objective pursued by a measure, may not *per se* exclude the application of State aid rules.
- (109) For those reasons, the Commission cannot accept the arguments raised by the Greek authorities in their letter of 23 September 2016 as regards the economic advantage, selectivity, distortion of competition and effect on EU trade of the schemes in question. These observations are based on an erroneous understanding of the applicable test for the determination of the existence of the conditions of State aid that focuses on the causes and objectives of the schemes.

⁽²⁵⁾ Commission Decision (EU) 2016/195 of 14 August 2015 on State aid measures SA.33083 (12/C) (ex 12/NN) implemented by Italy providing for reduced taxes and contributions linked to natural disasters (all sectors except agriculture) and SA.35083 (12/C) (ex 12/NN), implemented by Italy providing for reduced taxes and contributions linked to the earthquake in Abruzzo in 2009 (all sectors except agriculture) (OJ L 43, 18.2.2016, p. 1).

⁽²⁶⁾ Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, Case C-173/73, EU:C:1974:71, para. 13; judgment of the Court of Justice of 3 March 2005, *Heiser*, Case C-172/03, EU:C:2005:130, paragraph 55; judgment of the Court of Justice of 8 December 2011, *France Télécom v Commission*, Case C-81/10 P, EU:C:2011:811.

- (110) Furthermore, the Commission notes that if the *rationale* of the comments made by the Greek authorities was followed to its logical end, there could be no State aid in cases where aid was granted by the State with State resources for compensation of damage from natural disasters or exceptional occurrences. Such understanding would not only be in contrast to the objective character of the definition of State aid, as analysed in recital (107), but it would also be in conflict with the letter of Article 107(2)(b) TFEU, which provides that *aid to make good the damage caused by natural disasters or exceptional occurrences* is compatible with the internal market. The General Court made the same observation in response to the same argument made by Greece before it in a case which referred to State aid granted by the latter for compensation of damage caused by adverse climatic effects ⁽²⁷⁾.
- (111) The granting of an advantage directly or indirectly through State resources and the imputability of such a measure to the State are two separate and cumulative conditions for State aid to exist. ⁽²⁸⁾ Where a public authority grants an advantage to a beneficiary, the measure is by definition imputable to the State, even if the authority in question enjoys legal autonomy from other public authorities. Only advantages granted directly or indirectly through State resources can constitute State aid within the meaning of Article 107(1) TFEU ⁽²⁹⁾.
- (112) As analysed in the opening decision (see recitals 33 and 45-46 of that decision), both the interest subsidies and the State guarantees were imputable to Greece and were granted through State resources. The aid was indeed granted by the central government from the central State budget. This is clear in the legal bases of the schemes and was not disputed by Greece.
- (113) An advantage within the meaning of Article 107(1) TFEU is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ⁽³⁰⁾. Again, only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention ⁽³¹⁾. Whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been taken ⁽³²⁾.
- (114) The precise form of the measure is also irrelevant in establishing whether it confers an economic advantage on the undertaking ⁽³³⁾. It is not only the granting of positive economic advantages which is relevant for the notion of State aid, relief from economic burdens can also constitute an advantage.
- (115) As described in the opening decision (see recitals 33 and 47 of that decision) the beneficiaries could not have received the same economic advantage under normal market conditions and, as a result, their financial situation improved on different terms than the ones under normal market conditions.
- (116) However, the Greek authorities argued (see recitals 86 and 87) that there was no economic advantage, because of the extraordinary and exceptional character of the occurrence that caused the market conditions not to be normal. However, the concept of 'normal market conditions' used to determine the existence of an advantage, refers to the possibility of the beneficiary to enjoy the same economic benefit in the market as it does from the aid, and not to the assessment whether the market functions as usual or is in crisis. If the interpretation put forward by the Greek authorities were to be accepted, then the existence of economic benefit would be determined by the cause or objective of the aid, and every Member State would have been able to invoke a legitimate objective in order to prevent the application of State aid law to a measure ⁽³⁴⁾.

⁽²⁷⁾ Judgment of the General Court of 16 July 2014, *Greece v Commission*, Case T-52/12, EU:T:2014:677, paragraphs 66-71.

⁽²⁸⁾ See, for instance, judgment of the Court of Justice of 16 May 2002, *France v Commission (Stardust)*, Case C-482/99, EU:C:2002:294, para. 24; judgment of the General Court of 5 April 2006, *Deutsche Bahn AG v Commission*, Case T-351/02, EU:T:2006:104, para. 103.

⁽²⁹⁾ Judgment of the Court of Justice of 24 January 1978, *Van Tiggele*, Case C-82/77, EU:C:1978:10, paragraphs 25 and 26; judgment of the General Court of 12 December 1996, *Air France v Commission*, Case T-358/94, EU:T:1996:194, para. 63.

⁽³⁰⁾ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, Case C-39/94, EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, Case C-342/96, EU:C:1999:210, para. 41.

⁽³¹⁾ Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, Case C-173/73, EU:C:1974:71, para. 13.

⁽³²⁾ Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, Case C-173/73, EU:C:1974:71, para. 13.

⁽³³⁾ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, Case C-280/00, EU:C:2003:415, para. 84.

⁽³⁴⁾ Judgment of the General Court of 16 July 2014, *Greece v Commission*, Case T-52/12, EU:T:2014:677, para. 67 and case-law cited therein.

