DECISIONS

COMMISSION DECISION

of 14 December 2010

on the State aid C 8/10 (ex N 21/09 and NN 15/10) implemented by Greece in favour of Varvaressos S.A.

(notified under document C(2010) 8923)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2011/414/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof [1],

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

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) TFEU, in respect of the aid C 8/10 (ex N 21/09 and NN 15/10) [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 5 November 2007 the Commission received a notification from Greece for a rescue aid measure in favour of Varvaressos S.A. ('Varvaressos'). After exchanges of information, on 16 July 2008 the Commission adopted a 'no objections' decision on the notified measure.

(2) On 15 January 2009, the Commission received a notification from Greece for a restructuring aid measure in favour of Varvaressos.

(3) After exchanges of information, on 9 March 2010 the Commission opened the formal investigation procedure on the restructuring aid that Greece had notified on 15 January 2009 and also on a State guarantee unlawfully granted by Greece to Varvaressos in 2007. In relation to the latter, the Commission stated the possibility of revoking its decision of 16 July 2008 approving the notified rescue aid to Varvaressos.

(4) The opening decision was published in the *Official Journal of the European Union* on 10 March 2009 [3]. After the opening of the procedure, Greece submitted comments and information on 28 July 2010. Also, Varvaressos submitted comments and information on 18 June 2010. Finally, other third parties submitted comments on 4 June 2010, 14 June 2010 and 17 June 2010 [4].

(5) The Commission requested further information, regarding the above State measures, by letter of 9 July 2010. The Greek authorities answered by letter of 14 September 2010.

(6) At the request of the beneficiary, a meeting was held on 14 July 2010. On that occasion, the modified restructuring plan was discussed.

2. DESCRIPTION

2.1. The beneficiary

(7) Varvaressos was established in 1975 and is active in the textile market as a spinning mill company (production of and trade in yarns). It exports yarns to 20 countries, including Germany, France, Austria, Italy, Spain, the United Kingdom and Slovenia. In 2009, the company realised 52 % of its sales in EU countries other than Greece (57 % in 2008, 67 % in 2007), 42 % in Greece (40 % in 2008, 32 % in 2007) and 6 % in non-EU countries (2 % in 2008, 1 % in 2007).

(1) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty, where appropriate.

(2) Commission Decision C(2010) 1250 final of 9 March 2010 (OJ C 126, 18.5.2010, p. 7).

(3) See footnote 2.

(4) Hellenic Federation of Enterprises, Business Chamber of Imathia, Municipality of Naoussa and Feinjersey Betriebsgesellschaft (an Austrian clothing firm, […]).

(8) In 2009 the company had 205 employees on average (down from 212 in 2008) and a turnover of EUR 19 million. On the basis of 2007 data, it ranked 10th in the Greek textile market. Its share in the yarn market was […] % in 2008.

(9) Over the period 2004-2009 the company's annual turnover went down from EUR 28,4 million to EUR 19,2 million (a 32 % decrease). Over the period 2006-2009 the company had accumulated losses, which increased from EUR 2 million in 2006 to EUR 17,2 million in 2009. The company's key financial data for the years 2004-2009 are shown in Table 1 below.

Table 1

Varvaressos's key financial data 2004-2009

(EUR million)

	2004	2005	2006	2007	2008	2009
Turnover	28,5	26,1	26,4	23,2	20,7	19,2
EBT	0,02	− 2,8	− 3,3	− 2,7	− 6,3	− 5,5
Accumulated losses	NA	NA	− 2	− 5,1	− 11,5	− 17,2
Registered capital	16,6	16,6	16,6	16,6	16,6	16,6
Own equity	32,9	29,1	25,5	22,4	15,9	10,3
Debt/equity	79 %	106 %	117 %	135 %	216 %	350 %

Source: Data from 2004-2009 financial statements

2.2. **The measures**

(10) In the period 2007-2008, Varvaressos was granted two State measures, a non-notified State guarantee for the rescheduling of existing loans in May 2007 (measure 1) and a notified State guarantee for a new rescue loan which was approved by the Commission in July 2008 (measure 2). In January 2009, Greece notified a restructuring aid measure in the form of a direct grant (measure 3).

2.2.1. *The recovery plan of 2006*

(11) In order to receive the above aid, in December 2006 Varvaressos submitted a recovery plan to the Greek authorities entitled 'Strategic and business plan 2006-2011'. It describes the company's strategic goal and necessary actions and also the company's forecast financial position for 2006-2011. The plan provides for: (a) an increase in the proportion of special fibres in the overall production, from […] % in 2007 to […] % in 2011, in order to increase the company's profit margin; (b) a reduction in total production capacity, from […] thousand tonnes in 2007 to […] thousand tonnes in 2008-2011; and (c) a reduction in the company's personnel, from 237 in 2007 to 217 in 2011.

(12) The company's long-term loans of EUR 15,6 million are expected to be repaid by the end of 2010. Also, costs of EUR [1-2] million are expected in the period 2006-2009, for investments in the reorganisation of the company's management and the re-direction of its production to more profitable products. The required State aid for 2007-2011 amounts to EUR 13,5 million, to make good unsuccessful investments in the period 2000-2005, which created the company's difficulties. The company is expected to achieve viability in 2010, with EBT of EUR 1 million and a profit margin of 3,5 % (in 2011, positive EBT of EUR 0,8 million with a 2,6 % profit margin). Sales are expected to increase, from EUR 26,2 million in 2006 to EUR 29,3 million in 2011 (a 12 % increase).

2.2.2. *Measure 1: The non-notified State guarantee of 2007*

(13) On 30 May 2007, Greece issued a ministerial decision providing Varvaressos with a State guarantee as security for the rescheduling of the company's existing loans totalling EUR 22,7 million. The guarantee was supposed to cover 80 % of the loans, i.e. EUR 18,2 million; however, it actually exceeded the total amount of the underlying loan (see recital 16 below).

