Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

1 February 2018 *

(State aid — Aid implemented by Greece — Decision declaring the aid incompatible with the internal market — Concept of State aid — Advantage — Private investor test — Amount of aid to be recovered — Commission Notice on State aid in the form of guarantees)

In Case T-423/14,

Larko Geniki Metalleftiki kai Metallourgiki AE, established in Athens (Greece), represented by I. Dryllerakis, I. Soufleros, E. Triantafyllou, G. Psaroudakis, E. Rantos and N. Korogiannakis, lawyers,

applicant,

v

European Commission, represented by A. Bouchagiar and É. Gippini Fournier, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU for the annulment of Commission Decision 2014/539/EU of 27 March 2014 on the State aid SA.34572 (2013/C) (ex 13/NN) implemented by Greece for Larco General Mining & Metallurgical Company SA (OJ 2014 L 254, p. 24),

THE GENERAL COURT (Sixth Chamber),

Composed of G. Berardis, President, D. Spielmann and Z. Csehi (Rapporteur), Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 26 January 2017,

gives the following

Judgment

Background to the dispute

1 Larko Geniki Metalleftiki kai Metallourgiki AE ('the applicant' or 'Larko') is a large company specialising in the extraction and processing of laterite ore, the extraction of lignite and the production of ferronickel and its by-products.

* Language of the case: Greek

2 It was established in 1989 as a new corporate entity following the liquidation of Hellenic Mining and Metallurgical SA. At the time of the relevant facts, it had three shareholders: the Greek State, which held 55.2% of its shares through the intermediary of Hellenic Republic Asset Development Fund, the National Bank of Greece SA ('NBG'), a private financial institution, which held 33.4% of its shares, and Public Power Corporation (the main electricity producer in Greece, of which the State is the majority shareholder), which held 11.4% of its shares.

3 In March 2012, Hellenic Republic Asset Development Fund informed the European Commission about a programme for the privatisation of Larko.

4 In April 2012, the Commission initiated an *ex-officio* preliminary investigation into that privatisation, in accordance with the rules on State aid.

5 The investigation examined six measures:

– the first measure concerned, first, a 1998 debt settlement agreement between Larko and its major creditors, in accordance with which the company's liabilities to creditors were to be serviced with an interest rate of 6% per annum and, secondly, the non-collection of the debt owed to the Greek State ('measure No 1');

– the second concerned a guarantee for a loan of EUR 30 million made by ATE Bank to Larko; the guarantee was provided by the Greek State in 2008 ('measure No 2' or 'the 2008 guarantee'), covered 100% of the loan for up to three years and stipulated a guarantee premium of 1% per annum;

– the third concerned a EUR 134 million increase in the share capital, proposed in 2009 by Larko's Board of Directors and approved by the three shareholders; the Greek State participated fully and NBG participated partially ('measure No 3' or 'the 2009 increase in share capital');

– the fourth concerned a guarantee of indefinite duration provided by the State in 2010 to cover fully a letter of guarantee that NBG was to provide to Larko for the sum of approximately EUR 10.8 million; a guarantee premium of 2% per annum was stipulated ('measure No 4' or 'the 2010 guarantee'); the letter of guarantee guaranteed the stay of execution by the Areios Pagos (Court of Cassation, Greece) of a judgment by which the Efeteio Athinon (Court of Appeal, Athens, Greece) had recognised the existence of a debt of EUR 10.8 million owed by Larko to one of its creditors;

– the fifth concerned letters of guarantee which, in accordance with a Greek administrative court decision, were to replace a compulsory pre-payment of 25% of a tax fine ('measure No 5');

– the sixth concerned two guarantees provided by the State in 2011 for two loans of EUR 30 million and EUR 20 million respectively granted by ATE Bank; the guarantees covered 100% of the loans and stipulated a premium of 1% per annum ('measure No 6' or 'the 2011 guarantees').

6 In the course of the preliminary investigation, the Commission requested additional information from the Greek authorities, which they provided in 2012 and 2013. Meetings were also held between Commission staff and representatives of the Greek authorities.

7 By decision of 6 March 2013 (OJ 2013 C 136, p. 27, 'the opening decision'), the Commission initiated the formal investigation procedure provided for by Article 108(2) TFEU in relation to State aid SA.34572 (2013/C) (ex 13/NN).

8 In the course of the procedure provided for by Article 108(2) TFEU, the Commission invited the Greek authorities and interested third parties to submit their comments on the measures mentioned in paragraph 5 above. The Commission received comments from the Greek authorities on 30 April 2013. It received no comments from interested third parties.

9 On 27 March 2014, the Commission adopted Decision 2014/539/EU on the State aid SA.34572 (2013/C) (ex 13/NN) implemented by Greece for Larco General Mining & Metallurgical Company SA (OJ 2014 L 254, p. 24, 'the contested decision').