- (117) To fall within the scope of Article 107(1) TFEU the aid measure must favour 'certain undertakings or the production of certain goods'. The fact that the aid is not aimed at one or more specific recipients defined in advance, but that it is subject to a series of objective criteria according to which it may be granted, within the framework of a predetermined overall budget allocation, to an indefinite number of beneficiaries who are not initially individually identified, is insufficient to call into question the selective nature of the measure ⁽³⁵⁾. In addition, in principle, only measures that apply within the entire territory of the Member State escape the regional selectivity criterion laid down in Article 107(1) TFEU ⁽³⁶⁾.
- (118) As stated in recitals 34 and 51, the aid schemes in question provided an advantage only to undertakings, which were established and operating in the geographical areas that were affected by the fires in 2007. They did not apply to the rest of the territory of Greece. Other undertakings in a comparable legal and factual situation, within the agricultural sector or other sectors, are not eligible for aid and thus will not receive the same advantage. The aspect that certain undertakings were affected by fires while others were not, does not place them in a different situation, as fire damage is part of the economic risk any undertaking may face. Aid for natural disasters (including fire) is a category of aid under Article 107(2)(b) TFEU and in the Guidelines 2007-2013 (see recital 142), hence by definition such measures are selective. The schemes therefore give only certain undertakings (see recital 29) a selective economic advantage, by strengthening their competitive position on the market.
- (119) The argument of the Greek authorities in recital 88, attempts yet again to alter the test on the basis of which the existence of selectivity is ascertained. In accordance with the case-law of Union Courts (cited in recital 117) the existence of exceptional occurrences, the alleged transparent and objective character of the conditions for the granting of the aid as well as the broader objective of the aid are not relevant at the stage of the assessment of the existence of State aid.
- (120) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ⁽³⁷⁾. For all practical purposes, a distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽³⁸⁾. Public support is liable to distort competition even if it does not help the recipient undertaking to expand and gain market share. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations ⁽³⁹⁾. The definition of State aid does not require that the distortion of competition or effect on trade is significant or material. The fact that the amount of aid is low or the recipient undertaking is small will not in itself rule out a distortion of competition or the threat thereof ⁽⁴⁰⁾, provided however that the likelihood of such a distortion is not merely hypothetical ⁽⁴¹⁾.

⁽³⁵⁾ Judgment of the General Court of 29 September 2000, *Confederación Española de Transporte de Mercancías v Commission*, Case T-55/99, EU:T:2000:223, para. 40. See also judgment of the General Court of 13 September 2012, *Italy v Commission*, Case T-379/09, EU:T:2012:422, para. 47.

⁽³⁶⁾ See judgment of the Court of First Instance, *Salzgitter v Commission*, Case T-308/00, EU:T:2004:199, para. 38 (this part of the judgment was approved on appeal in Case C-408/04 P, *Commission v Salzgitter*, EU:C:2008:236, para. 109. In the above-referred judgment the Court explicitly ruled that: 'It does not matter that the selective nature of the measure flows, from [...] a criterion relating to geographic location in a defined part of the territory of a Member State. What matters, however, for a measure to be found to be State aid, is that the recipient undertakings belong to a specific category determined by the application, in law or in fact, of the criterion established by the measure in question'.

⁽³⁷⁾ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, Case C-730/79, EU:C:1980:209, para. 11; judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97, EU:T:2000:151, para. 80.

⁽³⁸⁾ Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraphs 141-147; judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415.

⁽³⁹⁾ Judgment of the Court of Justice of 3 March 2005, *Heiser*, C-172/03, EU:C:2005:130, para. 55.

⁽⁴⁰⁾ Judgment of the General Court of 29 September 2000, *Confederación Española de Transporte de Mercancías v Commission*, Case T-55/99, EU:T:2000:223, para. 89; judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, Case C-280/00, EU:C:2003:415, para. 81.

⁽⁴¹⁾ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, Case C-280/00, EU:C:2003:415, para. 79.

- (121) Public support to undertakings only constitutes State aid under Article 107(1) TFEU insofar as it affects trade between Member States. In that respect, it is not necessary to establish that the aid has an actual effect on trade between Member States but only whether the aid is liable to affect such trade ⁽⁴²⁾. In particular, the Union Courts have ruled that *‘where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid’* ⁽⁴³⁾.
- (122) The assessment in the opening decision, as quoted in recitals 36 and 52 of the present Decision, has been confirmed. The beneficiaries covered by the scope of the present Decision are active in the highly competitive market of agricultural products and in forestry. It should be noted in this regard that the agricultural trade between Greece and the other Member States in 2017 amounted to almost EUR 4 billion in exports and to over EUR 5 billion in imports ⁽⁴⁴⁾. The beneficiaries would have normally had to bear the costs of the damage themselves. Contrary to the observations made by Greece (see recitals 85-89) the Commission concludes that these aid schemes improved the competitive position of the beneficiaries. The fact that their condition might have been affected by the natural disaster is again not relevant for the assessment of the existence of a threat to distort competition and affect intra-EU trade. Furthermore, since the agricultural and forestry sectors are open to intra-EU trade, they are sensitive to measures favouring undertakings in a particular Member State. The schemes in question thus threaten to distort competition in the internal market and affect trade between Member States.
- (123) As to the argument put forward by the Greek authorities that the aid schemes in question did not improve the condition of the beneficiaries towards their competitors, but simply restored the function of these undertakings to the conditions prior to the natural disaster, the Commission refers to the judgment of the General Court in *Case Greece v Commission* ⁽⁴⁵⁾. In that case, the Greek authorities argued that the State aid in question only partly compensated farmers for the damage they had suffered due to adverse weather conditions and had therefore restored competition. The General Court rejected that argument and ruled that the adoption of unilateral measures by Member States with the aim of aligning the conditions of competition of an economic sector with those existing in other Member States, does not negate the characterisation of those measures as State aid ⁽⁴⁶⁾.

Existence of aid in the case of State guarantees

- (124) The findings of the opening decision with regard to the existence of aid in the case of State guarantees (see recitals 38-53 of the present Decision) were confirmed in the formal investigation procedure, notwithstanding the arguments presented to the contrary by the Greek authorities. The criteria of Article 107(1) TFEU apply to State guarantees ⁽⁴⁷⁾ and are satisfied for the State guarantees as well.
- (125) The guarantees were granted directly by the State through State resources and provided a benefit. As stated in Section 2.1 of the Commission Notice on Guarantees ⁽⁴⁸⁾, this benefit was that the risk associated with the guarantee was carried by the State. This risk should have normally been remunerated by an appropriate premium. In the case at hand no premium, let alone an appropriate one, was paid by the beneficiaries. No such obligation was laid down in

⁽⁴²⁾ Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, Case C-518/13, EU:C:2015:9, para. 65; judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11 and C-203/11, EU:C:2013:288, para. 76.