(14) Before the 2007 rescheduling, only part of the company's real estate assets were mortgaged to cover its loans. In the context of the 2007 rescheduling, the rest of the company's real estate assets were additionally mortgaged. This mortgage was set up in favour of the company's lending banks and not the State. However, under Greek law [5], before paying the call of a guarantee, the State first has to receive the securities for the guaranteed loans.

[5] N2322/95 and N2362/95, as well as ministerial decision 2/478/0025 of 4 January 2006.

(15) This measure was never notified to the Commission; instead Greece specified in the notification of the rescue aid of 5 November 2007 that the company had not received rescue or restructuring aid before.

(16) This measure was based on a non-notified guarantee scheme, approved by the Greek Ministry of Finance on 26 January 2007. The scheme granted State guarantees for the rescheduling of loans outstanding on 31 December 2006, whether or not overdue, into a new loan. The relevant loans were granted to industrial, mining, livestock farming and hotel companies established and operating in the district of Imathia, Northern Greece, for investments in fixed assets and working capital. The scheme did not provide for a premium for the State guarantee. On the basis of one of its provisions, the guarantee eventually covered a maximum amount of EUR 30 million plus interest, therefore an amount higher than that of the underlying loans (EUR 22,7 million) [6].

2.2.3. *Measure 2: The notified State guarantee of 2008*

(17) On 16 July 2008 the Commission approved a notified rescue aid for Varvaressos, in the form of a State guarantee for a EUR 2,4 million loan [7]. The decision was adopted based on the information that the company had not been granted rescue or restructuring aid before [8], and was therefore eligible for rescue aid.

(18) The guarantee was granted without a premium for the guarantor (the State) and covered the entire amount of the loan, i.e. EUR 2,4 million.

(19) According to the notification of the measure by the Greek authorities on 5 November 2007, from the total amount of the aid, EUR [1-2] million would finance the following investments: (a) the reorganisation and modernisation of the company's management (EUR […] million), carried out over the period 2006-2009; and (b) the re-direction of production to more profitable products (EUR […] million), carried out over the period 2007-2009. Those investments were also part of the restructuring plan submitted on 15 January 2009 and were to be carried out over the same period of time as the plan (see recitals 22-23 and 42-43 below).

2.2.4. *Measure 3: The notified direct grant of 2009*

(20) On 15 January 2009, Greece notified a direct grant of EUR 14 million to finance the company's restructuring plan.

(21) According to the submitted restructuring plan, the company's difficulties were caused by the high financial cost of an investment programme carried out in 2000-2005, high operating costs and managerial shortcomings.

(22) The plan stretches over the period 2006-2011. It has been properly updated and adjusted in the course of the formal investigation procedure. The core idea of the restructuring process envisages full payment of most of the company's bank loans (including the one for which rescue aid was approved in July 2008), a reduction in production and employment [9], the re-direction of production to more profitable products (the proportion of special yarn production in total production to be increased to […] % by 2012) and the reorganisation and modernisation of the company's management.

(23) Under the restructuring plan's three scenarios (intermediate, best-case and worst-case), the company will restore its long-term viability by the end of 2011.

(24) Under all three scenarios, the company's sales are expected to increase and costs and expenses (without depreciation) to decrease. Consequently, the company's EBT + D [10] are expected to be negative in 2010 and positive in 2011, at the end of the restructuring period. At the same time, in 2011 the company's ROE [11] will be higher than its borrowing cost [12] (under the intermediate and best-case scenarios) or equal to it (under the worst-case scenario).

3. GROUNDS FOR INITIATING THE PROCEDURE

(25) In its decision to initiate the procedure, the Commission indicated that the compatibility of the aid measures would be assessed on the basis of the Community Guidelines on state aid for rescuing and restructuring firms in difficulty ('the R&R Guidelines') [13]. The Commission therefore made an initial assessment of the aid measures on the basis of the criteria laid down in the R&R guidelines.

(26) Firstly, the Commission noted that Greece had not informed it about an earlier State guarantee granted to Varvaressos in May 2007. The Commission also noted that Greece had informed it, in its notification of the rescue aid in November 2007, that Varvaressos had not received rescue or restructuring aid before. Subsequently, the Commission doubted whether it would have considered the company eligible for rescue aid in its decision of July 2008, had Greece not submitted incorrect information regarding the 2007 guarantee.

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(6) The measure is currently being examined in case CP150/2009, which concerns in total four guarantee schemes adopted by the Greek authorities in the period 2006-2009, not notified to the Commission. See also Case C 27/2010 *United Textiles*.

(7) Case N 635/07 (OJ C 264, 17.10.2008, p. 1).

(8) As submitted by the Greek authorities in the aid notification (November 2007).

(9) To 190 employees.

(10) Earnings Before Tax plus Depreciation.

(11) Return On Equity.

(12) 6 months Euribor + 3,6 % at the highest, equal to around 5 % at present.

(13) OJ C 244, 1.10.2004, p. 2.

(27) Secondly, in the light of the 2007 guarantee the Commission also questioned the company's eligibility for the notified restructuring aid, i.e. whether the 'one time, last time' principle is complied with.

(28) Regarding the beneficiary's status as a firm in difficulty, the Commission noted that Varvaressos, given the losses and the decline in sales it suffered in previous years, could qualify as a firm in difficulties. However, the Commission expressed doubts that Varvaressos was indeed in difficulty when the 2007 guarantee was granted, because the company could allegedly have achieved the rescheduling of its existing loans with the same banks without the public intervention.

