COMMISSION DECISION

of 11 March 2014

on State aid SA.34445 (12/C) implemented by Denmark for the transfer of property-related assets from FIH to the FSC

(notified under document C(2014) 1280)

(Only the English text is authentic)

(Text with EEA relevance)

(2014/884/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on Member States and other interested parties to submit their comments pursuant to those provisions [1],

Whereas:

1. PROCEDURE

(1) On 30 June 2009, Denmark injected DKK 1,9 billion as Tier 1 hybrid capital into FIH Erhvervsbank A/S including its subsidiaries ('FIH') under the Danish Act on State-Funded Capital Injections [2].

(2) On 6 March 2012 Denmark notified a package of measures in favour of FIH. By decision of 29 June 2012 ('the Rescue and Opening Decision') [3] the Commission approved those measures [4] on a temporary basis finding that them compatible with the internal market.

(3) At the same time the Commission initiated the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') because of doubts with regard to the appropriateness of the measures, the limitation of the aid to the minimum necessary and the own contribution of the bank, in particular in view of the potentially low remuneration of the impaired asset measures granted in favour of FIH.

(4) On 2 July 2012 FIH paid back the capital of DKK 1,9 billion it had received in 2009 under the Danish Act on State-Funded Capital Injections [5].

(5) In line with the Rescue and Opening Decision Denmark submitted a restructuring plan on 4 January 2013 [6] which it subsequently modified. On 24 June 2013 Denmark submitted the final update of that plan ('the restructuring plan').

(6) On 3 February 2014 Denmark submitted a term sheet setting out the terms for the restructuring of FIH, which Denmark has committed to implement (the 'commitments').

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[1] OJ C 359, 21.11.2012, p. 1.

[2] 'Act on State-Funded Capital Injections' (lov om statsligt kapitalindskud) means the Act Number 67 of 3 February 2009 and executive orders issued under it. The Act was approved by Commission Decision of 3 February 2009 (OJ C 50, 3.3.2009, p. 4).

[3] Commission Decision of 29 June 2012 in case SA.34445 (2012/C) (ex 2012/N) (OJ C 359, 21.11.2012, p. 1).

[4] Those aid measures are described in detail in recitals 10 to 23 of the Rescue and Opening Decision.

[5] See recital 1.

[6] The plan was subject to subsequent amendments.

(7) The Danish authorities provided additional information during the period between 30 June 2012 and 3 February 2014.

(8) For reasons of urgency, Denmark accepts that exceptionally this Decision be adopted in the English language ([7]).

2. DESCRIPTION

2.1. THE BENEFICIARY

(9) FIH is a limited liability company regulated by the Danish banking legislation and supervised by the Danish Financial Supervisory Authority ('FSA'). It was founded in 1958 and has its headquarters in Copenhagen, Denmark. It is wholly owned by FIH Holding A/S ('FIH Holding').

(10) The FIH Group consists of FIH Holding and FIH Erhvervsbank, together with the latter's wholly-owned subsidiaries. Those subsidiaries are FIH Partners A/S (covering the business segment corporate finance), FIH Kapital Bank A/S ('FIH Kapital Bank') ([8]), FIH Realkredit A/S, which is a mortgage credit institution, and FIH Leasing and Finans A/S. FIH's activities consist of three segments: banking ([9]), markets ([10]) and corporate finance ([11]).

(11) As of 31 December 2012, FIH Holding was owned by the Danish Labour Market Supplementary Pension Fund which held 48,8 % of the shares of FIH Holding, by PF I A/S ([12]) which held 48,8 % of the shares, and by the Executive Board and executive employees who held 2,3 % of the shares, with FIH Holding itself holding 0,1 % of the shares.

(12) At the end of 2011 FIH Group had a balance sheet of DKK 84,16 billion (EUR 11,28 billion) and its total capital ratio ([13]) was 17,8 % which increased to 21,2 % by 31 December 2012. On 31 December 2012 FIH had a balance sheet of DKK 60,76 billion (EUR 8,1 billion) ([14]) and risk weighted assets ('RWA') of DKK 29,84 billion (EUR 3,98 billion).

(13) FIH is a focused niche bank specialising in medium-term financing as well as risk management advisory and corporate finance services for Danish enterprises with a balance sheet exceeding DKK 10 million (EUR 1,34 million). Originally FIH's banking activities covered three segments: Property Finance, Acquisition Finance and Corporate Banking.

(14) FIH constituted Denmark's sixth-largest bank by working capital ([15]) at the time of the Rescue and Opening Decision, servicing more than 2 000 banking customers at group level. The market share of FIH in bank and mortgage lending at that time was estimated at 1,7 %. It had a market share in SME/corporate lending of 2,5 %. In June 2012 FIH had a market share of 2,1 % of the total market for lending to corporates (both banks and mortgage banks).

([7]) Language waiver dated 10 December 2013.

([8]) It merged with FIH Erhvervsbank A/S as continuing company on 23 August 2013.

([9]) Originally banking consisted of: (1) corporate banking, which is responsible for FIH's lending activities, in particular to small and medium-sized enterprises; (2) acquisition finance, providing structured financing for mergers and acquisitions in the Scandinavian market; and (3) property finance, providing capital and advisory services to property investors. Property finance is no longer a business area in FIH, as explained in recital 40.

([10]) The markets segment provides financial advisory services for large and medium-sized companies relating, for example, to risk management, liability management and capital structure. The markets segment is also responsible for handling trading and customer-oriented activities in the interest rate, foreign exchange and securities markets.

([11]) The corporate finance segment provides financial advisory services on mergers and acquisitions, privatisations and capital injections, etc.

([12]) PF I A/S is the holding company for for the ownership of FIH Holding of PFA Pension's, Folksam Ömsesidig Livsförsäkring/Folksam Ömsesidig Sakförsäkring's and C.P. Dyvig & Co A/S.

([13]) The restructuring plan uses the term 'Solvency Ratio'. However, the term 'solvency ratio' in financial reporting means the ratio of a company's profits after tax and depreciations to its total liabilities. It therefore measures the ability of a company to meet its debts. It quantifies the size of a company's income after tax, not counting non-cash depreciation expenses, in contrast to its total debt obligations. It also provides an assessment of the likelihood of a company to continue congregating its debt obligations. Therefore, where the restructuring plan uses that term the present decision refers to the 'Total Capital Ratio', that is to say, the ratio of the bank's total capital to its total risk weighted assets.

([14]) Exchange rate of 31 December 2012: EUR 1 = DKK 7,4610 (ECB).

([15]) Working capital is defined as the sum of deposits, issued bonds, subordinated debt and equity.

(15) FIH Group has performed weakly in recent years. On 25 June 2009, it applied to the Danish Recapitalisation Scheme ([16]) and on 30 June 2009 it received a State-funded Tier 1 hybrid capital injection of DKK 1,9 billion in the form of a loan note. The coupon of that note amounted to 11,46 % per annum. Over the entire year 2009 FIH Group reported a pre-tax loss of DKK 148 million (EUR 19,9 million).

(16) Though FIH Group had a pre-tax profit of DKK 316 million (EUR 42,5 million) in 2010, that profit was mainly driven by non-recurring positive market value adjustments, including unrealised gains on an indirect holding. In 2011 FIH Group reported a pre-tax loss of DKK 1,27 billion (EUR 170 million) due to impairment charges on loans and negative market value adjustments. On 31 December 2012 it had a pre-tax loss of DKK 47 million (EUR 6,4 million). For the end of 2013 a pre-tax profit of DKK 95 million (EUR 12,8 million) has been budgeted. In 2013 the third quarter net profit for continuing operations before taxation was DKK 23,2 million (EUR 3,09 million). For total operations after taxation FIH recorded a loss of DKK 20,1 million (EUR 2,71 million) in 2012.

(17) In 2009 and in 2010 Moody's downgraded FIH's rating from A2 to Baa3. In 2010 the owners of FIH (the Icelandic Financial Supervisory Authority and the Central Bank of Iceland) ([17]) agreed to sell their shares in FIH to the current owners. That new ownership was expected to bring about significant improvement to the credit rating of FIH, as the prior ownership by Kaupthing Bank hf had been one of the main concerns for Moody's regarding FIH. However, mainly due to circumstances specific to FIH such as the refinancing of government-guaranteed bond issues, credit quality and exposure to the property sector, in 2011 Moody's downgraded FIH further to B1 with negative outlook.

(18) The rating downgrade in 2011 was in line with the market prices at that time for FIH bonds that did not benefit from a government guarantee: FIH's 2-4 year debt was priced at spreads of 600-700 basis points ('bps') over the equivalent maturity EURIBOR-linked swap.

2.2. THE EVENTS TRIGGERING THE AID MEASURES

(19) In 2011 and 2012 FIH anticipated difficulties with regard to debt that would mature in 2012 and 2013. The resulting funding challenge was mainly caused by a decline in FIH's credit rating and changed capital market conditions ([18]). In July 2009 FIH had already obtained liquidity assistance in the form of a government guarantee totalling DKK 50 billion (EUR 6,31 billion), which it had wholly utilised. It had also obtained a Tier 1 hybrid capital injection of DKK 1,9 billion (EUR 255 million) from the State under the Danish Guarantee Scheme. As of 31 December 2011 FIH held government-guaranteed bonds amounting to DKK 41,7 billion (EUR 5,56 billion), which constituted 49,94 % of the balance sheet of the bank.

(20) With those State-guaranteed bonds maturing in 2012 and 2013, FIH was about to face a funding problem. The FSA estimated, in the second half of 2011, that there was a relatively high risk that FIH would be unable to comply with liquidity requirements in the following 12-18 months as a result of its expected inability to obtain funding from the open markets.