⁽⁴³⁾ Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, Case C-518/13, EU:C:2015:9, para. 66; judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11 and C-203/11, EU:C:2013:288, para. 77; judgment of the General Court of 4 April 2001, *Friulia Venezia Giulia*, Case T-288/97, EU:T:2001:115, para. 41.

⁽⁴⁴⁾ Source: European Commission, Directorate-General for Agriculture and Rural Development, Statistical Factsheet (2017), 5.1 Agricultural Trade, May 2018, see http://ec.europa.eu/agriculture/statistics/factsheets/pdf/el_en.pdf.

⁽⁴⁵⁾ Judgment of the General Court of 16 July 2014, *Greece v Commission*, Case T-52/12, EU:T:2014:677.

⁽⁴⁶⁾ Judgment of the General Court of 16 July 2014, *Greece v Commission*, Case T-52/12, EU:T:2014:677, para. 112 and case-law cited therein.

⁽⁴⁷⁾ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 1. It should be noted that the previously applicable Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 71, 11.3.2000, p. 14 (hereinafter ‘Commission Notice of 2000’) adopted the same interpretation on the applicability of the criteria of Article 107(1) TFEU and the conditions excluding the existence of aid.

⁽⁴⁸⁾ See also ‘Commission Notice of 2000’, Section 2.1.2.

the legal bases of the schemes in question, while the Greek authorities did not even attempt to argue otherwise. There was therefore a benefit enjoyed by the beneficiaries and a drain on State resources. This is true even if it turns out that for some beneficiaries of the schemes no payments were ever made under the State guarantee.

- (126) Consequently, the State guarantees gave a benefit to the borrowers since they did not have to pay any premium for them. Therefore, the requirement of economic advantage for ascertaining the existence of aid in the case at hand has been fulfilled. Repeating the relevant excerpts from Section 2.2 of the Commission Notice on Guarantees ⁽⁴⁹⁾, the opening decision stated that compared to a situation without guarantee, the State guarantee enables the borrowers to obtain better financial terms for loans than those normally available on the financial markets (see recital 39 of the present Decision). The Greek authorities challenged this statement (see recital 95) by arguing that the State guarantees do not influence the conditions for the granting of a loan and that there is no comparison with a situation without guarantee because financial institutions always ask for a guarantee in order to grant a loan. These arguments cannot be accepted. In offering more certainty to the financial institution that the loan contract with the borrower will be honoured, guarantees by definition improve the financial terms of loans. This is all the more so if financial institutions refuse to grant a loan without a guarantee, as the Greek authorities suggest. In such cases, it is only thanks to the guarantee that the borrower has access to and can benefit from a loan.
- (127) The Greek authorities argued that there was no benefit or State resources involved since the State guarantees were given on the basis of collaterals that secured the interests of the State in full. According to the Greek authorities, the State was obliged to make use of the rights granted by the collaterals, if the beneficiaries had failed to pay back the loans. This line of argumentation cannot be accepted. First, as stated in the opening decision (see recital 52 of the present Decision), the Commission did not accept the same arguments made by the Greek authorities in its Decision 2012/320/EU and the Court upheld that reasoning ⁽⁵⁰⁾. In their letter of 23 September 2016, the Greek authorities referred to the same Ministerial Decision No 2/478/0025/4.1.2006 (GG II 16/13.1.2006), as they did in that older case, in order to suggest that the tax authorities are obliged to embark on all necessary legal actions in order to collect the amounts paid by the State under the guarantee. However, as with the older case the only reference to Ministerial Decision No 2/478/0025/4.1.2006 (GG II 16/13.1.2006) in the legal basis in question was to provide for the actions that banks needed to undertake in order to activate the State guarantee. Indeed, no provision in the legal basis of the schemes provided for an automatic activation of the collateral agreements in cases where the State guarantees were paid. Moreover, the collaterals were not required in all cases and it remains unclear whether they had to secure the full amount of the loan in all cases. Lastly, the existence of collaterals cannot alter the assessment that there was a benefit due to the fact that the beneficiaries did not pay any premium for the risk undertaken by the State through the State guarantee.
- (128) As to selectivity, distortion of competition and effect on intra-EU trade, the assessment and findings described in recitals 117-123 remain valid.
- (129) However, before reaching a final conclusion on the existence of aid in the case of State guarantees, it is necessary to assess whether all the conditions which allow to exclude the existence of that aid as provided in Section 3.4 of the Commission Notice on guarantees ⁽⁵¹⁾ are fulfilled. The opening decision raised doubts as regards the fulfilment of at least some of the conditions, whereas the Greek authorities challenged that view. It should be noted that these conditions are cumulative, namely that the failure to fulfil even one of them is sufficient for the State guarantee to be considered State aid based on the assessment in recitals 124-128. This is indeed the case here, as the borrowers did not have to pay any premium, as is required by the Commission notice on guarantees. It must therefore be concluded that the schemes were not self-financing; there was no annual review of the appropriate premium foreseen; the administrative costs of the scheme were not covered and there was no yearly remuneration of an adequate capital. Furthermore, the legal bases of the schemes did not refer to the possibility to use safe-harbour premiums or single premiums for SMEs where applicable. Finally, there was no determination of eligible companies in terms of rating, thereby affecting the overall transparency of the schemes. None of these elements were included in the legal bases of the schemes, whilst the Greek authorities failed to provide evidence to the contrary.

⁽⁴⁹⁾ See also 'Commission Notice of 2000', Section 2.1.1.

⁽⁵⁰⁾ See judgment of the General Court of 9 April 2014, *Greece v Commission*, Case T-150/12, EU:T:2014:191, paragraphs 82-85, 98.

⁽⁵¹⁾ See also 'Commission Notice of 2000', Section 3.4.