(29) Regarding the restoration of viability, the Commission expressed doubts about the time schedule of the plan, which forecast a return to long-term viability by the end of 2009. Since 2009 had come to an end and the main part of the restructuring had not yet been implemented, the Commission considered that the time frame put forward for the restoration of long-term viability could no longer be considered realistic.

(30) In addition, the Commission expressed doubts about the surveys submitted on the spinning market, which dated from 2007. Given that 2 years had already elapsed and that significant changes in the global economy had taken place since then, it was possible that these surveys had become obsolete. Therefore the Commission required a new set of data and projections and more recent market surveys.

(31) Regarding the avoidance of undue distortion of competition, the Commission expressed doubts about the proposed two compensatory measures. These were: (a) the closure of one of the company's three plants, the one in Naoussa; and (b) the sale of the shareholding in the subsidiary 'Thiva Ginning Mills SA'. Both of those measures were first of all considered necessary to achieve the long-term viability of the beneficiary and thus did not compensate the company's competitors for the distortion of competition.

(32) Finally, regarding the limitation of the aid to the minimum necessary, the Commission considered Varvaressos to be a large company for the purposes of the assessment (in 2006 it had an annual turnover of EUR 28 million) and indicated that it was located in an area eligible for aid under Article 107(3)(a) TFEU. On the basis of the above, the Commission set the company's own contribution to be in principle at least 40 % of the plan's total cost.

4. COMMENTS OF GREECE

(33) The information submitted by the Greek authorities on the alleged State aid measures may be summarised as follows:

4.1. The 2007 guarantee as State aid

(34) Greece acknowledges having granted the State guarantee of May 2007. However, Greece argues that it did not constitute State aid. In particular, Greece argues that: (a) lending banks would have agreed to the rescheduling even without the State guarantee, (b) there was no need for a State guarantee, because the loans were sufficiently covered in the rescheduling by assets of a value higher than the outstanding amount and (c) the 2007 State guarantee did not improve the company's ability to raise funds in the capital market, because Varvaressos was still able to raise funds on its own.

4.2. The beneficiary as a 'firm in difficulty' in 2007

(35) Greece argues that Varvaressos was indeed in difficulty in 2007 and that it was only thanks to unencumbered assets of considerable value that it could have access to the financial market without a State guarantee.

(36) Greece also argues that the 2007 loan rescheduling was not sufficient for the company to finance its restructuring. It was used only to reorganise the existing heavy debt. New funding was still needed, and it did not come through the 2007 rescheduling. Therefore, the company was not able to restore viability on its own and the public intervention was in order. Thus, Varvaressos meets the criterion of point 9 of the R&R Guidelines.

(37) Against this background, Greece argues that if the 2007 measure is deemed to be State aid, the company was eligible to receive rescue and restructuring aid.

4.3. The 'one time, last time' principle

(38) According to Greece, all three measures under scrutiny (the 2007 State guarantee, the 2008 State guarantee and the notified direct grant) were granted in order to facilitate the implementation of a single restructuring plan.

(39) In December 2006, Varvaressos applied for rescue and restructuring aid and submitted the same plan as the one notified to the Commission later in January 2009. The time difference between the application for rescue and restructuring aid to the Greek authorities (December 2006) and the notification of the 2009 direct grant to the Commission (January 2009) was caused only by administrative issues and not recurrent difficulties and repetitive need for State intervention.

(40) Also, the 2007 guarantee (measure 1) was intended to address the company's financial problems in the short run, by giving it a breathing space through the 2-year freeze on loan instalments. The other measures were intended to eliminate the company's financial problems in the long run. At the same time, all three measures were of a common nature, as they all addressed the problem of the company's bank loans.

(41) Greece finally argues that all three measures are parts of the same restructuring process and thus the 'one time, last time' principle is not infringed.

4.4. **Restructuring costs and own contribution**

(42) Restructuring costs consist of restructuring of long-term bank loans (EUR 23 million), restructuring of employment (EUR 1 million), investments (EUR 3 million) and restructuring of assets (EUR 1 million). These costs add up to EUR 28 million ([14]).

(43) Greece claims that the total costs of the restructuring will be funded by EUR 14 million as State aid and EUR 14 million as an own contribution. The own contribution comprises revenues of […] and EUR 1 million from the sale of a shareholding in a subsidiary in 2007.

4.5. **Avoidance of undue distortions of competition**

(44) As regards the compensatory measures, the plan initially (before the opening of the formal investigation procedure) proposed: (a) the stopping of operations in one of the company's three plants, which began in 2007 and was concluded in 2008; and (b) the sale of a shareholding in a subsidiary, which took place in 2007. The company stated that this subsidiary was loss-making in the years 2005 and 2006.

(45) After the opening of the formal investigation procedure, Greece proposed the following alternative compensatory measures:

— The withdrawal of the company from the Greek market by at least 10 %, compared with 2009 sales in Greece, for the period until the end of 2013, i.e. 2 years after the end of the restructuring,

— The ban on any kind of State aid to the company for the period until the end of 2013, i.e. 2 years after the end of the restructuring.

(46) Greece argues that there are reasons that justify less stringent compensatory measures and lower the own contribution in the case of Varvaressos.

(47) In particular, Greece states that Varvaressos is located in the area of Imathia, an assisted area for regional aid. The unemployment rate in Imathia is twice the national average and its GDP is 70 % of the national average. At the same time, the number of textile/clothing companies in Imathia has declined from 296 to 181 in 2008 (a 39 % decrease). Finally, 56 % of the jobs in companies with more than ten employees have been lost over the last few years.