(21) In order to address those emerging liquidity problems FIH was to carry out a substantial reduction of its balance sheet.

2.3. THE AID MEASURES

(22) To solve the liquidity problems that FIH was then expected to face, in July 2012 Denmark proposed a complex impaired asset measure to transfer problematic property finance assets of FIH to a new subsidiary of FIH Holding ('Newco'). At the same time, Denmark committed to provide funding and recapitalisation to Newco whenever needed.

([16]) See footnote 2.
([17]) In 2010, FIH Group was put up for sale by its previous owner, Icelandic Kaupthing Bank hf, which went into winding-down proceedings in 2008.
([18]) See recital 17.

(23) The 'measures' ([19]) consisted of two phases of a share purchase agreement ([20]) and several side agreements under which assets of FIH Group amounting to approximately DKK 17,1 billion (EUR 2,3 billion or 28 % of total assets of FIH at the time of the transfer) were transferred to Newco. Newco ([21]) was then purchased by the Danish Financial Stability Company ('FSC') ([22]), after which it would be wound up in an orderly manner under the approved Danish winding-up scheme ([23]), in accordance with the scheme's principles ([24]). The winding-up process is expected to last until 31 December 2016 but it could take until 31 December 2019. The FSC was able to finance almost the entire capital amount of DKK 2 billion for the purchase of Newco through an early redemption of the DKK 1,9 billion Tier 1 hybrid capital loan note which had been granted to FIH ([25]) by the State in 2009. The FSA approved the repayment by FIH of the State capital injection on 2 July 2012, based on a solvency and liquidity analysis that included the asset transfer measure ([26]).

(24) In phase 1 there was a demerger of the assets and liabilities of FIH Erhvervsbank and FIH Kapital Bank into Newco, the new subsidiary owned by FIH Holding. The assets transferred to Newco were real estate loans and securities amounting to DKK 15,2 billion (EUR 2,1 billion) and derivatives of DKK 1,6 billion (EUR 215 million). The initial liabilities of Newco consisted of two loans (Loan One and Loan Two) with a remaining equity part of DKK 2 billion.

(25) Loan One was a loss-absorbing loan from FIH to Newco of DKK 1,65 billion (EUR 221 million). That loan will only be repaid by Newco to FIH if the winding-up process of the assets transferred to Newco generates proceeds in excess of the FSC's purchase price of DKK 2 billion (EUR 268 million). As for remuneration for Loan One, Newco is to pay the five-year Danish Government Bond rate plus 1,15 % ([27]).

(26) Loan Two was a loan from FIH Erhvervsbank to Newco of approximately DKK 13,45 billion (EUR 1,8 billion). As remuneration for Loan Two, Newco is to pay FIH the DKK CIBOR three-month rate plus 1,12 %. The maturity of Loan Two matches the maturity of loans which had previously been issued by FIH under the State guarantee. Loan Two and those matching loans thus fully matured in mid-2013 and it was contractually agreed that, as Newco repaid loans to FIH, FIH would repay outstanding loans that were guaranteed by the government. As the notional amount of Loan Two has been repaid by Newco to FIH, the FSC has provided funding to Newco in the amounts that were necessary to refinance Newco's assets.

(27) In phase 2, which was executed immediately after the completion of phase 1, the FSC bought all the shares in Newco from FIH Holding. The price initially paid ([28]) by the FSC to FIH Holding for Newco was the equity capital (net worth) as of 1 January 2012, which amounted to DKK 2 billion.

(28) FIH Holding could then use the cash proceeds as immediate liquidity to pay back some of the government-guaranteed debt. At the same time, the asset transfer led to a replacement of real estate loans by loans to a government-sponsored entity, thus reducing FIH's RWA by about DKK 10 billion ([29]).

([19]) See footnote 4. The measures are further described in recitals 22-30 of this Decision.
([20]) Closing Memorandum between FIH and the FSC, dated 2 July 2012.
([21]) Newco has, since its acquisition by the FSC, been renamed 'FS Property Finance A/S' but continues to be located at the same address as FIH's head office.
([22]) The FSC is the Danish State-owned vehicle which takes care of the different measures entailing the use of State resources for financial institutions in the context of the financial crisis.
([23]) See Decision N 407/10 of 30 September 2010 (OJ C 312, 17.11.2010, p. 7); Decision SA.31938 (N 537/10) of 7 December 2010 (OJ C 117, 15.4.2011, p. 1); Decision SA.33001 (11/N) — Part A of 28 June 2011 (OJ C 237, 13.8.2011, p. 1); Decision SA.33001 (11/N) — Part B of 1 August 2011 (OJ C 271, 14.9.2011, p. 1); Decision SA.33757 (11/N) of 9 December 2011 (OJ C 22, 27.1.2012, p. 2); and Decision SA.34227(12/N) of 17 February 2012 (OJ C 128, 3.5.2012, p. 1) as well as Decision SA.33639 (11/N) – Rescue Aid for Max Bank of 6 October 2011 (OJ C 343, 23.11.2011, p. 10).
([24]) The objective of the scheme is to preserve value in failing banks by means of a controlled winding-up on a going concern basis instead of those banks being subject to bankruptcy proceedings. Under the original scheme, equity holders and subordinated bond holders of the failing bank are fully wiped out. Assets and remaining liabilities are transferred to the FSC as the State's winding-up company. Sellable assets are sold to investors, and the remaining assets are put in run-off. The revenues generated by the sale and run-off of assets are used to compensate creditors (senior bond holders and depositors).
([25]) See recitals 1 and 4.
([26]) Confirmed by a letter from the FSA dated 18 April 2013, submitted to the Commission by electronic mail on 29 April 2013.
([27]) Contractually, Newco is to pay the two-, three-, or five-year Danish Government effective Bond rate plus 1,15 % depending on which maturity is chosen by FIH. However, it has de facto become the five-year rate.
([28]) The purchase price consists of a fixed amount of DKK 2 billon and a variable amount, depending on the terminal realisation value of Newco, which is decribed in recital 30.
([29]) Confirmed by a letter of the Danish supervisory authority FSA, dated 18 April 2009, see also footnote 26.

(29) In addition to the share purchase agreement, the measures include several side agreements between FIH Holding and the FSC:

(a) on 1 July 2012 ([30]) FIH Holding gave an unlimited loss guarantee to the FSC guaranteeing that when resolving Newco the FSC would fully recover all its funding and the capital it had provided to Newco. Remuneration for that guarantee is included in the variable purchase price of the share purchase agreement;

(b) on 1 July 2012 the FSC committed to provide funding to Newco once Loan Two had matured (in mid-2013). The FSC receives interest from Newco equivalent to the EU Base rate plus 100 bps. To implement that commitment, the FSC has provided Newco with a DKK 13 billion (EUR 1,64 billion) loan facility for which it will not receive any facility fee;

(c) the FSC has committed to fund and recapitalise Newco if it is necessary to do so prior to the final winding-up process.

(30) At Newco's resolution, the FSC is contractually entitled to recover at least its initial DKK 2 billion investment net of costs incurred by FIH and the FSC in the transaction. If the winding-up process generates proceeds of less than the purchase price of DKK 2 billion, FIH will cover the difference by Loan One, the loss-absorbing loan, and by the guarantee respectively. If the proceeds of the winding-up process exceed DKK 1,5 billion, an additional 25 % of any excess amount will be paid to the FSC in addition to the DKK 2 billion minimal amount it is to receive. Any additional excess amount will be paid to FIH Holding. In practice, if the final proceeds are below DKK 1,5 billion, the FSC will obtain DKK 2 billion. if, for example, the final proceeds are DKK 1,9 billion, the FSC will receive DKK 2,1 billion.

2.4. THE FORMAL INVESTIGATION PROCEDURE

(31) In the Rescue and Opening Decision, the Commission raised doubts with regard to the proportionality of the measures, their limitation to the minimum necessary, whether there was an adequate own contribution by FIH Group and whether there was a sufficient limitation of the distortion of competition.

(32) Those concerns originated from the high intricacy of the measures which appeared to be unnecessarily complicated to fix the future liquidity challenges of FIH. In particular it was unclear to which extent the various side agreements and the interconnectedness in the remuneration formula were necessary, appropriate and well-targeted for the purposes of the 2008 Banking Communication ([31]).

(33) Further, at the time of the Rescue and Opening Decision FIH intended to aggressively enter the internet retail deposit market by pursuing a 'price leadership' role. That entry into the internet retail deposit market was a core component of FIH's strategy to address its funding problems.

(34) Furthermore, the suggested remuneration to be paid to the FSC for the transferred assets and liabilities appeared very unlikely to be in line with the remuneration level referred to in point 21 of the Impaired Asset Communication ([32]) according to which banks should bear the losses associated with impaired assets to the maximum extent. Point 21 requires a correct remuneration of the State for any asset relief measures to ensure equivalent shareholder responsibility and burden-sharing irrespective of the specific model chosen.

([30]) An agreement in principle, outlining many of the details of the share purchase agreement and its side agreements was signed on 1 March 2012, with the final closing documents signed on 1 July 2012.

([31]) Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8).

([32]) Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector (OJ C 72, 26.3.2009, p. 1).

3. **RESTRUCTURING**

3.1. THE RESTRUCTURING PLAN

(35) On 24 June 2013 Denmark presented a final updated version of the restructuring plan for FIH Group for the period 2012 to 2016. The plan includes a best case and a worst case scenario [33] with the aim of demonstrating FIH's ability to restore its long-term viability, sufficient burden-sharing and adequate measures to address distortion of competition measures.