- (130) In any case, for the sake of completeness, the Commission will address the observations made by the Greek authorities on other conditions, which had to be fulfilled as well, in order to exclude the existence of State aid with regard to the State guarantees.
- (131) The Commission remains of the opinion that the schemes were open to firms in financial difficulty, since there was no provision excluding these firms in the legal bases of the schemes. The Greek authorities suggested that the Board of Management and Assessment of the responsibility for guarantees of the Greek State ascertained the viability of the beneficiaries prior to granting the State guarantee on the basis of the submitted viability studies – for those beneficiaries, from whom the submission of a viability study was required – and the rest of the required submitted documents. However, the viability studies were only required from beneficiaries who wished to rearrange debts exceeding EUR 100 000,00. Thus, that indicator was not at the disposal of Board to assess the viability of the other beneficiaries. The fact that the amounts of debt below EUR 100 000,00 were considered low by the Greek authorities is irrelevant for the purpose of the assessment whether undertakings in difficulty were excluded from the schemes.
- (132) The Greek authorities also argued (see above recitals 92-93) that the legal bases of the schemes in question differed from those assessed by Decision 2012/307/EU, with regard to which the Commission had found that they applied to firms in difficulty (see above recital 41). The Commission analysed the legal bases of the schemes in question and reached the same conclusion. It must be underlined in this regard that a viability study took into account the total liabilities of the beneficiaries *after* the rearrangement of the debt pursuant to the scheme in question. Consequently, such a viability study offered only a limited value in determining whether at the moment of the granting of the State guarantees, and not at a later stage, the beneficiaries were firms in financial difficulty.
- (133) Finally, given that the Board of Management and Assessment of the responsibility for guarantees of the Greek State evaluated all applications for State guarantees under these schemes before their final approval, the opening decision stated that the Greek authorities could not subsequently argue that the approved State guarantees were null and void *ex tunc* (see recital 49 of the present Decision). The Greek authorities challenged this finding (see recital 96 of the present Decision), arguing that such a retroactive revocation of the State guarantees could occur if the conditions of their implementation are not fulfilled subsequently by the relevant financial institution. This argument ultimately touches on the question of the imputability of these State guarantees. It should be noted in this regard that the aid is granted at the moment when the State guarantee is granted, not when the guarantee is invoked or the payments are made. Furthermore, the question whether the guarantee constitutes State aid is to be assessed at the moment the guarantee is granted⁽⁵²⁾. Thus, since the State guarantees granted under these schemes had been previously evaluated and found by the Board, an indisputably State organ, to fulfil the applicable conditions, they cannot be considered afterwards not to be imputable to the State and never to have been granted. It would of course be a completely different scenario and irrelevant for the present assessment, if financial institutions outside the control of the State misconstrued the relevant legal bases and independently from the State granted loans on the apparent understanding that these were covered by the schemes in question although the applicable conditions had not been complied with.
- (134) For those reasons the Commission concludes that the compensation granted in the form of, both, interest subsidies and State guarantees on the basis of the schemes in question to undertakings in the agriculture and forestry sectors constitutes State aid under Article 107(1) TFEU.
- (135) Consequently, it should be examined whether a derogation from the general principle of incompatibility of State aid with the internal market laid down in Article 107(1) TFEU may apply.

2. Classification of the schemes as unlawful aid

- (136) The formal investigation procedure has confirmed the findings of the opening decision (see recital (54) of the present Decision). Greece did not challenge the fact that the aid in question was granted without prior notification to the Commission. It is therefore unlawful aid within the meaning of Article 1(f) of Regulation (EU) 2015/1589. The Commission regrets that the Greek authorities did not fulfil their obligation to notify the schemes in accordance with Article 108(3) TFEU.

⁽⁵²⁾ Commission Notice on guarantees, Sections 2.1; see also 'Commission Notice of 2000', Section 2.1.2.

3. Compatibility of the aid with the internal market

- (137) It needs to be examined whether the unlawful aid could be considered compatible under Article 107(2) or (3) TFEU. Greece invoked at the stage of the preliminary assessment of the case the compatibility of the schemes in question with Article 107(2)(b) TFEU as aid to make good the damage caused by natural disasters or exceptional occurrences. It further argued in the alternative at the stage of the formal investigation procedure that the aid schemes were compatible with the internal market under Article 107(3)(b) TFEU as aid to remedy a serious disturbance in the economy of the country.
- (138) With regard to the question whether the extensive fires are to be classified as natural disasters, as submitted by Greece, or as an exceptional occurrence, the relevant observation made in the opening decision (see recital 57 of the present Decision), is still valid. Irrespective of the classification of the fires, the compatibility will anyway be assessed under Article 107(2)(b) TFEU.
- (139) The applicable State aid rules in the case are those that were in force at the time the aid was granted (see recital 58). These were the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 2013 ('the Guidelines 2007-2013')⁽³³⁾, and in particular Section V.B.2 for agriculture and Section VII for forestry.
- (140) Given that the schemes in question did not exclude firms in difficulty (see recital 40 and recitals 131-132), the clarification made in the opening decision (see recital 59 of the present Decision) remains valid. Thus, aid for firms in difficulty can only be deemed compatible if it fulfils the conditions of the R&R Guidelines, which were applicable at the time the aid was granted. The only exception to this rule is aid to make good damage caused by natural disasters or exceptional occurrences, to which the R&R Guidelines do not apply (see points (19) and (20) of the R&R Guidelines). For this reason, the assessment in recitals 142 to 151 based on Article 107(2)(b) TFEU applies to all beneficiaries irrespective of their viability at the time the aid was granted. The compatibility assessment made in recitals 160 to 163 differentiates between healthy firms and firms in difficulty, to which the R&R Guidelines apply.
- (141) The argument of the Greek authorities (see recital 98), according to which the Guidelines should be interpreted in accordance with the automatic derogation of Article 107(2)(b) TFEU, cannot be accepted. That interpretation is contrary to the standing case-law of the Union Courts. In accordance with that case-law, Article 107(2)(b) TFEU, which constitutes a derogation from the general principle laid down in Article 107(1) TFEU that State aid is incompatible with the internal market, must be construed narrowly⁽³⁴⁾. In addition, the Court ruled that only economic disadvantages directly caused by natural disasters or exceptional occurrences qualify for compensation as provided for in Article 107(2)(b) TFEU⁽³⁵⁾. In other words, the derogation of Article 107(2)(b) TFEU is automatic in the sense that it is not in the discretion of the Commission to decide that a State aid falling within its remit is compatible. However, it has to be proven that the aid fulfils the conditions of the derogation; namely that it does indeed compensate damage actually caused by a natural disaster or exceptional occurrence.