(48) Greece also states that Varvaressos' size has reduced significantly since 2006, through the closure of one of its three plants and the sale of its subsidiary. The plant's closure caused a manpower reduction of […] man-hours and a production capacity reduction of 30 %, which in addition is irreversible (through scrap or sale of equipment). The sale of the subsidiary caused an annual turnover reduction of EUR 6,7 million. Overall, the company's market share was reduced by 27 % in terms of sales value and 30 % in terms of sales volume. Also, the company withdrew completely from Estonia, Hungary and Romania, and partially from Austria, Germany, France, the UK, Bulgaria, the Czech Republic, Italy and Poland (withdrawal range between […] % and […] %).

5. COMMENTS FROM THIRD PARTIES

(49) The Commission received comments from Varvaressos. Its arguments coincided to a large extent with those submitted by the Greek authorities.

(50) The Commission also received comments from other third parties, either related to the operations of Varvaressos or affected by them. All of the comments praised the beneficiary's status, both as a contributor to the local economy and as a well-established company. It was also stated that the company's cessation of operations would significantly reduce employment and production capacity in Greece and especially Imathia. In addition, it was stated that the aid to Varvaressos does not create any distortion of competition, given the company's minimal market share.

6. ASSESSMENT: EXISTENCE OF AID

6.1. **Measures 1 and 2: The State guarantees of 2007 and 2008**

(51) Article 107(1) TFEU declares incompatible with the internal market 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, and affects trade between Member States. Thus, in order to be considered State aid, a measure must fulfil the following four criteria.

(52) Firstly, a measure must be granted by a Member State or through State resources. State guarantees put at risk State resources, as their call is paid through the State budget. Moreover, any guarantee that is not properly remunerated implies a loss of financial resources for the State. In addition, State guarantees are granted through decisions of the competent Ministries. In the case at hand, it was by decision of the Greek Ministry of Finance that the 2007 and 2008 guarantees were granted to Varvaressos. Thus, the criterion of State resources is fulfilled.

([14]) Here the Commission refers to the 'real' restructuring costs. In recital 123 below, where the overall restructuring cost is presented, the aid elements of 2007 and 2008 State guarantees are also included, because they have to be financed by the own contribution.

(53) Secondly, a measure must give the beneficiary an advantage. The Commission considers that the two guarantees in question have conferred an undue advantage on Varvaressos. Indeed, for the reasons set out in the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ('the Guarantee Notice') [15], sections 2.2 and 3.2, when the borrower does not pay a market-oriented price for the guarantee, it obtains an advantage. In some cases, the borrower, as a firm in financial difficulty, would not find a financial institution prepared to lend on any terms, without a State guarantee.

(54) In point 3.2 of the Guarantee Notice, the Commission has set out three cumulative conditions which it deems sufficient to rule out the presence of State aid (i.e. an advantage) in the form of a guarantee. These are:

— the borrower is not in financial difficulties,

— the guarantee does not cover more than 80 % of the outstanding loan,

— the extent of the guarantee can be properly measured when it is granted,

— a market-oriented price is paid for the guarantee.

(55) Applying these criteria to the case at hand, the Commission finds that:

— Varvaressos was in financial difficulty [16] at the time of granting of both the 2007 and the 2008 guarantees.

— Secondly, as demonstrated in recitals 13, 16 and 18, both the 2007 and 2008 guarantees did cover more than 100 % of the loan.

— Thirdly, with regard to the 2007 guarantee, the Commission notes that the extent of the guarantee could not be properly measured when it was granted. This is shown by the fact that, according to the information transmitted by the Greek authorities (see above, recitals 13 and 16), the guarantee was initially supposed to cover 80 % of the loan, or EUR 18,2 million, but eventually, on the basis of one of the provisions of the guarantee scheme, covered EUR 30 million.

— Fourthly, both the 2007 and 2008 guarantees were granted for loans to a firm in difficulty and did not provide for a premium for the guarantor (State). The mere fact that no fee was paid in exchange for the guarantees might indicate that the measures conferred an advantage on Varvaressos. A guarantee without premium payment is not available on the commercial banking market. This is all the more true for guarantees given to undertakings in difficulty, which have a high risk of default.

(56) On the basis of the above the Commission concludes that the company would not have obtained the 2007 and 2008 guarantees under the same terms on the market and hence these measures conferred an advantage.

(57) Thirdly, to be considered aid under Article 107(1) TFEU, a measure must be selective. The 2007 guarantee was based on a sectoral scheme and the 2008 guarantee was an ad hoc measure for Varvaressos. Thus, the criterion of selectivity is indeed fulfilled.

(58) Finally, a measure must distort competition and affect trade between Member States. Varvaressos is active in a sector whose products are widely traded among Member States and which is subject to intense competition. At the time the aid measures were granted, Varvaressos made most of its sales to other Member States (see recital 7 above). Also, the aid measures in question granted Varvaressos an advantage over its competitors (see recitals 53-56 above). When State aid strengthens the position of an undertaking compared with other undertakings competing in trade between Member States, those other undertakings must be regarded as affected by that aid. Thus, the criterion of distortion of competition and effect on trade between Member States is indeed fulfilled.

(59) On the basis of the above, it is concluded that the State guarantees of 2007 and 2008 (measures 1 and 2) constitute State aid in favour of Varvaressos within the meaning of Article 107(1) TFEU.

6.2. **Measure 3: The notified direct grant of 2009**

(60) As regards the criterion of State resources and imputability, this direct State grant comes from the State budget and is approved by the responsible ministry. Therefore, the criterion is fulfilled.

(61) As regards the criterion of advantage, the direct grant was decided in favour of a company in financial difficulty. The Greek State does not receive any consideration in return for the grant. Therefore, the grant gives an advantage to Varvaressos.

(62) Thus, the Commission considers that the notified direct grant of 2009 will confer an advantage on the company within the meaning of Article 107(1) TFEU.