(36) The restructuring plan is based on assumptions in respect of the evolution of gross domestic product ('GDP') growth as projected by the International Monetary Fund ('IMF'), and the evolution of short- and mid-term interest rates changes as based on the Danish Ministry of Business and Growth's estimate of developments in short-term interest rates until 2014. The plan assumes a moderate recovery of GDP growth in 2013 and thereafter.

(37) In the best case [34] FIH is expected to continuously improve its results until 2016. The pre-tax return on normalised equity [35] on group level is budgeted to be 10,3 % on 31 December 2013 and 11,2 % [36] on 31 December 2016.

(38) The worst case scenario [37] is based on less favourable market assumptions. They include among others worsening market conditions for funding to banks both in terms of volume and price; lower demand for loans and advisory services; unfavourable movement in foreign exchange rates, interest rates, etc.; and impairment charges remaining above historical levels through the business cycle. According to FIH's estimations those developments together would lead to a pre-tax return on normalised equity on group level of 0,9 % on 31 December 2013 and 2,0 % on 31 December 2016.

(39) In both cases there is a relatively low level of return on equity which is mainly due to the dividend ban and the ban on coupon payments foreseen in Denmark's commitments made in the context of the State aid investigation. As a result of those commitments, FIH Group would retain profits until the end of the restructuring period and the settlement of the measures.

(40) Originally FIH's banking activities covered three segments: Property Finance, Acquisition Finance and Corporate Banking. The business segment Property Finance has been discontinued as part of FIH's restructuring, as loans within Property Finance were sold to the FSC in 2012. In addition, the loans in its Acquisition Finance business unit will be phased out. Thus, Corporate Banking will be the only business unit to be continued. As of March 2013 the number of full-time employees was down to 214.

(41) According to the restructuring plan the balance sheet was to decrease to DKK 27,68 billion (EUR 3,74 billion) by 31 December 2013. On 31 December 2016 FIH projects a total capital ratio of 19,6 %.

(42) The statutory liquidity ratio [38] which on 31 December 2012 was 214 %, is expected to be 239,7 % on 31 December 2013.

(43) Over the restructuring period the total capital ratio is expected to amount to 19,6 % and the statutory liquidity ratio to 175 % and thus significantly exceed the regulatory requirements.

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(33) With various sub-scenarios.

(34) Sub-scenario with lower impairment charges.

(35) Calculated on the basis of the amount of equity corresponding to a core capital ratio of 16 %, given the risk positions of the bank. Assuming no effects on the profit/loss.

(36) It is worth mentioning that assuming a net cost increase in 2013 of DKK 310,25 million through a payment in accordance with the Impaired Asset Communication + interest and DKK 61,7 million of administration fee refunds (see further in recital 117 ff.), the net profit and loss figure for the bank is likely to be negative in 2013 in both scenarios. FIH has largely offset that effect through a liquidity management exercise in December 2013. The effect in 2016 would be negligible, as the figures are quoted as 'normalised' return on equity.

(37) Sub-scenario with high impairment charges.

(38) The Statutory Liquidity Ratio is defined as current statutory liquidity position in per cent of the statutory liquidity requirement. A ratio of 100 % is required to fulfil the statutory requirement, and a ratio of 214 % is thus more than double the statutory requirement.

(44) The pre-tax return on so-called normalised equity ([39]) according to the best case scenario ([40]) of the restructuring plan is budgeted to be 9 % on 31 December 2013 and 10,1 % on 31 December 2016. Those figures are 0,9 % and 4,7 % respectively in the worst case scenario ([41]).

(45) The situation of the bank has significantly improved since mid-2011 when the FSA anticipated that FIH would face major liquidity needs that it would be unable to meet. FIH repaid the remaining outstanding government-guaranteed bonds and the refinancing challenge was thus solved by 13 June 2013. In addition, FIH redeemed the government's Tier 1 hybrid capital on 2 July 2013.

(46) At present, FIH has no problems in meeting either its regulatory solvency or its liquidity requirements.

3.2. ACTIONS TAKEN BY DENMARK TO ADDRESS THE CONCERNS RAISED BY THE COMMISSION

(47) In order to address the concerns raised by the Commission in the context of the Rescue and Opening Decision, Denmark and FIH Group have taken a series of actions.

(48) FIH has made a 'one-off' payment to the FSC of DKK 310,25 million (EUR 39,12 million) with a value date of 4 December 2013 ([42]).

(49) FIH paid, with value date 18 December 2013, an amount of DKK 61,7 million to Newco as partial repayment of fees received under the administration agreement for 2012, and retroactively reduced the management fees for administration and hedging for 2013 charged to Newco to 0,05 % of the outstanding loan portfolio.

(50) FIH reduced its total assets from DKK 109,3 billion (EUR 14,67 billion) on 31 December 2010 to DKK 60,80 billion (EUR 8,16 billion) by 31 December 2012, corresponding to a decrease of 44 %.

(51) FIH further reduced its loan book from DKK 58,0 billion (EUR 7,79 billion) on 31 December 2010 to DKK 16,2 billion (EUR 2,17 billion) by 31 December 2012, that is to say, by DKK 41,8 billion in total corresponding to a decrease of 72 %.

(52) In addition, FIH significantly reduced the risk lines in Markets ([43]).

(53) FIH reduced the number of its full-time employees from 356 at 31 December 2010 to 214 by 31 March 2013, which corresponds to a reduction of 41 %.

(54) In addition, FIH has reduced its geographical presence as two of its four regional offices have been closed.

3.3. COMMITMENTS PROPOSED BY DENMARK

(55) In view of the concerns raised by the Commission in the Rescue and Opening Decision and to ensure compatibility with the Impaired Assets Communication, in particular with regard to the proper remuneration of the asset transfer measures, Denmark has provided additional commitments which are set out in recitals 55 to 62.

([39]) See footnote 35.
([40]) Best case assumes a lower average funding cost and higher income from Markets and Corporate Finance activities.
([41]) Worst case assumes significant negative developments at macroeconomic level with both lower credit demand and historically high impairment charges (although assumed to decline over the restructuring period).
([42]) With effect from 4 December 2013, FIH transferred an amount of DKK 310,25 million to the FSC (the amount had been deposited on 30 September 2013). In addition, FIH transferred an amount of DKK 6 575 342.
([43]) For example, reduction of the Value at Risk from DKK 50 million (EUR 6,71 million) on 31 December 2011 to DKK 35 million (EUR 4,7 million) on 22 April 2013.

(56) FIH will make an annual payment of DKK 12,1 million (EUR 1,61 million) to the FSC from 30 September 2014 until final settlement of the transaction with an ACT/ACT ([44]) pro rata temporis payment for the last period at settlement date (this can be up to 31 December 2019).

(57) FIH will reduce the management fees it makes to the FSC or make a lump sum payment to the FSC, with a present value of the reduction or of the payment equivalent to DKK 143,2 million (EUR 19,09 million).

(58) In order to attain that outcome, FIH has paid an amount of DKK 61,7 million to Newco as a partial repayment of fees received by FIH from Newco under the administration agreement for 2012. FIH has also reduced the management fees for administration and hedging charged to Newco to 0,05 % on the outstanding loan portfolio for the year 2013.

(59) In addition FIH will reduce the management fees for administration and hedging charged to Newco to 0,05 % per annum of the outstanding loan portfolio, from 1 January 2014.

(60) FIH will pay an additional annual fee to the FSC of DKK 47,2 million (EUR 6,29 million) in the event that the FSA changes its regulatory stance as regards capital requirements at holding level so that FIH's regulatory lending capacity would remain unrestricted by the capital position of FIH Holding.

(61) The commitments also provide for a withdrawal of FIH from certain business lines (property finance, private equity, private wealth management) as well as for a set of behavioural restrictions including a price leadership ban for deposits, a ban on commercially aggressive practices and a ban on acquisitions, as well as for the liquidation of FIH Realkredit A/S which was the mortgage bank of FIH Group. FIH Realkredit A/S was liquidated in 2013.

(62) A full list of commitments ([45]) is set out in the Annex.

4. **POSITION OF THE DANISH AUTHORITIES**

(63) When it notified the measures to the Commission, Denmark's initial position ([46]) was that the transfer of equity to Newco involved State aid to Newco, but that any such aid would be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

(64) In the same submission Denmark claimed that the FIH Group had not received any State aid as the FSC would pay the market price for Newco. While not quantitatively substantiating that claim, whether by making reference to relevant market data or explaining the reasoning behind transaction costs, Denmark emphasised that:

(a) procedures were in place to establish the market price of the transfer;

(b) initial funding and guarantees were provided by FIH Group;

(c) FIH Group has to pay all transaction and winding-up costs; and

(d) FIH Group made additional commitments in connection with the transfer, in particular the obligation to submit a business plan.

([44]) Referring to the interest payment day count convention as the actual number of days in the last period (from the last payment date to the next) divided by the actual number of days between two consecutive 30 Septembers.

([45]) Comprised in the so-called 'Term sheet'.

([46]) SANI notification 6783 dated 2 March 2012, FIH Note to the Commission — final, Section 3.

(65) Against that background Denmark concluded that FIH would not receive an advantage. In the event that the Commission were to take a different view on that matter, Denmark submitted that any aid to FIH could be declared compatible with the internal market as the arrangement amounted to a restructuring of FIH in compliance with the Restructuring Communication [47].

(66) Denmark followed up its initial submission with a presentation on 20 March 2012 [48] in which it pointed out that FIH had not requested the measures and that at the time FIH had concluded those measures it had had deleveraging alternatives which supported the claim that the transaction was negotiated on market terms. It also claimed that an initial write down on the book value of the assets of DKK 1,4 billion and a further risk adjustment discount of DKK 1,3 billion corresponded to a market price. Moreover, any earn-out losses would be corrected through the variable share purchase agreement formula, so that an effective *ex post* adjustment mechanism would ensure pricing in line with market conditions. Denmark did not elaborate on the amount of the proposed discount and risk adjustment or the reasons why they would lead to a market price.