Aid to make good damage caused by natural disasters or exceptional occurrences

- (142) With regard to aid granted in agriculture, the official investigation conducted by the Commission led to the same conclusions as in the opening decision, as regards the non-fulfilment of the conditions of Section V.B.2 of the Guidelines 2007-2013. According to the Guidelines, (a) Greece had to demonstrate a direct link between the damage and the natural disaster or exceptional occurrence, and (b) the aid should not have resulted in overcompensation of damage and should only have made good the damage caused by the natural disaster or exceptional occurrence. To this end the damage should have been assessed as precisely as possible whilst the compensation stemming from that damage should have been calculated at the level of the individual beneficiary. At the same time any payments due, for example under insurance policies, should have been deducted from the amount of aid.

⁽³³⁾ OJ C 319, 27.12.2006, p. 1.

⁽³⁴⁾ See: judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, Case C-73/03, EU:C:2004:711, para. 36; judgment of the Court of Justice of 29 April 2004, *Greece v Commission*, Case C-278/00, EU:C:2004:239, para. 81.

⁽³⁵⁾ See: judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, Case C-73/03, EU:C:2004:711, para. 37; judgment of the Court of Justice of 29 April 2004, *Greece v Commission*, Case C-278/00, EU:C:2004:239, para. 82; judgment of the Court of Justice of 29 April 2004, *Greece v Commission*, Case C-278/00, EU:C:2004:239, para. 82 with further references.

- (143) As noted in recital 61, irrespective of whether the fires in this case were to be considered wild fires of natural origin, and therefore natural disasters, or fires which resulted in widespread loss, and therefore exceptional occurrences, undertakings that suffered damage from them can qualify as beneficiaries of aid under the conditions mentioned in recital 141.
- (144) However, the schemes under assessment do not fulfil any of the conditions. They do not define what qualifies as damage and they do not require the establishment of any link between the damage suffered and the fires. As analysed in recital 62, it is clear from the text of the legal bases of the schemes that the sole link between the beneficiaries and the fires is that the former are established and operating, irrespective of their registered seat, in one of the geographical areas affected by the fires. Instead of a direct link requirement between the damage and the fires, the aid schemes introduced a general geographical link between the establishment of the beneficiaries and the broader areas where the fires occurred. Besides, the Greek authorities revealed in their observations submitted on 23 September 2016 that there was a presumption that due to the severity of the fires **all** undertakings suffered damage. The applicable test was, thus, not that of a direct link between the damage and the fires, but that of a presumption of damage. The schemes are therefore too broad in scope and cannot be regarded as aid to compensate the damage caused by natural disasters or exceptional occurrences ⁽⁵⁶⁾.
- (145) The Greek authorities also challenged (see recital 99) the validity of the finding in the opening decision, quoted in recital 63 of the present Decision). They suggested that the exception included in the legal bases of the schemes, which contrary to the remainder of the schemes suddenly required from the beneficiaries to show a direct link between their damage and the fires, only indicated that for some particular cases additional proof was asked. It should be noted that this finding was ancillary to the main point, namely that there was no direct link requirement between the damage and the fires in the schemes. The lack of direct link is clear and has been established in recital 143. The observation made by the Greek authorities is however accurate and actually reflects the finding of the Commission in its opening decision. The exception did require additional proof from the beneficiaries, contrary to the requirements for the other parts of the schemes; namely it required the beneficiaries to prove a direct link between their damage and the fires. This requirement did not apply to the remainder of the schemes.
- (146) Furthermore, the schemes did not contain any methodology for an as precise as possible assessment of the damage suffered due to the fires nor did they determine the eligible costs on the basis of that damage. Instead, an arbitrary approach was adopted where the amount of the aid was ultimately determined by the amount of the loan for which the interest subsidy and the State guarantee were granted, as described in the opening decision (see recital 64 of the present Decision). Consequently, the Commission concludes that the aid was completely dissociated from damage, if any, caused by the fires. Greece did not challenge this finding of the opening decision.
- (147) Furthermore, the Greek authorities did not challenge the finding of the opening decision that the schemes did not contain a mechanism to prevent overcompensation for the damage caused by the fires due to other aid granted or because of payments due to insurance policies (see recital 65).
- (148) Finally, according to the requirement laid down in point (119) of the Guidelines 2007-2013 the aid schemes should have been established not more than three years after the occurrence of the event and paid out not more than four years following the event. The Commission notes that the legal bases of the aid schemes in question were amended and supplemented until 2015 (see recitals 9-10). The Commission therefore concludes that the Greek authorities have created additional new elements of State aid, which were not compliant with the time-limits laid down in point (119) of the Guidelines 2007-2013 and were therefore not compatible with the internal market.
- (149) With regard to aid granted in forestry, it became clear in the process of the formal investigation of the case at hand that the schemes were purely of a compensatory nature and they did not aim at restoring forests damaged by the fires. Given that such measures were not governed by any Guidelines at the time the aid was granted, they are assessed directly under Article 107(2)(b) TFEU.

⁽⁵⁶⁾ See: judgment of the Court of Justice of 29 April 2004, *Greece v Commission*, Case C-278/00, EU:C:2004:239, para. 85.

- (150) The conditions for the application of Article 107(2)(b) TFEU are detailed in recital 68. A direct link between the damage and the natural disaster or exceptional occurrence has to exist, overcompensation of the damage must be excluded and the aid must only compensate the damage caused by the natural disaster or exceptional occurrence ⁽⁵⁷⁾. Moreover, the aid in all the forms per beneficiary must be limited to the material damage occurred. The assessment on the fulfilment of these conditions made in recitals 144-147 for the agricultural sector, applies to the forestry sector *mutatis mutandis*. The schemes did not require the proof of the existence of a direct link between the damage and the fires, nor did they contain any provisions in order to prevent overcompensation. Besides, in light of the lack of any methodology regarding the assessment of the material damage that occurred due to the fires, the legal bases of the schemes could not have limited the aid to that material damage.
- (151) The aid schemes in question are therefore not compatible with the internal market under Article 107(2)(b) TFEU.