(63) As regards the criterion of selectivity, the direct grant was decided on the basis of an ad hoc decision for the company. Therefore, the criterion is fulfilled.

[15] OJ C 155, 20.6.2008, p. 10.
[16] See section 7.3 below for a detailed assessment of the company's situation in 2007 and 2008.

(64) Finally, the criterion of distortion of competition and effect on trade between Member States is fulfilled in the same way as in recital 58 above.

(65) On the basis of the above considerations, the Commission concludes that the notified direct grant of 2009 constitutes State aid in favour of Varvaressos within the meaning of Article 107(1) TFEU.

6.3. **Unlawful aid**

(66) According to Article 1(f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [17], new aid that was put into effect in contravention of Article 108(3) TFEU is to be considered unlawful aid.

(67) In the case at hand, the State guarantee of 2007 in favour of Varvaressos was put into effect by Greece without notifying it to the Commission and without waiting for the latter's comments or final decision on the measure's compatibility with the internal market.

(68) Thus, the Commission considers at this stage that the State guarantee of 2007 is unlawful.

7. **ASSESSMENT: COMPATIBILITY WITH THE TFEU**

(69) As set out in point 4.1 of the Guarantee Notice, where an individual guarantee or a guarantee scheme does not comply with the market economy investor principle, it is deemed to entail State aid. The State aid element therefore needs to be quantified in order to check whether the aid may be found compatible under a specific State aid exemption. Therefore, before assessing the compatibility of the aid, the Commission needs to quantify the aid element.

7.1. **Quantification of the aid**

(70) The 2007 and 2008 guarantees: the Commission has laid down the general principles for calculating the aid element in guarantees in the Guarantee Notice.

(71) The Commission considers that, in principle, a State guarantee can be deemed aid up to the total amount of the underlying loan if the beneficiary is not capable of accessing financial markets by its own means (see points 2.2 and 4.1(a) of the Guarantee Notice).

(72) The Guarantee Notice sets out, in points 4.1 (general rules), 4.2 (aid element in individual guarantees) and 4.4 (aid element in guarantee schemes), the rules it applies for calculating the aid element in the guarantees. The Commission will in the following recitals apply these rules to measures 1 and 2.

(73) In the case at hand, Greece has demonstrated that Varvaressos was still able to access financial markets (see recital 35 above) at the time the 2007 guarantee was granted. The Commission therefore considers that the company could still have had access to the financial markets without the State guarantees of 2007.

(74) With regard to the 2008 guarantee, the Commission notes that Greece notified the 2008 guarantee within the same year (November 2007) as when it granted the 2007 guarantee (May 2007). Thus, the Commission considers that also at the time of the granting of the 2008 guarantee the company still had some creditworthiness and access to the financial market [18].

(75) However, given its financial difficulties at the time of the granting of the measures, commercial banks would have charged a correspondingly higher interest rate than the one achieved with a State guarantee, because the latter is an additional security for the banks. Thus, the Commission considers that the benefit of Varvaressos through the 2007 and 2008 guarantees was not the total loans, which it could have received even without the State guarantees, but the lower interest rate, which it received thanks to the guarantees.

(76) According to point 4.2 of the Guarantee Notice, in the absence of a comparable market premium, the all-in financing costs of the loan on the market with and without guarantee (i.e. the interest rate for a similar loan without guarantee should be compared to the interest rate + guarantee premium for the loan with the State guarantee) should be compared.

(77) In many cases, such a market interest rate is not available. Therefore, in its 2008 Notice on the method for setting the reference and discount rates [19] ('the 2008 Reference Rate Communication'), the Commission has developed a financial methodology which, for the reasons set out in point 4.2 of the Guarantee Notice, can be used as proxy for the market interest rate.

(78) In the case at hand, there is no indication of what Varvaressos would have paid for a comparable non-guaranteed loan. Furthermore, the granting of both guarantees predates the economic and financial crisis. In addition, the Commission is of the view that, due to the time that has elapsed since the granting of the measures, the calculation of a 'real' market rate for a Greek textile company would be a difficult exercise. Therefore, the Commission will use the relevant reference rate as proxy for the market rate.

(17) OJ L 83, 27.3.1999, p. 1.

(18) The 2008 rescue aid decision did not quantify the aid element of the guarantee.

(19) Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

(79) As regards the 2007 State guarantee, at the time when it was granted, the securitisation of Varvaressos's loans could be considered high for the purposes of the 2008 Reference Rate Communication [20]. Therefore, the aid element of the 2007 State guarantee is to be calculated with a margin of 400 basis points, applicable to highly securitised loans to undertakings in difficulty.

(80) On this basis, the amount of market interest which should have been paid for the loan covered by the 2007 guarantee in the absence of the State guarantee was calculated at EUR 7,3 million in total. The interest actually paid for it (there was no guarantee fee) amounts to a total of EUR 4,9 million for the period from January 2007 to December 2010. Thus the difference between the specific market interest rate this company would have borne without the guarantee and the interest rate obtained by means of the State guarantee after any premiums paid is equal to an aid element of EUR 2,4 million, to be added to the aid amount of the restructuring plan [21].

(81) As regards the 2008 State guarantee, the underlying loan of EUR 2,4 million was paid to the company on 10 February 2009. It bore an interest rate of 6 months Euribor plus 3,6 %, and had a duration of 6 months (or until the end of the assessment of the restructuring plan). It has not been repaid yet (it still remains with the initial capital).

(82) The company was still in difficulty and did not have any more free assets to offer as security [22]. In the absence of any collateral, the Commission thus applies a top-up of 1 000 basis points on top of the Greek base rate, resulting in the amount of EUR 550 000 of market interest which should have been paid for the 2008 financing. The interest actually applied in the 2008 loan amounts (there was no guarantee fee) to a total of EUR 0,25 million for the period February 2009 (when the underlying loan was paid) to December 2010. Thus the difference between the specific market interest rate this company would have borne without the guarantee and the interest rate obtained by means of the State guarantee after any premiums paid is equal to an aid element of EUR 0,3 million, to be added to the aid amount of the restructuring plan.