(67) In subsequent correspondence with the Commission [49], Denmark asserted that that maximum loss to which the FSC was exposed was DKK 1,05 billion, that is to say, the difference between on the one hand the loss-absorbing loan of DKK 1,65 billion and on the other the sum of the book value write down and the FSC's preliminary risk adjustment amount which totals DKK 2,7 billion. It also claimed that the State enjoys a considerable reduction of its risk related to FIH State-guaranteed loans and a repayment by FIH of a previous capital injection of DKK 1,9 billion.

(68) By a memorandum submitted on 23 April 2012 [50], Denmark informed the Commission that it would 'not for the moment supply the Commission with further arguments regarding the use of the Market Economy Investor Principle.' At the same time, it provided some explanations as regards the valuation methodologies used by the FSC's legal advisor.

(69) Subsequently, on 16 May 2012, Denmark asserted that FIH Holding and the FSC had negotiated the transaction terms based on normal commercial considerations regarding the sharing of risk and profit and asserted that the transaction had been made on market terms. That statement was certified by the FSC's accountancy firm, KPMG [51].

(70) On 7 June 2012, Denmark submitted a KPMG report assessing the measures by considering all contributing elements at the same time. KPMG saw 'no reason to conclude that the terms of the agreement would not correspond to the risks for the FSC', citing the high level of collateral, the potential use of covered bonds, the loss-absorbing loan and a 25 % earn-out for the FSC.

(71) On 11 September 2012, in its reply to the opening of proceedings, Denmark did not directly contest the Commission's view that the measures constituted State aid, but it referred to its line of argument of 29 March 2012 [52], arguing that any transfer above market value would be compensated by the loss-absorbing loan and the price-adjustment guarantee granted by FIH Holding. Moreover, Denmark cited margin increases on renewals and a higher than anticipated redemption rate as examples to support that view, but without explicitly reiterating that the market economy operator principle ('MEOP') [53] should apply.

(72) Instead, Denmark argued that the measures are compatible, giving arguments to show that they are appropriate, that the aid is limited to the minimum necessary and that distortion of competition is limited [54].

(47) Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).
(48) The Transfer of Assets from FIH to the FSC, submitted by Denmark to the Commission on 20 March 2012.
(49) Eletronic mail by Denmark to the Commission on 29 March 2012.
(50) 'Answers to Questionnaire of 4 April 2012 regarding FSC's purchase of shares from FIH Holding', submitted by Denmark to the Commission on 23 April 2012.
(51) 'Statement — FIH Erhvervsbank', undated, submitted to the Commission on 16 May 2012.
(52) See footnote 49 and recital 67.
(53) Market economy investor principle (MEIP) is a term equivalent to market economy operator principle (MEOP) for the purposes of this Decision. The term MEOP was adopted to cover the situation of investors and other market actors, such as lenders, creditors, etc.
(54) Submission of 11 September 2012, Sections 2, 3 and 4.

(73) The Danish authorities also recalled their position in the note of 23 April 2012 that the measures were the result of negotiations between FIH and the FSC ([55]) and argued that some of the guidance in the Banking Communication ([56]) had necessitated a degree of complexity in the measures ([57]), disputing that complexity might render them inappropriate.

(74) When the Commission informed Denmark about the expert assessment as regards the market value and real economic value of the measures, Denmark contested the results and submitted a number of questions and clarifications between 7 February and 11 September 2013.

(75) Denmark commented that the aid was limited to the minimum necessary ([58]), because it assumed the transfer value would not exceed the real economic value, but added that only a final valuation by the Commission could establish that fact.

(76) Aside from the valuation aspects, Denmark noted the positive effects of the transfer on the regulatory position of FIH, in line with the goal of restoration of long-term viability contained in the restructuring plan.

(77) Denmark also argued that FIH's deposit acquisition strategy is independent of the State aid measure and does not convey the intention of a 'price leadership' role, but is an essential part of its funding strategy. Nevertheless, to alleviate the Commission's concerns, Denmark has provided a commitment that FIH will adhere to a price leadership ban.

5. **ASSESSMENT**

5.1. EXISTENCE OF STATE AID

(78) According to Article 107(1) of the Treaty, State aid is 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, in so far as it affects trade between Member States.

(79) The Commission considers that the measures in favour of FIH described in Section 2.3 should be considered together as a package. The measures are part of a single transaction as their elements are interdependent (chronologically and in terms of structure) and have been designed altogether in order to address FIH's funding problem.

5.1.1. **State resources**

(80) The measures described in Section 2.3 involve State resources as they are directly financed by the FSC, which is a State-owned company (through the Danish Ministry of Business Affairs) responsible for providing different kinds of measures to Danish banks in the context of the financial crisis ([59]). First, the FSC is providing DKK 2 billion in cash for the Newco share purchase agreement. Second, the FSC has committed to fund Newco's assets while FIH repays its State-guaranteed loans. That commitment can exceed DKK 13 billion. Third, the FSC is foregoing an amount of interest in order to pay for a guarantee from FIH Holding.

5.1.2. **Existence of an advantage**

(81) The measures described in Section 2.3 provide an advantage as they result in an asset relief for FIH, thus improving the group's capital ratios, while at the same time enabling the bank to better address its funding problems.

(82) The Danish authorities have argued that the measures respect the MEOP and hence do not constitute State aid to FIH Group.

([55]) Submission of 11 September 2012, p. 5.
([56]) See footnote 31.
([57]) Submission of 11 September 2012, Section 2, page 5.
([58]) Submission of 11 September 2012, p. 6.
([59]) The FSC's activities are governed by the Act on Financial Stability and the Financial Business Act and executive orders issued in pursuance thereof. In addition, the FSC is subject to special provisions regarding State-owned companies. Other measures previously provided by the FSC were found imputable to the Danish State in the Commission Decision NN 51/08 of 10 October 2008 ('Guarantee scheme for banks in Denmark') (OJ C 273, 28.10.2008, p. 2).

(83) The Commission will therefore assess whether the measures in favour of FIH Group fulfil the MEOP test. That test examines whether a market operator would have taken part in a given operation on the same terms and conditions as the public investor at the time when the decision to make public resources available was taken. There is no State aid when public funds are granted in circumstances and on terms which correspond to market conditions.

(84) In that respect in the particular case of FIH Group the Commission considers that it is relevant to examine: (i) whether initially there had been a private investor willing to finance the measures on the same terms and conditions as the Member State; (ii) if so, what was the return on investment it demanded in comparison with the return for the State; and (iii) in the absence of private interest, what the expected return ([60]) and the distribution of the potential returns from the measures for the State would be, in comparison to those a market investor would expect if he was to undertake the measures under normal market economy conditions. If the State accepts those conditions or better, the measures can be considered to be carried out on market terms. In particular, it is important to check whether the transaction in its entirety generates positive cash flow, because no private operator, aiming at maximising of its profit, would enter a loss-making operation.

(85) The most straightforward evidence showing that a transaction is in line with the MEOP is that the terms of the deal would not only be acceptable to a hypothetical market economy operator, but that there is actually such an operator participating in the same investment on the same terms as the State. The presence of other investors provides a benchmark for the Commission to make its assessment of the applicability of the MEOP.

(86) At the time Denmark granted the measures, there was no market participant prepared to grant similar measures to FIH as those which were granted by entities under the control of the State. In particular, neither the consortium of owners nor any third party expressed any intention to invest in FIH. The Commission has no grounds to conclude that under those circumstances a market economy operator would be willing to participate in the measures. The absence of private interest is an indication of the financial difficulties and weak position of the bank.

(87) In the absence of an operator investing on the same terms as the State, a measure can still be still free of aid, if in similar circumstances a private operator would have granted the same funding, asking a return at least as high as the return the State received. That assessment should, in principle, be based on a business plan taking into account available information and foreseeable developments at the time when the public funding was granted and it should not rely on any analysis based on a later situation.

(88) Furthermore, one of the situations in which it is hardest to apply the MEOP is where a company is already a beneficiary of State aid. In this case, FIH had already received a recapitalisation on 30 June 2009, which it repaid on 2 July 2012. The hybrid instruments used for the recapitalisation were remunerated at […] (*) %. FIH also participated in the Danish guarantee scheme. Whilst those facts do not exclude the application of the MEOP in this case per se, they are indicative of the difficulties faced by FIH and would affect the willingness of private investors to invest in the measures. The previous aid already distorts the economic circumstances, creating a perception of continued State support. In its evaluation, the Commission has taken the replacement of such advantages by new ones into consideration.

(89) The FSA was of the view that FIH was in a precarious position as there was significant risk that FIH would not be able to meet its statutory requirements as regards liquidity when its government-guaranteed debt expired. That situation could, accordingly, have led to a withdrawal of FIH's banking licence ([61]). The position of the FSA therefore supports the Commission's assessment that a market operator would have been unlikely to invest in FIH. While it can be argued that the FSA's report was not in the public domain, a market operator would have had access to the maturity profile of FIH's government-guaranteed debt and thus been able to derive the same conclusion.