10 In the contested decision, the Commission formed the view, as a preliminary matter, that, at the time when the six measures in question were granted, Larko had been a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2, 'the guidelines on rescuing and restructuring').

11 As regards its assessment of the measures mentioned in paragraph 5 above, the Commission took the view, first of all, that measures Nos 2, 3, 4 and 6 constituted State aid within the meaning of Article 107(1) TFEU, next, that those measures had been granted in breach of the notification and standstill obligations laid down in Article 108(3) TFEU and, lastly, that the measures in question were aid incompatible with the internal market and must be recovered in accordance with Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

12 The Commission also took the view that the two other measures, Nos 1 and 5, concerning respectively the non-collection of a debt owed to the Ministry of Finance and two guarantees provided by the State in 2011 (see paragraph 5 above) did not constitute State aid.

13 The operative part of the contested decision reads as follows:

'*Article 1*

The non-collection of debt to the Ministry of Finance and letters of guarantee instead of pre-payment of additional tax in 2010, which Greece has implemented for [Larko], do not constitute State aid within the meaning of Article 107(1) of the Treaty.

Article 2

The State aid amounting to EUR 135 820 824.35 in the form of State guarantees to [Larko] in 2008, 2010 and 2011 and the State's participation to the company's capital increase in 2009, unlawfully granted by Greece in breach of Article 108(3) of the Treaty is incompatible with the internal market.

Article 3

1. Greece shall recover the incompatible aid referred to in Article 2 from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004, as amended.

4. As regards measure [No] 3, Greece shall provide the exact date(s) when it provided its contribution to the 2009 share capital increase.

5. Greece shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of adoption of this decision.

Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. Greece shall ensure that this decision is implemented within four months following the date of notification of this decision.

Article 5

1. Within two months following notification of this decision, Greece shall submit the following information:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this decision;

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the Hellenic Republic.'

14 The annex to the contested decision provides 'information about the amounts of aid received, to be recovered and already recovered', as set out below:

Identity of the beneficiary — measure	Total amount of aid received	Total amount of aid to be recovered (Principal)	Total amount already reimbursed	
			Principal	Recovery interest
Larko — measure 2	30 000 000	30 000 000	0	0
Larko — measure 3	44 999 999.40	44 999 999.40	0	0
Larko — measure 4	10 820 824.95	10 820 824.95	0	0
Larko — measure 6	50 000 000	50 000 000	0	0

Procedure and forms of order sought by the parties

15 By application lodged at the Registry of the General Court on 6 June 2014, the applicant brought the present action.

16 On 30 October 2014, the Commission submitted its defence. The reply and the rejoinder were lodged within the prescribed periods.

17 By document lodged at the Registry of the General Court on 9 October 2014, Elliniki Metalleftiki kai Metallourgiki Larymnis Larko AE applied for leave to intervene in the proceedings in support of the form of order sought by the applicant. That application was dismissed by order of 11 June 2015, *Larko* v *Commission* (T-423/14, not published EU:T:2015:439). An appeal against that order was also dismissed, by order of 6 October 2015, *Metalleftiki kai Metallourgiki Etairia Larymnis Larko* v *Commission* (C-385/15 P(I), not published, EU:C:2015:681).

18 By decision of the President of the Ninth Chamber of the General Court of 3 September 2015, the proceedings were stayed pending the final decision of the Court of Justice in Case C-385/15 P(I). The proceedings were resumed on 16 October 2015.

19 Following a change in the composition of the Chambers of the Court, pursuant to Article 27(5) of the Rules of Procedure of the General Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present case was accordingly allocated.

20 The applicant claims that the Court should:

– annul the contested decision;

– order that whatever amount may have been 'recovered' directly or indirectly from the applicant in execution of the contested decision be reimbursed with interest, and

– order the Commission to pay the costs.

21 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

22 In support of its action, the applicant puts forward three pleas in law. By the first it alleges that the Commission was wrong to conclude that measures Nos 2, 3, 4 and 6 ('the contested measures') constituted State aid incompatible with the internal market. By the second, it alleges a failure to state reasons. By the third plea, which is put forward in the alternative, it alleges that the Commission erred in its determination of the amount of aid to be recovered in respect of the contested measures and that it ordered the recovery of that aid in breach of fundamental principles of the European Union.

23 The Court considers it appropriate to deal first with the second plea in law alleging a failure to state reasons and then the other pleas, in the order in which they were put forward.