(83) With regard to measure 3, given that it is a direct grant, the entire amount of EUR 14 million represents the aid element.

(84) On the basis of the above, the total aid element in measures 1, 2 and 3 amounts to EUR 16,7 million.

7.2. **Legal basis for the assessment: the Rescue and Restructuring Guidelines**

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

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

(87) Varvaressos was a firm in difficulty at the time the measures were granted (see recitals 9 above and 89-90 below), therefore the compatibility of the aid measures can be assessed only in the light of the R&R guidelines, i.e. under Article 107(3)(c) TFEU.

7.3. **Eligibility of the firm**

(88) With regard to point 10(a) of the R&R Guidelines, the Commission notes that although Varvaressos lost a substantial amount of its own equity in the period 2004-2009, it did not lose more than half of its registered capital in the period under assessment (2007 to 2009). As to point 10(c), Varvaressos did not fulfil the criteria under its domestic law for being the subject of collective insolvency proceedings.

(89) On the other hand, as shown in recital 9 above, the company's financial performance deteriorated significantly in the period 2006-2009. It is therefore concluded that Varvaressos was already a firm in difficulty, within the meaning of point 11 of the R&R Guidelines, in 2006, because it had increasing losses and diminishing turnover.

(90) As regards point 9 of the R&R Guidelines, it appears that in 2007 the company indeed needed more funds than its existing loans in order to achieve viability. This is demonstrated by the fact that in 2006 it applied for restructuring aid. Therefore, the rescheduling of 2007 was not enough for viability restoration, because it served only to settle the existing loans and not to raise more. Thus, the Commission accepts that in 2007 the company could not restore viability without public support and that it had financial difficulties also on the basis of point 9 of the R&R Guidelines.

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[20] Varvaressos's real estate assets were of a commercial value and a 'liquidation' value (income from a sale under pressing circumstances) close to its outstanding loans. In particular, the company's real estate assets were evaluated in January 2005 at a commercial value of EUR 15,6 million and in December 2008 at a commercial value of EUR 28,8 million. Also, the company's total loans amounted to EUR 26,4 million in December 2007 and to EUR 29,2 million in December 2008. A 'liquidation' value equal to […] % of the assets' market value would give a 'liquidation' value of EUR […] million. Consequently, the 'liquidation' value of the company's real estate assets was equal 1 year after the rescheduling to […] % of its outstanding loans. This percentage would give an LGD of […] %, therefore, below […] %. On this basis, the rescheduled loan's collateralisation would be considered high.

[21] The calculation was done by comparing the interest actually charged with the interest that should have been charged. It was carried out for the period from January 2007 (when the 2007 State guarantee took effect) to December 2010, since the restructuring plan provides for full repayment of the loans.

[22] Actually, there had been assets offered as collateral, but all of those assets had already been mortgaged before, therefore they cannot be considered as effectively covering the 2008 loan.

7.4. **The 'one time, last time' principle**

(91) The Commission considers the State guarantees of 2007 and 2008 to be rescue aid. Indeed, the former was intended to address Varvaressos's financial problem in the short run, by giving it a breathing space through the 2-year freeze on loan instalments. The latter aimed at keeping the company afloat until a restructuring plan was submitted.

(92) Despite the fact that the guarantee of 2007 was in fact a rescue aid measure, it was not terminated within 6 months from the date it was granted (30 May 2007), i.e. until 30 November 2007. This would in principle constitute misuse of (illegal) aid and an infringement of the 'one time last time' principle.

(93) However, the Commission has also to assess the compatibility of the aid measure on all other possible grounds. Point 20 of the R&R Guidelines limits the grounds to those stipulated under the rescue and restructuring guidelines. That would still leave the possibility of the rescue aid qualifying as restructuring aid, i.e. as part of a restructuring continuum (see also Case C 11/2007, *Ottana Energia* ([23])).

(94) In this context and as regards the question whether the three measures under scrutiny form a restructuring continuum, the Commission considers that indeed they do. This consideration stems from the following:

(95) Firstly, all three measures were directed at the same purpose, i.e. to address the problem arising from the company's past high loan obligations.

(96) Furthermore, the 2007 and 2008 guarantees were not enough to provide the company with the financial resources needed for its restructuring (equal to at least its total loans, i.e. EUR 25,4 million at the end of 2006), as the latter could be achieved only through the combination of the three measures, as three tranches of one single restructuring process.

(97) Also, the largest part of the loan that was covered by the 2008 guarantee (EUR 1,8 million out of a total of EUR 2,4 million) was aimed at financing the same investments as the restructuring grant of 2009. At the same time, those investments were to be carried out over the same period of time as the restructuring plan of 2009 (see recital 19 above).

(98) In addition, the restructuring plan of 2009 is the same as the recovery plan already submitted by the company to the Greek authorities in 2006 (see recitals 11-12 above), with certain amendments in the context of its assessment.

(99) Finally, the restructuring indeed started in 2006. In particular, the plan included four restructuring measures applied or starting to be applied before the granting of the 2007 guarantee (May 2007), i.e. the reduction in production (2006), the reduction in the workforce (2006), the sale of the subsidiary Thiva (January 2007) and the reorganisation and modernisation of the company's management (2006).

(100) Thus, the Commission concludes that the aid measures under scrutiny are tranches of the same restructuring, granted in order to facilitate the implementation of a single restructuring plan. Thus, the 'one time, last time' principle is not infringed.