(90) In the absence of an actual private investor, to further check the applicability of the MEOP the Commission has to assess whether the overall return of the measures in favour of FIH is equal to or higher than the expected return that a hypothetical private investor would demand in order to make that investment. The expected return of the

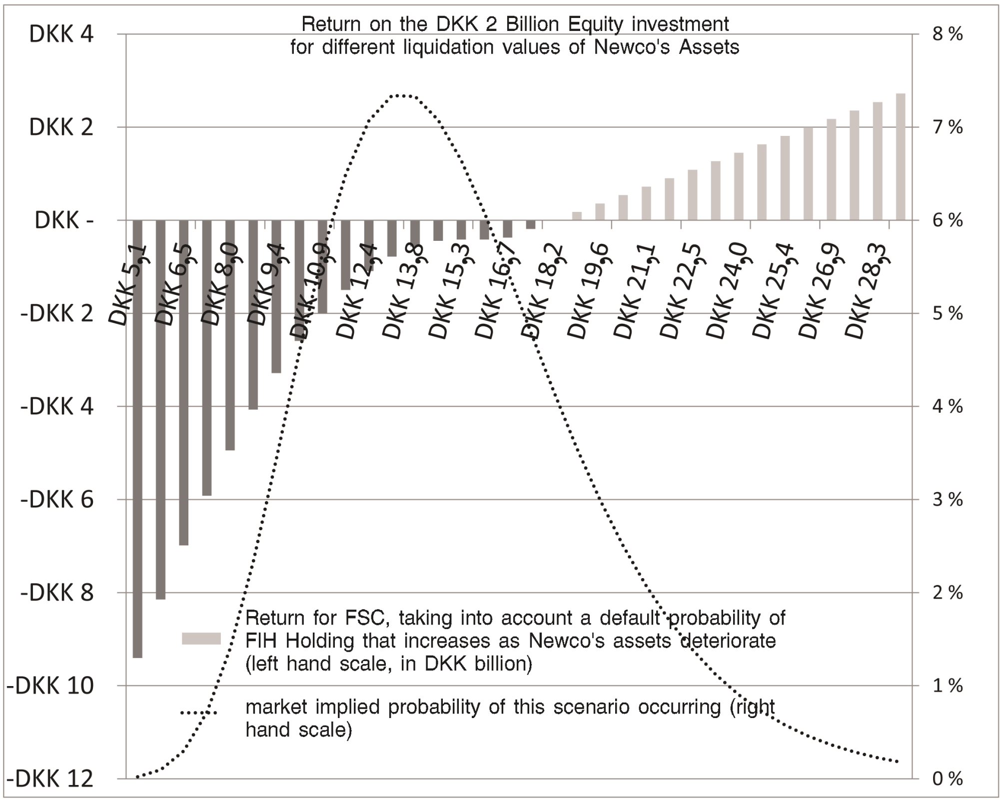
([60]) The expected return of the measures is calculated based on the future stream of cash flows, discounted to derive the net present value. See recitals 91 and 92.
(*) Confidential information.
([61]) Note by the FSA on FIH Erhvervsbank A/S dated 16 May 2012, submitted to the Commission.

measures depends on the future stream of revenue from cash flows, which has to be discounted to the present day to derive its net present value ('NPV') using an appropriate rate of discount.

(91) Relying on expert advice, the Commission estimated the market value of Newco's assets and modelled the expected return for the FSC for entire distribution of liquidation values of Newco's equity. In so doing, it has taken into account all elements of the share purchase agreement, such as the net liquidation value, revenues and costs incurred by the FSC and FIH Group and the purchase price adjustment, which included the loss-absorbing loan. The use of a distribution model is necessary to calculate the NPV of both the benefits stemming from a 25 % equity upside participation and the negative effects from the combination of large asset losses in Newco and a default of FIH Holding if such a scenario were to materialise [62].

Graph 1

Net Present Value of the measure for the FSC



(92) Graph 1 shows, for different liquidation values of Newco's assets (from DKK 5,1 billion to DKK 28,3 billion), the NPV of the share purchase agreement. Each of the scenarios occurs with a probability indicated by the dotted line against the right-hand scale (0,1 % to 7,5 %). In the most likely scenarios, the return is slightly negative.

[62] That phenomenon is known in financial markets as 'wrong way risk'. Following expert advice, the Commission assumed an average implied cumulative loss expectation of 16 %. However, it was distributed linearly across the negative returns, so that a 91 % loss expectation was applied in the extreme case that the asset portfolio were to devalue to a mere DKK 5,1 billion, and no loss expectation if the assets were to have a positive return.

(93) As can be seen from Graph 1, the overall probability-weighted average NPV of the share purchase agreement operation is also negative. The expert calculation shows it amounts to DKK 726 million. As a result, the share purchase agreement generates a loss instead of a profit. A market economy operator would have required an equity remuneration of at least 10 % ([63]) per annum on a similar DKK 2 billion investment, which would have generated about DKK 1,33 billion over the seven-year existence period of Newco. The Commission therefore concludes that no market economy operator would have been willing to invest on terms and conditions equivalent to those of the share purchase agreement. As a result the measures are not in line with the MEOP ([64]).

(94) It should be noted that in the calculation set out in recitals 91-93, the Commission took into account correspondence from Denmark dated 7 February and 11 March 2013, as well as subsequent correspondence ([65]) in which Denmark submitted previously undisclosed elements such as specific interpretations of the components of the variable purchase price, the reference date of the submitted loan exposure tapes that were earmarked for transfer from FIH to Newco, the evolution of the credit quality of the portfolio between December 2011 and September 2012 and a more granular analysis of the 'uncommitted credit lines' in the portfolio.

(95) Furthermore, the quantifications contained in Denmark's arguments ([66]) do not withstand scrutiny. First, the *ex ante* write-down amounts and risk provisions are not substantiated by an independent valuation report ([67]). Moreover, when considering the possibility of FIH Group not being able to honour *ex post* guarantees, there is no reason why the losses of Newco could not exceed DKK 2,7 billion, in which case the FSC (and hence the Danish government) would be contractually required to recapitalise Newco prior to its final liquidation. The Commission therefore concludes that the claim that any investment losses would be limited to DKK 1,05 billion is not substantiated.

(96) The fact that the terms of the measures were negotiated between the FSC and FIH Holding does not necessarily mean that the measures were executed on market terms. If Denmark intended to grant a substantial amount of additional aid to a bank facing grave liquidity difficulties, that fact alone would not exclude negotiations between the authorities and that bank on specific points of the transaction. Because of the bilateral aspect of the negotiation which took place, it lacked features such as those of an open non-discriminatory tender procedure or of a comparison to similar market transactions. Therefore, the conformity of the measures with market conditions does not follow automatically from the fact that negotiations occurred.

(97) As regards the KPMG report of 7 June 2012, the Commission agrees that due to the complexity of the measures their terms and conditions should be assessed in their entirety, because there are no individual provisions that can be allocated to the remuneration of each individual element. However, the analysis contained in that KPMG report overlooked the possibility of more extreme downside scenarios under which FIH Holding might not be able to honour its commitments. Moreover, the analysis failed to address a remuneration on the DKK 2,0 billion of capital invested. As indicated in recital 95, there cannot be conformity with market behaviour given that there is no

([63]) In evidence, the Commission notes that in a crisis situation recapitalisation market remuneration levels can easily exceed 15 % (J.P. Morgan, European Credit Research, 27 October 2008 and Merrill Lynch data on euro denominated Tier 1 debt for investment grade institutions). FIH itself could only obtain a recapitalisation from the Danish government in 2009, and had to pay an 11,45 % coupon to do so. Finally, in the beginning of March 2012, at the time of the signing of share purchase agreement, FIH's senior unsecured debt such as ISIN XS0259416757, with an annual coupon of 4,91 % and a 2021 maturity, was quoted in the market at 67 % of par value, implying a yield of more than 10,50 %. It is therefore logical to assume that equity, having a much more junior credit position, would require a much higher return for a market investor.

([64]) The lack of compliance with market behaviour is established without even taking into account other elements that are part of the closing agreement, such as the cost Newco is paying for its original funding and the loss-absorbing loan, as well as the administration fees paid to FIH for asset management and hedging, which are counted towards the total aid amount in Section 5.2

([65]) Summarised in two notes submitted by Denmark on 24 June 2013 and further clarifying notes on 29 August and 11 September 2013.

([66]) See recitals 66 and 67.

([67]) The submitted one-page summary document 'Brev vedr FIH nedskrivning' mentions a valuation team working on behalf of the FSC — and hence not independent — which concludes that a write-off of DKK 3,2 billion would be necessary under International Financial Reporting Standards rules. In addition, the risk adjustment of DKK 1,3 billion is justified by a 10 % collateral haircut, which itself is not explained. The non-independence of the valuation team is confirmed by the submission of Denmark of 11 March 2013, where the valuation exercise done by the FSC is described in greater detail.

annual remuneration on the capital and given a mere 25 % participation of any equity upside over a seven-year investment period, both on a standalone basis and as a parameter in the entire remuneration model ([68]).

(98) In that context, the Commission notes that under a previous Tier 1 hybrid recapitalisation ([69]) FIH had to pay an annual coupon of […] % per annum. Furthermore, in the beginning of March 2012 FIH's senior debt was quoted on the market with an implied yield exceeding 10 %. Therefore, the Commission's reasoning that a remuneration for capital should be at least 10 % is justified. A market operator would probably require a remuneration in excess of that level, in view of the particular risks related to the concentration and the inferior quality ([70]) of the real estate portfolio of Newco in addition to the junior credit rank of an equity investment. Therefore, a remuneration of 6,5 %, as put forward by Denmark ([71]) is clearly insufficient. It should also be noted that the transaction generates a negative expected return.

(99) The Commission concludes that the measures in favour of FIH are not in line with the MEOP.

5.1.3. **Selectivity**

(100) The use of the measures only concern FIH Group and Newco. The measure is therefore selective.