The second plea in law, alleging a failure to state reasons

24 By the second plea in law, the applicant claims that the Commission failed to explain sufficiently in the contested decision a number of aspects relating, first, to the existence of State aid, secondly, to the compatibility of measures Nos 3, 4 and 6 with the internal market and, thirdly, to the quantification of the amount of aid to be recovered in respect of measures Nos 2, 4 and 6.

25 The Commission disputes the applicant's arguments.

26 According to settled case-law, the scope of the duty to state reasons depends on the nature of the measure in question and on the context in which it was adopted. The statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, so as to enable the persons concerned to ascertain the reasons for it in order that they can defend their rights and ascertain whether or not the measure is well founded and to enable the Courts of the European Union to exercise their power of review. It is not necessary for the statement of reasons to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned and it is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision (see the judgment of 3 March 2010, *Freistaat Sachsen and Others* v *Commission*, T-102/07 and T-120/07, EU:T:2010:62, paragraph 180 and the case-law cited).

27 It is in the light of those principles that the applicant's arguments must be examined.

28 In the first place, it is appropriate to examine the applicant's argument that the Commission failed to give adequate reasons in the contested decision concerning the existence of State aid and thus, first of all, the existence of an advantage, secondly, the use of State resources in connection with measures Nos 2, 4 and 6 and, thirdly, the distortion of competition and the effect on trade between Member States.

29 First of all, it must be observed that, in the contested decision, the Commission set out the reasons for which it had concluded that the contested measures entailed the conferral of an advantage on Larko, as is clear from recitals 73 and 74, in so far as measure No 2 is concerned, recitals 80 to 85, in so far as measure No 3 is concerned, recitals 90 to 92, in so far as measure No 4 is concerned, and recitals 101 and 102, in so far as measure No 6 is concerned.

30 In the recitals mentioned in paragraph 29 above, the Commission explained, on the one hand, that the 2008, 2010 and 2011 guarantees constituted State aid because the conditions of its Notice on the application of Articles [107] and [108 TFEU] to State aid in the form of guarantees (OJ 2008 C 155, p. 10, 'the Guarantee Notice') were not fulfilled, inasmuch as Larko was a firm in difficulty and the guarantee premiums did not therefore reflect the risk of default for the guaranteed loans and, on the other, that the 2009 increase in share capital did not satisfy the private investor test, since no restructuring plan had been provided to the shareholders in advance, despite Larko's being a firm in difficulty.

31 Secondly, the same is true of the Commission's conclusion that measures Nos 2, 4 and 6 entailed the use of State resources, as is clear from recital 72 of the contested decision, in so far as measure No 2 is concerned, recital 89 of the decision, in so far as measure No 4 is concerned, and recital 99 of the decision, in so far as measure No 6 is concerned.

32 In the recitals mentioned in paragraph 31 above, the Commission explained that the contested measures, on the one hand, entailed a risk that State resources would be called on and, on the other, implied a loss of financial resources for the State, because they were not properly remunerated with market premiums.

33 Thirdly, the same is true of the Commission's conclusion that the contested measures could potentially affect trade between Member States and distort competition, as is clear from recitals 75 and 76 of the contested decision, in so far as measure No 2 is concerned, and from the reference to those two recitals made in recitals 86, 93 and 103 of the decision, in so far as the other contested measures are concerned.

34 In the recitals mentioned in paragraph 33 above, the Commission explained that Larko was active in a sector in which products were traded among Member States and itself exported most of its production to other Member States, and that the contested measures had enabled Larko to continue operating, unlike other competitors experiencing financial difficulties.

35 Although the considerations set out in the recitals mentioned in paragraph 34 above — and especially those concerning the use of State resources and the effect on competition and trade between Member States — are extremely succinct, they are nevertheless sufficient to provide grounds of the requisite legal standard for the contested decision, if account is also taken of the fact that the Commission was following a consistent decision-making practice and that the context surrounding the contested decision was well known to the applicant. Moreover, during the administrative procedure, the Greek authorities did not themselves dispute the presence of the conditions relating to the use of State resources and to the effect on competition and trade between Member States.

36 It follows that the contested decision discloses clearly and unequivocally the reasoning followed by the Commission and enabled the applicant to develop its arguments concerning the merits of that reasoning and the General Court to exercise its power of review.

37 In the second place, it is appropriate to examine the applicant's argument that the Commission failed to give sufficient reasons in the contested decision for its conclusion that measures Nos 3, 4 and 6 were not compatible with the internal market in accordance with Article 107(2)(b) TFEU.

38 Suffice it to observe in this connection that the exception provided for in Article 107(2)(b) TFEU was not invoked by the Greek authorities during the administrative procedure and that the contested measures were not of a kind as to be useful in the making good of damage caused by exceptional occurrences, but were instead general measures unconnected with the damage allegedly caused by exceptional occurrences.