7.5. **Restoration of long-term viability**

(101) On the basis of the above, the Commission will assess the compatibility of the three aid measures as a restructuring continuum.

(102) The Commission is of the view that the measures provided for in the restructuring plan are indeed tackling the exact sources of the company's difficulties. In particular, in the Commission's view the plan rightly identifies the following factors (external and internal) as the sources of Varvaressos's difficulties:

— past heavy borrowing (in the period 2000-2005),

— high operating costs (drop in margin due to Asian competition and soaring input prices),

— inability to respond to market development.

(103) The proposed restructuring measures aim at remedying these problems. Firstly, the plan proposes the financial restructuring of the company; secondly, it proposes concrete measures to improve the company's profit margin by changing the earnings mix and reducing operating costs; and thirdly, it proposes management modernisation. The restructuring measures are broken down into 14 'actions' with costs attributed to each. The Commission concludes that the proposed actions indeed seem to be adequately tackling the company's fundamental problems.

(104) With regard to the financial impact of the restructuring plan, the financial projections realistically follow the implementation of the restructuring package. Both increase in turnover (about 5 % yearly) and increase in operating income (about 10 % yearly) are reasonable after the implementation of the restructuring measures (i.e. redirection of the product mix and cost rationalisation measures).

([23]) OJ L 259, 2.10.2009, p. 22.

(105) On this basis, the Commission accepts that the restructuring will enable the company to return to viability in 2011 and its shareholders will have a return on their invested capital that will be higher than or (at worst) equal to their borrowing cost, therefore at a satisfactory level. The Commission notes that these results will be achieved within a reasonable timescale and that the expected results are based on reasonable assumptions.

(106) Thus, the Commission considers that the plan meets the criteria of points 35-37 of the R&R Guidelines.

7.6. **Avoidance of undue distortions of competition**

(107) With regard to the proposed compensatory measures, the restructuring plan proposes: (a) withdrawal of the company from the Greek market by at least 10 %, compared to 2009 sales in Greece, for the period until the end of 2013, i.e. 2 years after the end of the restructuring; and (b) a ban on any kind of State aid to the company for the period until the end of 2013, i.e. 2 years after the end of the restructuring.

(108) The Commission considers that the proposed 10 % withdrawal from Greece will allow competitors to enter or increase their sales in a market where the company has a strengthened presence. Indeed, the company's presence in Greece has increased considerably in past years, from 32 % to 42 %, unlike its EU sales, which fell from 67 % to 52 % (see recital 7 above). Finally, the company is ranked tenth in the Greek textile market (according to 2007 data, see recital 8 above). At the same time, the company's presence in non-EU countries has also increased in the past years (from 1 % to 6 %), which shows that the company's viability does not depend on increasing its presence in the EU market.

(109) At the same time, the withdrawal from the Greek market will mean Varvaressos partially or entirely giving up its established commercial relations within its own country and attempting to replace them with new ones, in other EU Member States or in third countries. This will be a real test of the company's competitiveness.

(110) The Commission also notes that under all three viability scenarios, the company's sales are expected to increase (see recital 24 above). However, the reduction of sales in Greece does not contradict the increase in turnover: the former can take place to the benefit of the company's competitors by freeing up capacity for them; the latter will allow the viability of the beneficiary.

(111) However, it could be argued that the appropriate year to be used as the point of reference for the 10 % withdrawal from the Greek market should be 2006 rather than 2009. That is because, according to point 40 of the R&R Guidelines, 'The reduction must be an integral part of the restructuring as laid down in the restructuring plan'. Indeed, the company's restructuring started in 2006 and was to take 5 years (until 2011). Therefore, according to this line of thinking, the compensatory measure should have an impact that would take into account and correspond to the whole duration of the restructuring and not only to a part of it.

(112) On the other hand, the Commission notes that the impact of compensatory measures needs to be as significant as possible. In the case at hand, the company's 2009 sales in Greece were higher than the 2006 sales (EUR 8,1 million and EUR 7,1 million, respectively). Therefore, the Commission considers that the measure is to be reckoned in comparison with 2009 sales, since this way it will have a higher impact.

(113) As regards the ban on any kind of State aid, the Commission considers it an addition to the withdrawal from the Greek market, which is already of a satisfactory level (10 %). Indeed, Varvaressos is located in the area of Imathia, an assisted area for regional aid purposes under the derogation in Article 107(3)(a) TFEU (see recital 47 above), which means that the company could have been eligible for investment aid with an aid intensity of 40 %. Bans on future aid have already been approved before, as additional compensatory measures, in cases *Alstom* [24] and *Constructions Mécaniques de Normandie* [25].

(114) In addition, the Commission considers that the company's size has decreased so much that any further reduction would be fatal to its viability (see recital 48 above).

(115) At the same time, the Commission notes again that the impact of compensatory measures needs to be as significant as possible. Thus, in the case at hand, the Commission considers that the duration of the future ban on State aid should be extended to more than 2 years. This will not damage the company's viability, but will make good the undue distortion of competition. In conclusion, the Commission considers that a 4-year ban is more appropriate.

(116) On the basis of the above, the Commission considers that the compensatory measures described above fulfil the requirements of the R&R Guidelines. In particular: (a) they benefit Varvaressos's competitors, within the meaning of point 31; (b) they take a form provided for in points 39 and 46(c); and (c) they will take place in the market where Varvaressos will have a significant market position after restructuring, within the meaning of point 40.

(117) Also, in accordance with point 40 of the R&R Guidelines, the compensatory measures are in proportion to the distortive effects of the aid in question, and in particular to the size and relative importance of the firm on the market. Varvaressos in 2008 had a small market share of […] % in EU yarn production (see recital 8 above).