5.1.4. **Distortion of competition and effect on trade between Member States**

(101) The measures helped FIH strengthen its capital and liquidity position compared to that of its competitors who will not benefit from similar measures. The measure therefore enabled FIH to improve its market position. The measure can therefore lead to a distortion of competition.

(102) Given the integration of the banking market at European level, the advantage provided to FIH is felt by competitors both in Denmark (where banks from other Member States operate) and in other Member States. The measures must therefore be regarded as potentially affecting trade between Member States.

5.2. AMOUNT OF AID

(103) The total aid amount of the measures ([72]) is calculated to be approximately DKK 2,25 billion (approximately EUR 300 million). To quantify the amount of aid, the Commission has considered:

(a) a benefit related to the share purchase agreement formula (DKK 0,73 billion) ([73]);

(b) a foregone equity investment remuneration (DKK 1,33 billion) ([74]);

(c) excess interest payments by Newco on Loan One, the loss-absorbing loan, and the initial funding (DKK 0,33 billion); and

(d) excess administration fees (DKK 0,14 billion).

(104) As a mitigating factor, the Commission considered the early cancellation of government guarantees amounting to DKK 0,28 billion should be deducted from the total aid amount.

(105) As indicated in Section 5.1, the Commission took a holistic approach in valuing all interest and other cash flows, fees and guarantees given, taking into consideration:

([68]) A straightforward equity investment would entail a 100 % participation in the equity returns. The Commission is of the view that lowering that equity return to 25 % is insufficient compensation for FIH Holding guaranteeing to make good on equity losses, because of FIH's and FIH Holding's weak credit stance. In addition, the Commission wants to exercise care in valuing the contribution of the equity upside participation, as the majority of the underlying assets in Newco are real estate loans, whose return is limited to interest and principal, so that liquidation values of Newco's assets in excess of DKK 25 billion, as described in the model in recital 91 not only have a low probability of occurring, but might even be totally excluded. For that reason, adjusting the participation percentage to a higher figure (for example, 50 %) would underestimate the State aid amount in the model used.

([69]) See footnote 5.

([70]) The submission by Denmark of 2 April 2013 highlights that, with reference date June 2012, about 25 % of the assets are in default and another 25 % have a 'low' rating. The expert report (Advisory Services Related to Case FIH- 20 December 2012) further qualifies that statement by indicating that only 6,3 % of the portfolio has an FIH credit quality rating of 7 or higher, corresponding to 'Investment Grade'. Therefore, with more than 90 % of the portfolio being sub-investment grade and 25 % in actual default, the Commission believes an equity investment in such a portfolio to be risky and commanding a high remuneration.

([71]) Submitted in its notes of 11 March 2013 and reiterated in Annex 1 of its summary note of 24 June 2013.

([72]) Comprised in the share purchase agreement of 1 March 2012 and the following closing agreements of 2 July 2012.

([73]) See recital 97.

([74]) See footnote 73.

(a) Denmark's concern that the Commission would pay insufficient attention to at the economic reality of all aspects of the measures, such as the loss-absorbing loan; and

(b) the fact that not all elements of the transaction could be linked to a specific item in the remuneration formula.

(106) In line with the Impaired Asset Communication, the Commission has relied on external experts for valuation advice ([75]).

5.3. COMPATIBILITY

5.3.1. **Legal basis for the compatibility of the aid**

(107) Article 107(3)(b) of the Treaty provides that State aid may be considered to be compatible with the internal market where it is intended to 'remedy a serious disturbance in the economy of a Member State'. Given the present circumstances and also the circumstances in the financial markets at the time of the Rescue and Opening Decision, the Commission considers that the measures may be examined under that provision.

(108) The Commission accepts that the financial crisis has created exceptional circumstances in which the bankruptcy of one bank may undermine trust in the financial system at large, both at national and international level. That may be the case even for a small bank which is not in immediate difficulty but under tightened supervision by the financial regulator, such as FIH. The 2-4 year debt of that bank was priced at spreads of 600-700 bps over EURIBOR at the time of the Rescue and Opening Decision. That pricing level is a clear indication of imminent distress. In such cases, early intervention to avoid the institution concerned becoming unstable can be necessary to avoid threats to financial stability. It is particularly so in the case of a small economy such as Denmark where counterparts may tend not to distinguish between individual banks, thus extending the lack of confidence generated by the failure of one bank to the whole sector. Therefore, the legal basis for the compatibility assessment of all the measures covered by this Decision is Article 107(3)(b) of the Treaty.

(109) As regards specifically the compatibility of the transfer of assets to the FSC, the Commission will assess the measures with regard to the Impaired Assets Communication.

(110) The Commission will then assess the compatibility of the restructuring measures with regard to the Restructuring Communication.

5.3.2. **Compatibility of the measures with the Impaired Assets Communication**

(111) The Impaired Assets Communication lays down the principles regarding the valuation and transfer of impaired assets and compatibility of measures with the Treaty. It has to be assessed whether the aid has been limited to the minimum and there is sufficient own contribution of the bank and its shareholders.

(112) According to point 21 of the Impaired Assets Communication banks should bear the losses associated with impaired assets to the maximum extent. Point 21 requires a correct remuneration of the State for the asset relief measure, whatever its form, so as to ensure equivalent shareholder responsibility and burden-sharing irrespective of the exact model chosen.

(113) In their original form, the measures provided for remuneration equal to the funding cost of the Danish government plus a mere 100 bps for the liquidity. No remuneration for the equity investment was foreseen, apart from a partial (25 %) upside in case the net resolution yields an excess through the price adjustment mechanism. Moreover, in a negative scenario where the asset portfolio of Newco would deteriorate significantly, compensation to the FSC would be provided by FIH Holding which, under those circumstances, would probably not have the capacity to honour its obligations. It seemed therefore unlikely, as stated in recitals 66 to 73 of the Rescue and Opening Decision, that the remuneration and own contribution would be sufficient to make the aid compatible with the internal market according to the guidance in the Impaired Assets Communication.

([75]) Final Report — Advisory Services Related to Case FIH — Phase II — Case SA.34445 Denmark, 19 September 2013.

(114) In line with point 39 of the Impaired Assets Communication, the Commission has therefore thoroughly analysed the market value of the measures. Aided by an external expert, it estimated a probabilistic distribution of outcomes for the Newco asset portfolio and calculated the effect on the likely terminal liquidation asset values through the share purchase agreement.

(115) In its assessment, the Commission found advantages through foregone equity remuneration and potential losses linked to the credit quality of FIH Holding, excess interests for the loss-absorbing loan, excess spreads on funding to Newco by FIH and excess fees for administration and derivative hedging. The Commission also found mitigating factors such as the early cancellation of government guarantees. In total, the measures contained a State aid element of about DKK 2,25 billion.

(116) Taking into consideration points 40 and 41 of the Impaired Assets Communication, the difference between transfer value and real economic value was assessed by performing the same calculation as for the market value assessment with two adaptations. First, the distribution of outcomes was based on real economic values of the asset portfolio, instead of the market values. Second, the required remuneration for equity was based on the effective net capital relief of the measures. Following a statement by the FSA, the Commission assessed the gross capital relief effect of the measures to be DKK 375 million ([76]), and the equivalent transfer value to be DKK 254 million above the real economic value ([77]), which needed to be remunerated and clawed back. In addition, DKK 143,2 million in excess fees needed to be recovered.

(117) An up-front payment of DKK 254 million (with value date 1 March 2012) has reduced the net capital relief effect from DKK 375 million to DKK 121 million. Therefore, a one-off premium of DKK 310,25 million ([78]) with value date 30 September 2013 plus an annual payment of DKK 12,1 million (corresponding to an annual remuneration of 10 % of the capital relief), in addition to the recovery of the excess administration fees ([79]) would bring the measures in line with the Impaired Assets Communication.

(118) Denmark has ensured that FIH paid those amounts ([80]) in addition to honouring all agreements under the closing documents of the measures.

(119) Denmark commits that FIH will pay no dividends until the final settlement of the Newco accounts under the share purchase agreement, so as to mitigate the credit risk faced by FIH Holding for the FSC.

(120) In conclusion, the measures in their entirety are proportionate, limited to the minimum and provide sufficient own contribution by FIH. Moreover, due to the payment of DKK 310,25 million plus interest ([81]) to the FSC as well as the additional commitments as regards remuneration and fees ([82]), the measures provide for an appropriate remuneration in accordance with the Impaired Assets Communication.

([76]) The Commission accepted that, although the FSA indicated that the capital relief to FIH Erhvervsbank A/S amounted to DKK 847 million (the equivalent of DKK 10,5 billion of RWAs), the unlimited loss guarantee given by FIH Holding significantly reduced the overall effect for the lending risk weight capacity of the group. In order to mitigate concerns by the Commission, Denmark added a commitment to increase the remuneration by FIH to the FSC, should the FSA change its regulatory view regarding capital requirements at holding level such that FIH's lending capacity would no longer be restricted by FIH Holding's capital position.

([77]) The Commission's analysis was validated by an expert report which took into consideration all elements submitted by Denmark in its correspondence up to and including the summary note of 24 June 2013, as well as the clarifications of 29 August 2013.

([78]) DKK 310,25 million is calculated as DKK 254 million + 1,5 * DKK 37,5 million. The capital relief of the measure is DKK 375 million, which according to the Impaired Assets Communication has to be remunerated at 10 % per annum. In addition, the transfer value of the portfolio is deemed to be DKK 254 million, the real economic value, which needs to be clawed back according to paragraph (41) of the Impaired Assets Commuication. However, by paying a clawback of DKK 254 million, the net capital relief effect would be reduced to DKK 121 million. Therefore, in order to make the remuneration compatible, FIH has to remunerate the capital relief effect of DKK 375 million at a rate of 10 % per annum, until the 'transfer delta' between transfer value and real economic value has been settled. Since this only happens 1,5 years after implementing the measures, the required payment is DKK 254 million + 1,5 * DKK 37,5 million and then annual payment of DKK 12,1 million, which is 10 % of the remaining net capital relief.