Aid to remedy a serious disturbance in the economy of a Member State

- (152) The Greek authorities argued in the alternative that the State aid in question could be found compatible under Article 107(3)(b) TFEU as aid to remedy a serious disturbance in the economy of a Member State. In support of this argument, by letter of 9 March 2017 the Greek authorities submitted to the Commission statistical data concerning agricultural production and GDP in the whole of Greece and in the areas affected by the fires. They also attached a copy of the study: *'Forest fires: causes and contributing factors in Europe'* ⁽⁵⁸⁾ and referred to a Greek press article of 6 September 2007 ⁽⁵⁹⁾.
- (153) The Commission notes that under Article 107(3)(b) TFEU aid to remedy a serious disturbance in the economy of a Member State may be considered as compatible with the internal market.
- (154) Nonetheless, regard must be given to the context and the structure of this provision and the need for a strict interpretation of the derogations from the general principle that State aid is incompatible with the internal market. ⁽⁶⁰⁾ The serious disturbance mentioned in that provision must affect the entire economy of the Member State, not merely that of one of its regions or sectors ⁽⁶¹⁾. In cases where particular regions or sectors of a Member State are affected, only Article 107(3)(a) and (c) TFEU will apply ⁽⁶²⁾.
- (155) As regards the statistical data provided by the Greek authorities on 9 March 2017, the Commission concludes that these data do not support the argument raised in recital (152). In particular, even though the data indicate some fluctuations in the production (both increase and decrease in the agricultural and total production in the period 2007-2009), they do not indicate any 'disturbance' in the entire economy of Greece, let alone a serious one. Moreover, there is no indication whatsoever proving that any impact on the production in Greece would be attributable to the fires of 2007. Finally, the statistical data provided by the Greek authorities only cover a three-year period (2007-2009); therefore, they do not provide sufficient indication on the longer-term evolution of the agricultural production and its impact on the total production in Greece in the period following the fires.
- (156) For the sake of completeness, the Commission analysed the statistical data regarding production in Greece (both agricultural and total production covering all industry sectors) published by Eurostat ⁽⁶³⁾.

⁽⁵⁷⁾ Judgment of 1 February 2018, *Larko v Commission*, T-423/14, EU:T:2018:57, para. 156.

⁽⁵⁸⁾ Study requested by the European Parliament's Committee on the Environment, Public Health and Food Safety, February 2008: *'Forest fires: causes and contributing factors in Europe'*, IP/A/ENVI/ST/2007-15, available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/Join/2008/401003/IPOL-ENVI_ET\(2008\)401003_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/Join/2008/401003/IPOL-ENVI_ET(2008)401003_EN.pdf).

⁽⁵⁹⁾ <http://www.tanea.gr/news/economy/article/36098/?iid=2>

⁽⁶⁰⁾ Judgement of the General Court of 9 April 2014, *Greece v Commission*, T 150/12, EU:T:2014:191, paragraph 146, Judgment of 20 September 2018, *Carrefour Hypermarchés and Others*, C-510/16, EU:C:2018:751, para. 37.

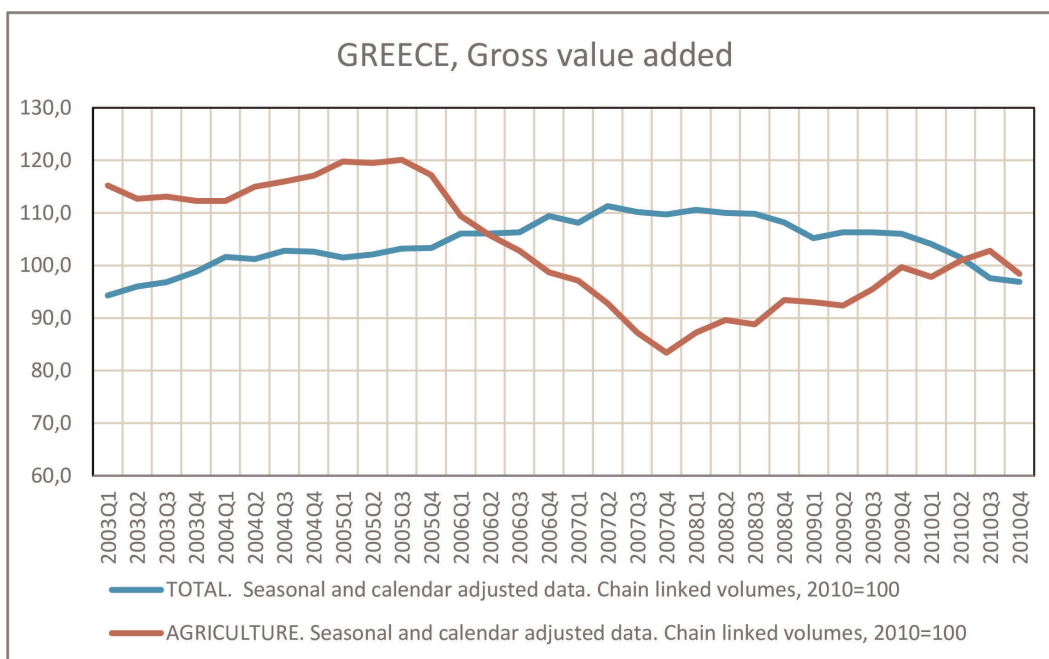
⁽⁶¹⁾ See: judgment of the Court of Justice of 30 September 2003, *Germany v Commission*, Case C-301/96, EU:C:2003:509, paragraphs 105-106; judgment of the General Court of 15 December 1999, *Freistaat Sachsen and Volkswagen v Commission*, Joined Cases T-132/96 and T-143/96, EU:T:1996:326, para. 167.