[24] OJ L 150, 10.6.2005, p. 24, paragraph 209.
[25] OJ C 191, 17.8.2007, p. 1, paragraph 29.

(118) At the same time, point 56 of the Guidelines provides that the conditions for authorising aid may be less stringent in an assisted area. Varvaressos is located in the area of Imathia, an assisted area for regional aid purposes under the derogation in Article 107(3)(a) TFEU (see recital 47 above).

(119) On the basis of the above, the compensatory measures proposed by Greece do not seem to be sufficient. On the other hand, the Commission is of the view that the measures combined with the ban on future aid extended until 2015 indeed meet the compensatory measures criteria of the R&R Guidelines.

7.7. **Aid limited to the minimum: real contribution, free of aid**

(120) Greece argues that since 2009 the company has been medium-sized, according to the criteria set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([26]). However, taking into consideration the fact that the company received State aid for the first time in 2007, it should be considered a large company for the purposes of the present assessment (in 2006 it had an annual turnover of EUR 28 million). Therefore, the company's contribution to the restructuring plan should in principle be at least 50 % of the plan's total cost, according to point 44 of the R&R Guidelines.

(121) However, the Commission notes that the company is located in an assisted area for regional aid purposes under the derogation in Article 107(3)(a) TFEU (see recital 47 above). According to point 56 of the R&R Guidelines, in assisted areas and unless otherwise stipulated in the rules on State aid in a particular sector, the conditions for authorising aid may be less stringent as regards the size of the beneficiary's contribution.

(122) In the light of the circumstances explained above and in accordance with its practice, the Commission considers that in the case at hand the percentage of 40 % qualifies as a proper own contribution under the R&R Guidelines.

(123) In view of the above and the calculation of the aid measures in recitals 70 to 84 above, the overall restructuring of EUR 30,7 million is financed as follows:

— EUR 16,7 million of aid: direct grant of EUR 14 million, plus aid element of EUR 2,4 million of the 2007 State guarantee (under the 400 basis points scenario), plus aid element of EUR 0,3 million of the 2008 State guarantee (under the 1 000 basis),

— plus EUR 14 million of own contribution.

(124) Therefore the company's own contribution is 46 % of the total financial cost of restructuring, i.e. above the 40 % minimum own contribution as determined in recital 122 above, thus within appropriate limits under the R&R Guidelines.

8. **REVOCATION OF COMMISSION RESCUE AID DECISION OF JULY 2008**

(125) The 2007 State guarantee shows that the Commission's rescue aid decision of July 2008 (see recital 1 above) was based on wrong information provided by the Greek authorities. In particular, the Greek authorities stated in the notification of the rescue aid (November 2007) that Varvaressos had not received rescue or restructuring aid, even though it had been granted a State guarantee in May 2007.

(126) According to Article 9 of the Procedural Regulation, the Commission may revoke a decision taken pursuant to Article 4(3), after having given the Member State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure, which was a determining factor for the decision.

(127) In the case at hand, the Commission was not aware that Varvaressos had already received aid before, while already being in difficulty. Therefore, the 'one time, last time' principle was not examined and the aid already granted was not taken into account in the rescue aid calculation.

(128) With its opening decision of 9 March 2010, the Commission gave Greece the opportunity to submit its comments on the fact that the Commission's rescue aid decision of July 2008 was based on the wrong information provided by the Greek authorities that Varvaressos had not received rescue or restructuring aid before. In its comments, Greece acknowledged having granted the State guarantee of May 2007. However, Greece argued that the 2007 guarantee did not constitute State aid (see recital 34 above). The Commission cannot accept Greece's arguments, because either they are based on hypothetical statements and non-State aid criteria or distort the correct sense of credit rating.

(129) On the basis of the above, the Commission's rescue aid decision of July 2008 has to be revoked.

9. **CONCLUSION**

(130) The Commission concludes that the aid measures under scrutiny are compatible with the internal market, if certain conditions are respected,

([26]) OJ L 124, 20.5.2003, p. 36.

HAS ADOPTED THIS DECISION:

Article 1

The Commission decision of 16 July 2008 approving the notified rescue aid in favour of Varvaressos is revoked on the grounds of incorrect information provided during the procedure which was a determining factor for the decision, in accordance with Article 9 of Regulation (EC) No 659/1999.

Article 2

The aid which Greece has in part implemented and is planning in part to implement for Varvaressos S.A. amounting to EUR 16,7 million is compatible with the internal market, subject to the conditions set out in Article 3.

Article 3

1. The plan for restructuring Varvaressos must be fully implemented.

2. Starting in the year 2011, Varvaressos's yearly turnover from sales in Greece must be reduced by 10 % compared with the turnover in sales in Greece in 2009. This limitation will apply for the calendar years 2011, 2012 and 2013.

3. The company will not be granted any kind of State aid until the end of 2015. This includes any funding from local, regional, national and EU sources.

4. The two prior conditions shall apply to Varvaressos, to all its future subsidiaries, and to any company controlled by the shareholders of Varvaressos to the extent that it uses productive assets (e.g. plants, production lines) currently belonging to Varvaressos or its subsidiaries. They shall also remain in force if Varvaressos is sold to and/or merged into a different legal entity, or if the assets of Varvaressos are sold as a going concern to a different legal entity.

5. For the purpose of monitoring compliance with all the prior conditions, Greece shall provide the Commission with 6-monthly reports on the state of progress of Varvaressos's restructuring. As regard the sales limitations, Greece shall provide the Commission with annual reports, sent at the latest at the end of January, giving the sales figures for the previous calendar year.

Article 4

Greece shall inform the Commission, within 2 months of notification of this Decision, of the measures taken to comply with it.

Article 5

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 14 December 2010.

For the Commission

Joaquín ALMUNIA

Vice-President