([79]) The excess administration fees are estimated at DKK 143,2 million over the lifetime of the measures. Denmark mitigates this by paying back DKK 61,7 million to Newco as an excess earned thus far and by reducing the future administration fee to 0,05 % of the outstanding notional, which is in line with market practice.

([80]) See recital 48.

([81]) In fact, the clawback payments were only made with value date 4 December 2013, so that an additional accrued interest payment covering the period 1 October 2013–4 December 2013 was due. Denmark has confirmed that FIH has made an additional payment of DKK 6,575 million on top of the DKK 310,25 million to cover that amount.

([82]) See footnote 78.

5.3.3. **Compatibility of the aid with the Restructuring Communication and the 2011 Prolongation Communication** [83]

(121) According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis must: (i) lead to a restoration of the viability of the bank, or to the orderly winding-up thereof; (ii) ensure that the aid is limited to the minimum necessary and include sufficient own contribution by the beneficiary (burden-sharing); and (iii) contain sufficient measures limiting the distortion of competition.

(i) *Viability*

(122) According to the Restructuring Communication a Member State needs to provide a comprehensive restructuring plan which demonstrates how the long-term viability of the beneficiary will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.

(123) The restructuring plan submitted by Denmark in respect of FIH covering the period up to 31 December 2016 shows a return to viability at the end of that restructuring period. The bank is expected to remain profitable and improve its yearly results in particular during the period 2013-2016, with an adequate return on equity on newly generated business. In a worst case scenario, the bank would still generate profits, with net profit improving from DKK 51 million (EUR 6,8 million) in 2013 to DKK 122 million (EUR 16,27 million) in 2016.

(124) According to the restructuring plan, by 31 December 2016 the total capital ratio of FIH will be as high as 19,6 % and the statutory liquidity ratio then is expected to be 160 %. All those ratios exceed significantly the regulatory minimum requirements. The group therefore appears well capitalised and endowed with a comfortable liquidity position.

(125) Following the measures, in particular the transfer of loans, FIH was a position not only to redeem the government-guaranteed bonds in 2013 in due time but also to repay on 2 July 2013 the hybrid capital it had received from the government.

(126) The measures have improved the liquidity profile of FIH which was able to obtain a statutory liquidity ratio of 214 % as of 31 December 2012 and was expected to obtain a ratio of 239,7 % as of 31 December 2013 [84] thus exceeding the regulatory liquidity requirements significantly.

(127) In particular, the funding gap which previously threatened FIH has been closed through a hive-off of assets, with the help of the DKK 13 billion funding facility provided by the FSC to Newco. In addition, the FSC has committed to recapitalise Newco over the lifetime of the measures, if necessary [85]. As a result, any immediate recapitalisation issues for FIH have been pre-empted.

(128) In summary, with both profitability and liquidity assured, and a sufficient capital base FIH seems to be in a good position to attain long-term viability on a stand-alone basis.

(129) Although in the worst case scenario the pre-tax return on normalised equity is budgeted to be only 0,9 % at 31 December 2013 and 2,0 % [86] at 31 December 2016, the best case projects a return on normalised equity of 10,3 % and 11,2 % for 2013 and 2016 respectively.

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[83] Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7).

[84] See recital 37 ff.

[85] This could be the case if the asset value were to deteriorate further. If that were to occur Newco might have negative equity after which, in line with standard commercial law, it could be obliged to file for bankruptcy. Such an outcome is prevented by the recapitalisation clause which means that Newco will receive a new capital injection from the FSC if need be and which the FSC will only get back from FIH Holding at the final settlement of the transaction (between 31 December 2016 and 31 December 2019).

[86] See recital 38.

(130) The Commission does not usually use the concept of 'normalised equity' because it regularly leads to a higher return on equity than if the calculations were based on the actual equity. In this case, however, Denmark has given a commitment that FIH Holding and FIH will retain accumulated earnings to a high level, so as to better guarantee an appropriate payment to the FSC. In particular if Newco realises significantly lower proceeds than planned by FIH, FIH (via the loss-absorbing loan) and FIH Holding (via the guarantee given to the FSC) will bear costs to ensure the remuneration of the FIH at a level commensurate with the State aid rules. The accumulation of retained earnings nevertheless increases equity to a relatively high level (DKK 8,4 billion in the best case, DKK 7,3 billion in the worst case) which reduces the return on equity ratio. FIH is not in a position to counteract that process unless it produces losses (which is neither foreseen nor desirable). The concept of 'normalised equity' is therefore preferable in the current case to allow the Commission to assess properly the profitability of the bank, setting aside the results of the accumulation of retained earnings.

(131) Further, FIH will exit the relatively risky business area of acquisition finance which leads to a risk reduction of its business activities and puts its business model on a more solid foundation. Moreover, with a total capital ratio of 20,8 % ([87]) at the end of the restructuring period FIH seems overcapitalised ([88]) in view of its business model and thus much less exposed to market risks which might jeopardise its existence as a going-concern than before.

(132) The Commission therefore considers that the restructuring plan is apt to restore FIH's long-term viability.

(ii) *Burden-sharing*

(133) FIH has committed not to pay any dividends during the restructuring phase and to repay a previous State recapitalisation of DKK 1,9 billion. Further, FIH will not make any coupon payments to investors in hybrid instruments or any instrument for which financial institutions have discretion to pay coupons or to call, regardless of their regulatory classification, including subordinated debt instruments, if no legal obligation to make payments exists.

(134) In addition, as explained in Section 5.4.1, the remuneration of the impaired asset measures is set at an appropriate level.

(135) The Commission therefore considers that the restructuring plan sufficiently addresses the burden-sharing requirement.

(iii) *Distortion of competition*

(136) The restructuring plan provides for FIH to withdraw from certain business lines (property finance, private equity and private wealth management). In particular, DKK 15,4 billion of property finance assets (25 % of the 2012 balance sheet) have been hived off to Newco.

(137) The amended term sheet also provides for a price leadership ban for deposits if the market share of FIH exceeds 5 %. That commitment allows FIH to further improve its funding position by raising deposits on the market while at the same time establishing a threshold preventing excessive practices. In addition, there will be a ban on commercial aggressive practices safeguarding competitors from excessive market behaviour. It should be noted that no market participant commented on FIH's policy concerning deposit pricing after the Commission opened proceedings on that question.

(138) Further, FIH will divest its investments in private equity funds and other equity investments and will no longer have a mortgage institute in its company structure after 31 December 2014. Thus, those business areas will also be left to competitors and the presence of FIH on the market reduced accordingly.

([87]) The ratio will be 19,6 % after the 'one-off' payment of DKK 310,25 million.
([88]) The overcapitalisation is solely due to the fact that FIH has to retain its profits over the restructuring period and thus is not to pay any dividends over the whole period in order to preserve a high capital buffer. That course of action is a precaution to ensure the correct and complete remuneration of the impaired asset measures as FIH and FIH Holding have guaranteed the final payment to the State.

(139) Moreover, FIH Realkredit [89] will be liquidated and all business activities in the business field Acquisition Finance will be ceased. According to the 2012 year-end figures, FIH Realkredit still held assets of around DKK 300 million (EUR 40,3 million) so was of limited importance to the overall FIH Group.

(140) In addition, FIH has already reduced its total assets from DKK 109,3 billion (EUR 14,67 billion) on 31 December 2010 to DKK 60,80 billion (EUR 8,16 billion) by 31 December 2012, corresponding to a decrease of 44 %.

(141) Altogether, those commitments lead to a sufficient mitigation of distortion of competition because business opportunities which could potentially be profitable for FIH will be abandoned and left to its competitors.

5.4. CONCLUSION AND CLOSURE OF THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE

(142) The Commission expressed doubts in its Rescue and Opening Decision as to whether the measures at stake are well-targeted as required by the 2008 Banking Communication [90]. In particular at that stage, it was unclear whether investors would consider FIH as fully relieved from its worst assets, and whether they would be ready to provide funding under bearable conditions. FIH's restructuring plan demonstrates that the bank has a sufficient capital buffer even under a stress scenario and that it is likely to remain viable under unfavourable macroeconomic developments.

(143) In the Rescue and Opening Decision the Commission also raised doubts as to whether the measures were limited to the minimum and envisaged sufficient own contribution [91], in particular in view of the complexity of the measures.

(144) Following a detailed assessment of the elements and their links the Commission considers that that the remuneration FIH will pay for the measures serves as a sufficient own contribution and is in line with the Impaired Assets Communication. The Commission welcomes the 'one-off' payment (of DKK 310,25 million) to the FSC and the commitments made in that respect. The Commission notes further that the measures have improved the liquidity profile of the bank which, under all scenarios, remains liquid and viable according to the restructuring plan.

(145) In the Rescue and Opening Decision the Commission expressed further doubts in relation to whether the requirement that distortion of competition be limited had been met. FIH is now subject to a coupon ban, a dividend ban, a price leadership ban (including for deposits) and a ban on commercial aggressive practices and is subject to divestment commitments.

(146) Overall, the Commissions notes that the restructuring plan presented by Denmark adequately addresses the issues of viability, burden-sharing and distortion of competition, and hence it is in line with the requirements of the Restructuring Communication and Impaired Assets Communication.

(147) Based on the assessment above the Commission finds that the measures are well-targeted, limited to the minimum and provide for limited distortion of competition. Therefore the Commission's doubts related to the compatibility of the measures, initially raised in the Rescue and Opening Decision, have been allayed.