⁽⁶²⁾ See: Commission Decision 94/725/EC of 27 July 1994 on measures adopted by the French Government concerning pigmeat (OJ L 289, 10.11.1994, p. 26).

⁽⁶³⁾ http://ec.europa.eu/eurostat/web/products-datasets/-/teina442_r2. The statistical data are presented in the below graph.

- (157) As regards the overall agricultural production in Greece ⁽⁶⁴⁾, the statistical data clearly demonstrate that the decline in production followed a longer-lasting trend, which had started back in 2005 and which lasted until the end of 2007. Furthermore, the graph shows clearly that, since the beginning of 2008, the overall agricultural production in Greece was steadily and constantly growing until 2010. Consequently, the Commission concludes that there is no evidence proving a serious negative impact of the fires in 2007 on the overall agricultural production of Greece.
- (158) Finally, the Commission observes that in the period 2007-2009 total production in Greece ⁽⁶⁵⁾ was constantly rising until the financial crisis, which affected Greece in 2009. As a result, the data available do not prove that the fires have had a significant effect on the economy of Greece as a whole.

Source: Eurostat.



- (159) Therefore the argument raised by the Greek authorities in recital 152 has to be rejected.

Aid to promote or facilitate the development of certain economic areas

- (160) The Commission also assessed in its opening decision the possible compatibility of the schemes under examination pursuant to Article 107(3)(c) TFEU as aid promoting or facilitating the development of certain economic areas. The Greek authorities did not put forward any argument even at the stage of the formal investigation that the schemes could be found compatible under Article 107(3)(c) TFEU while they disagreed that the schemes could have also benefited firms in difficulty. This explains why they did not attempt to argue that the R&R Guidelines applied and had been complied with. However, the Commission embarked on such an assessment in the opening decision for the sake of completeness. The present Decision briefly re-examines the findings of the opening decision, as these were confirmed during the formal investigation.
- (161) As regards healthy undertakings which benefited from these schemes, they received operating aid, which cannot be found compatible with the internal market under Article 107(3)(c) TFEU.
- (162) As to firms in difficulty that were given aid under the schemes in question, the assessment has to take place in accordance with the R&R Guidelines (see recitals 59 and 73). Again, as pointed out in the opening decision, the assessment is not limited to SMEs, as the schemes were open to all undertakings.

⁽⁶⁴⁾ See: red line in the graph.

⁽⁶⁵⁾ See: blue line in the graph.

- (163) Given the characteristics of the schemes in question, namely long-term aid granted without any restructuring plan, no compensatory measures taken to minimize any adverse effects on trading conditions, no conditions preventing the beneficiaries from using the aid to finance new investment not essential for restoring the firm's viability, the schemes do not comply with the R&R Guidelines, as analysed in detail in the opening decision (see recitals 72-78 of the opening decision).

Possible compatibility with other derogations in Article 107 TFEU

- (164) For the sake of completeness ⁽⁶⁶⁾, the Commission observes that the findings of the opening decision as regards the incompatibility of other derogations in Article 107 TFEU from the prohibition to grant aid in these schemes (quoted in recitals 81-82 of the present Decision) were confirmed during the formal investigation procedure. With the exception of the derogation under Article 107(3)(b) TFEU, the applicability of which in the present case was discussed in recitals 153-159, neither the Greek authorities nor any third party argued to the contrary.

Final considerations

- (165) Lastly, the legal bases of the schemes did not have any provision to the effect of respecting the Deggendorf principle. According to that principle, undertakings that have benefited from prior aid, which has been found incompatible by the Commission, could not have received aid under these schemes until they had reimbursed that prior aid ⁽⁶⁷⁾. This principle does not apply to aid to make good the damage caused by natural disasters under Article 107(2)(b) TFEU. Consequently, due to the non-compliance with this principle, none of the other legal bases examined could justify the granting of aid under these schemes.

VI. CONCLUSION

- (166) The Commission finds that the aid schemes established under Ministerial Decision No 36579/B.1666/27-8-2007 (with subsequent amendments) in the form of interest subsidies and guarantees of the Greek State constitute State aid within the meaning of Article 107(1) TFEU. The Commission finds that Greece has unlawfully implemented the aid schemes in question, in breach of Article 108(3) TFEU. The foregoing analysis shows that the aid cannot be declared compatible with the internal market.
- (167) It follows in particular that, the State aid granted by Greece to Sogia Ellas and its subsidiaries in the form of interest subsidies under the schemes referred to in recital 166 is unlawful and incompatible with the internal market.

VII. RECOVERY

- (168) Given that the aid is unlawful and incompatible with the internal market, Greece should put an end to the aid schemes and recover the aid granted from the beneficiaries, unless the aid has been granted to a specific project, which, at the time of granting, fulfilled all conditions of the block exemption regulations, *de minimis* regulation or of an aid scheme approved by the Commission.
- (169) As regards the observations of the Greek authorities that there is absolute impossibility to recover the State aids (see recitals 101-102), they are not relevant for the compatibility assessment performed in the present Decision but rather expressly aim at leading the Commission not to require Greece to recover the incompatible aid. To this end, the Greek authorities make reference to previous decisional practice of the Commission (see recital 102).

⁽⁶⁶⁾ In line with case-law of the EU Courts the Commission is not obliged to assess the compatibility of the measures on the basis of grounds, which were not invoked by the Member State; see in this respect: judgment of the General Court of 1 February 2018, *Larko v Commission*, Case T-423/14, EU:T:2018:57, para. 157.

⁽⁶⁷⁾ Judgment of the General Court of 13 September 1995, *Textilwerke Deggendorf v Commission*, Joined Cases T-244/93 and 486/93, EU:T:1995:160, paragraphs 51-60.