Conclusion

(148) Based on the notification and in view of the commitments presented by Denmark it is concluded that the aid measures are compatible with the internal market. The appropriateness of the measures as well as the viability of the bank and own contributions together with the measures to mitigate distortion of competition appear sufficient. Consequently, the measures should be approved pursuant to Article 107(3)(b) of the Treaty and the opened proceedings should be closed,

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[89] See recital 10.
[90] See Section 2.1 of the Rescue and Opening Decision.
[91] See Section 2.2 of the Rescue and Opening Decision.

HAS ADOPTED THIS DECISION:

Article 1

The asset transfer from FIH Group to the Danish Financial Stability Company, together with the side agreements, constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

This State aid is compatible with the internal market, in the light of the restructuring plan and the commitments set out in the Annex.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 11 March 2014.

For the Commission

Joaquín ALMUNIA

Vice-President

ANNEX

TERM SHEET (CASE SA.34445) DENMARK — RESTRUCTURING PLAN OF FIH

1. **Background**

The Kingdom of Denmark undertakes to ensure that the Restructuring Plan for FIH submitted on 24 June 2013 is correctly and fully implemented. This document (the 'Term Sheet') sets out the terms (the 'Commitments') for the restructuring of FIH Erhvervsbank A/S including subsidiaries ('FIH'), which the Kingdom of Denmark has committed to implement.

2. **Definitions**

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

Term	Meaning
Commitments	mean the undertakings related to the restructuring of FIH set out in this Term Sheet
Decision	means the decision of the European Commission on the restructuring of FIH in the context of which these Commitments are undertaken and to which this Term Sheet is attached
Restructuring Period	is the time period specified in clause 3.2
Restructuring Plan	means the plan submitted by FIH to the European Commission, via the Kingdom of Denmark, on 24 June 2013, as amended and supplemented by written communications
FIH or FIH Group	FIH Erhvervsbank A/S including subsidiaries
FIH Holding	FIH Holding A/S
FIH Holding Group	FIH Holding A/S including direct and indirect subsidiaries
FS Property Finance A/S	The wholly owned subsidiary of the Financial Stability Company FSC, also referred to in the decision as 'Newco'.
Acquisition Finance	The separate and dedicated business unit with employees solely focusing on financing solutions in connection with mergers and acquisitions, and which was marketed specifically towards existing and potential clients.

3. **General**

3.1. The Kingdom of Denmark undertakes to ensure that the Commitments are fully observed during the implementation of the Restructuring Plan.

3.2. The Restructuring Period shall end on 31 December 2016. The Commitments apply during the Restructuring Period, unless otherwise indicated.

4. **Structural measures**

4.1. Acquisition Finance

FIH will cease all business activities in the business field Acquisition Finance by 30 June 2014. The existing portfolio will be placed in run off by 30 June 2014.

4.2. Closure of the Property Finance business

FIH has withdrawn from the business area of investment properties [1] and closed that business area by 31 December 2013. There will be no re-entry into that business area which means in particular that no new lending (capital) to finance investment in investment properties in Denmark, Sweden, Germany or any other country will take place [2].

4.3. Divestiture of the Private Equity business

FIH will divest its investments in private equity funds and other equity investments to the extent permitted by law as early as possible and in any case not later than 31 December 2016. If a divestment by that date is not possible, the investments will be put in run-off which means in particular that no funding or renewals of investments may take place any more [3]. Further, from the date of the Decision, no new private equity or other investments will be made *(with the exceptions stated in footnote 3)*.

4.4. Mortgage Bank

FIH shall not have a mortgage institute in its company structure by end of 2014, and shall not act as a mortgage bank thereafter.

5. **Behavioural measures and corporate governance**

5.1. Ban on acquisitions: FIH shall not acquire any stake in any undertaking. This applies both to undertakings which have the legal form of a company and packages of assets which form a business.

Activities not comprised by the acquisition ban: This ban does not apply to acquisitions that must be made in exceptional circumstances to maintain financial stability or in the interests of effective competition, provided they have been approved beforehand by the Commission. This does neither apply to acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms and to disposal and restructuring within FIH Holding Group.

Exemptions not requiring the Commission's prior approval: FIH may acquire stakes in undertakings provided that the purchase price paid by FIH for any acquisition is less than 0,01 % of the balance sheet size of FIH at the date of the Commission decision and that the cumulative purchase prices paid by FIH for all such acquisitions over the whole restructuring period is less than 0,025 % of the balance sheet size of FIH at the date of the Commission decision.

5.2. Ban on commercial aggressive practices: FIH shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Plan.

5.3. Deposits: FIH will not offer more favourable prices for deposit products (notably but not exclusively for retail deposits in FIH Direct Bank) than the two best-priced competitors in a given market.

The restriction does not apply if FIH's share of the total deposit market is less than 5 % [4].

5.4. Advertising: FIH must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes. Further, its overall annual advertising expenses will be below EUR 1 million.

5.5. Ban on coupon payments: FIH will refrain during the Restructuring Period from making any payments on capital instruments, unless those payments stem from a legal obligation, and not call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the state may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. This commitment not to pay coupons during the Restructuring Period does not apply for newly issued instruments (meaning instruments issued after the Commission's final approval of the restructuring plan), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on FIH's securities existing at the moment of the adoption of the Commission's Restructuring Decision.

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(1) Defined as loans granted in the context of financing shops, offices, blocks of flats, warehouses, showrooms, factories or similar premises if granted to a company that does not reside at the premises for their primary business activity or to a company that is specialised in developing real estate.

(2) Does not apply in the following instances: (a) FIH Holding/FIH/other current or future entities in the FIH Holding Group buys back FSPF A/S (alternatively the loan portfolio of FSPF A/S, or part thereof); (b) if FIH is contractually/legally obliged to provide such loan, or if a loan is made in connection with a restructuring/refinancing/recapitalisation/work-out solution for debtors in FIH or FSPF; or (c) non-lending advisory services.

(3) Does not apply in the ordinary course of the banking business (e.g. if FIH obtains a shareholding through a restructuring or similar of debtors) or if FIH is legally obliged to make such investment.

(4) FIH's share of the market is derived from the Danish Central Bank's MFI-statistics (www.statistikbanken.dk/DNMIN). It is based on the total amount of deposits from Danish residents in the Danish MFI sector relative to deposits from Danish residents in FIH.

5.6. Ban on dividend payments: All dividends paid to FIH Holding will be retained until settlement of the share purchase agreement respectively the end of the Restructuring Period, whichever is longer. Thus, FIH Holding shall not distribute funds to its shareholders by way of dividends or otherwise until the final settlement of the purchase price agreement. To retain earnings in the FIH Holding group, FIH shall not pay dividends to other entities than FIH Holding.

5.7. Restrictions on FIH Holding related to ownership: FIH Holding shall not pledge its shareholding in FIH. Related party transactions shall be at arm's length. No decision affecting the creditworthiness or liquidity of FIH Holding compromising its capability of paying a negative variable purchase price if required shall be taken.

FIH Holding is only allowed to conduct business as holding company for FIH and any shareholder loans shall not be repaid.

5.8. Buy Back of Hybrid Capital Instruments or other Capital Instruments: With regard to the buy-back of hybrid capital instruments or other capital instruments existing in FIH on 2 March 2012, FIH will respect the rules concerning Tier 1 and Tier 2 capital transactions as set out in the MEMO/09/441 of 8 October 2008 ([5]). In any case FIH will consult the Commission before making announcements to the market concerning Tier 1 and Tier 2 capital transactions.

6. **Capital relief**

FIH will remunerate the measure in line with the IAC. Specifically, in addition to making a one off payment of DKK 310,25 million + 37,5 million * N/365, where N is the number of days between 30 September 2013 and the final payment date, which, according to the Danish authorities has already occurred with value date 4 December 2013, FIH will:

— each year, from 2014 to 2020 or the year following the final settlement of the purchase price agreement, whichever is earlier, pay a fee of DKK 12,1 million per annum with value date 30 September (or, if 30 September of the respective date is not a business day, on the following business day). The final fee is to be paid on the settlement date of the purchase price agreement, and reduced pro rata temporis (on an actual over actual basis) for the period between the penultimate fee payment (30 September) and the settlement of the purchase price agreement as well as for the first period, from 4 December 2013 to 30 September 2014,

— reduce the management fees for administration and hedging charged to FS Property Finance A/S to 0,05 % per annum of the outstanding loan portfolio, retroactively effective from 1 January 2013,

— pay an annual fee of DKK 47,2 million to FSC if the FSA changes its regulatory view regarding capital requirements at holding level such that FIH's lending capacity would no longer be restricted by FIH Holding's capital position. Value dates and time limitations similar to the first indent above apply ([6]).

7. **Reporting**

7.1. The Kingdom of Denmark shall ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored.

7.2. The Kingdom of Denmark will report semi-annually to the Commission on the evolution of the Restructuring Plan and the above mentioned commitments until the end of the Restructuring Period.

7.3. Within three months of the final settlement of the transaction the Kingdom of Denmark will provide a report made by an external certified accountant on the accurateness of the settlement of the transaction.

([5]) http://europa.eu/rapid/press-release_MEMO-09-441_en.htm

([6]) It is worth mentioning that: (i) FIH has already made a one-off payment of 310,25 million DKK + 37,5 million * N/365, where N is the number of days between 30 September 2013 and the final payment date, which, according to the Danish authorities has already occurred with value date 4 December 2013; and (ii) payed an amount of 61,7 million DKK to the FS Property Finance A/S as partial repayment of fees received under the administration agreement for 2012, which according to the Danish authorities has already occurred with value date 18 December 2013.