- (170) The Commission does not at this stage accept the argument of Greece that there is absolute impossibility to recover ⁽⁶⁸⁾. In this regard two cumulative conditions must be satisfied following a detailed examination by the Commission, namely that the difficulties relied on by the Member State concerned are real and that there are no alternative methods of recovery. Only if the Commission had found, following such a detailed examination, that there were no alternative methods allowing even partial recovery of the unlawful aid in question might that recovery have been considered to be objectively and absolutely impossible to carry out. In the present case, Greece did not rule out alternative methods for at least partial recovery, relying solely on the fact that it is not possible to obtain the necessary information on direct and indirect damage caused by the fires, in the absence of any records and documentation thereof. For example, it is not clear if the damage can be approximated on the basis of aerial photographs at the time of the fires, public records or other means. Therefore, the request not to order the recovery of the incompatible State aid cannot be accepted at this stage.
- (171) As to previous Commission decisions, in accordance with settled case-law of Union Courts ⁽⁶⁹⁾ it is to be noted that the concept of State aid must be applied to an objective situation, which falls to be appraised on the date on which the Commission takes its decision, the sole test being whether a State measure confers an advantage on one or more particular undertakings. Accordingly, prior decisions of the Commission cannot be a decisive factor.
- (172) The Commission is only bound in this regard by the relevant provisions of the Council Regulation (EU) 2015/1589. Thus, according to Article 16(1) of the Procedural Regulation on the recovery of aid, the Commission has to order the recovery of incompatible aid. In addition, the limitation period for the recovery of aid is 10 years, which starts afresh after each interruption, pursuant to Article 17 of Regulation (EU) 2015/1589. The aid schemes in question were put in place on 25 August 2007, whilst the first action undertaken by the Commission in this regard was the letter sent to the Greek authorities on 25 July 2014 asking for information regarding this case.
- (173) In any event, the conditions, which justified the decision not to order the recovery in the cases referred to by Greece (see above recital 102), are not fulfilled here. Among others, in case SA.33083 (2012/C) (ex 2012/NN) the natural disasters occurred more than 10 years before the date of the decision; in some cases it was 25 years earlier. On the contrary, in the present case, the fires occurred in late 2007 and the Greek authorities were aware of the fact that the Commission was dealing with the schemes in question since mid-2014. For these reasons the Commission cannot accept the request of the Greek authorities not to order the recovery of the incompatible aid in this case.
- (174) Consequently, in accordance with paragraph 42 of the Notice from the Commission: ‘Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid’ a time-limit should be imposed for Greece to fully implement it. Interest should be paid on the amounts to be recovered in accordance with Commission Regulation (EC) No 794/2004 ⁽⁷⁰⁾.
- (175) This Decision should be implemented immediately, except for aid that, at the time it was granted, met all the conditions in the applicable *de minimis* regulation (see Article 2 of Council Regulation (EC) No 994/98 ⁽⁷¹⁾) or the block exemption regulations. In particular, individual aid granted under the aid schemes covered by this decision

⁽⁶⁸⁾ See Judgment of the Court (Grand Chamber) of 6 November 2018 in Joined Cases C-622/16P to C-624/16P, *Scuola Elementare Maria Montessori v Commission*, EU:C:2018:873, paragraphs 96-97. See further on the interpretation of the concept of absolute impossibility to recover as the sole exception to the obligation to recover State aid declared incompatible by the Commission: Notice from the Commission, ‘Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid’, OJ C 272, 15.11.2007, p. 4, points 18-20 and case-law cited therein.

⁽⁶⁹⁾ Judgment of the General Court of 4 March 2009, *Associazione italiana del risparmio gestito and Fineco Asset Management v Commission*, Case T-445/05, EU:T:2009:50, para. 145.

⁽⁷⁰⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

⁽⁷¹⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the TFEU to certain categories of horizontal State aid, OJ L 142, 14.5.1998, p. 1.

which, at the time it was granted, fulfilled the conditions laid down by Regulation (EU) No 702/2014 or by any other approved aid scheme should be considered compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

HAS ADOPTED THIS DECISION:

Article 1

The aid schemes established under Ministerial Decision No 36579/B.1666/27.8.2007 (with subsequent amendments) in the form of interest subsidies and guarantees granted by the Hellenic Republic constitute State aid in the meaning of Article 107(1) TFEU. These State aid schemes were unlawfully put into effect by the Hellenic Republic, in breach of Article 108(3) TFEU and are incompatible with the internal market.

The present Decision only applies to activities linked to the production, processing and marketing of agricultural products, i.e. products listed in Annex I to the TFEU with the exception of fisheries and aquaculture products, and to forestry, as defined by Eurostat. It is therefore without prejudice to possible aids granted to other sectors of the economy in accordance with the aid schemes in question.

Article 2

1. The Hellenic Republic shall recover the aids referred to in Article 1 from the beneficiaries.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
3. The interest on the sums to be recovered shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 ⁽⁷²⁾ amending Regulation (EC) No 794/2004.
4. The Hellenic Republic shall stop granting the benefit of the schemes referred to in Article 1 and shall cancel all outstanding payments of aid under the schemes referred to in Article 1 with effect from the date of adoption of this decision.

Article 3

The aid does not constitute State aid if, at the time it was granted, it met the conditions of Article 2 of Regulation (EC) No 994/98 which applied at the time the aid was granted.

Article 4

Individual aid granted under the measures referred to in Article 1 which, at the time it is granted, fulfils the conditions laid down by Regulation (EU) No 702/2014 or by any other approved aid scheme is compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

Article 5

1. Recovery of the aid granted under the schemes referred to in Article 1 shall be immediate and effective.
2. The Hellenic Republic shall ensure that this Decision is fully implemented within four months from the date of its notification.

⁽⁷²⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

Article 6

1. Within two months following notification of this Decision, the Hellenic Republic shall submit the following information:

- (a) the list of beneficiaries that have received aid referred to in Article 1 and the total amount of aid received by each of them;
- (b) the total amount (capital and interest) to be recovered from each beneficiary that received aid, which is not covered by the *de minimis* rule, Regulation (EU) No 702/2014 or by any approved aid scheme;
- (c) a detailed description of the measures already taken and planned to comply with this Decision;
- (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. The Hellenic Republic shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. At the Commission's request, it shall immediately submit information on the measures already taken and planned for the purpose of complying with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 7 October 2019.

For the Commission
Phil HOGAN
Member of the Commission