39 In light of those facts, it cannot be held that the Commission failed to state sufficient reasons for not applying Article 107(2)(b) TFEU.

40 In the third place, it is appropriate to examine the applicant's argument that the Commission failed to give sufficient reasons in the contested decision concerning the quantification of the aid to be recovered in respect of measures Nos 2, 4 and 6.

41 It must be observed in this regard that, in the contested decision, the Commission stated that the 2008, 2010 and 2011 guarantees had conferred an advantage on Larko that was equal to the amount of the guaranteed loans, since Larko, being a firm in difficulty, would not have been able to obtain that funding on the market without the guarantees. That explanation is given in recital 77, in so far as measure No 2 is concerned, in recital 94, in so far as measure No 4 is concerned, and in recital 104, in so far as measure No 6 is concerned. In addition, in recitals 56 to 66, the Commission described in detail the difficult situation in which Larko found itself at the time when the aid measures were granted.

42 It must, therefore, be concluded that a sufficient statement of reasons is given in the contested decision in so far as the quantification of the aid to be recovered is concerned.

43 Lastly, the Court must make the more general observation that the applicant's arguments alleging an inadequate statement of reasons overlap significantly with the arguments it develops in the context of the first and third pleas in law and focus more on whether the reasons given in the contested decision were correct than on their sufficiency from a formal point of view. Suffice it to observe in this regard that, according to settled case-law, the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgments of 22 March 2001, *France* v *Commission*,

C-17/99, EU:C:2001:178, paragraph 35, and of 18 January 2005, *Confédération Nationale du Crédit Mutuel* v *Commission*, T-93/02, EU:T:2005:11, paragraph 67). Such arguments, therefore, inasmuch as they are put forward in the context of a plea alleging breach of the duty to state reasons, must necessarily be rejected as ineffective (see, to that effect, the judgment of 3 May 2017, *Gfi PSF* v *Commission*, T-200/16, not published, EU:T:2017:294, paragraph 34 and the case-law cited).

44 The second plea in law must therefore be rejected.

The first plea in law, alleging errors in the classification of the contested measures as State aid incompatible with the internal market

45 By its first plea in law, the applicant alleges errors in the classification of the contested measures as State aid incompatible with the internal market, within the meaning of Article 107(1) TFEU.

46 This plea essentially falls into four distinct parts.

47 The first and second parts concern the classification of the contested measures as State aid, and more specifically, the question whether each of the contested measures conferred an advantage and the question whether State resources were used in the case of measures Nos 2, 4 and 6.

48 The third and fourth parts concern the compatibility of the measures with the internal market, on the basis of Article 107(2)(b) TFEU in the case of measures Nos 3, 4 and 6, and on the basis of Article 107(3)(b) TFEU in the case of measure No 6.

The first part of the plea, concerning the existence of an advantage for the purposes of Article 107(1) TFEU

49 First of all, it must be remembered that Article 107(1) TFEU prohibits measures which, through the use of State resources, confer, for the sole benefit of certain undertakings or certain sectors of activity, an advantage which distorts or threatens to distort competition and is liable to affect trade between Member States.

50 The concept of aid embraces not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect. State measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions, are also regarded as aid (see the judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 94 and the case-law cited).

51 On the other hand, the conditions which a measure must meet in order to be treated as 'aid' for the purposes of Article 107 TFEU are not met if the recipient public undertaking could, in circumstances which correspond to normal market conditions, obtain the same advantage as that which has been made available to it through State resources. In the case of public undertakings, that assessment is made by applying, in principle, the private investor test (see the judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 78 and the case-law cited).

52 In so far as concerns State aid granted in the form of a guarantee, it cannot be ruled out that advantages given in the form of a State guarantee can entail an additional burden on the State. Indeed, a borrower who has subscribed to a loan guaranteed by the public authorities of a Member State normally obtains an advantage inasmuch as the financial cost that it bears is less than that

which it would have borne if it had had to obtain that same financing and that same guarantee at market prices (see the judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraphs 95 and 96 and the case-law cited).

53 Next, it must be recalled that it is for the Commission to provide proof of the existence of State aid within the meaning of Article 107(1) TFEU. In order to verify whether the beneficiary undertaking is receiving an economic advantage which it would not have obtained under normal market conditions, in accordance with the private investor test, the Commission is required to carry out a complete analysis of all factors that are relevant to the transaction at issue and its context, including the situation of the beneficiary undertaking and of the relevant market (see the judgment of 26 May 2016, *France and IFP Énergies nouvelles* v *Commission*, T-479/11 and T-157/12, EU:T:2016:320, paragraph 71 and the case-law cited).

54 In so far as concerns, more specifically, the private investor test, it has been held in the case-law that, where it is applicable, that test is among the factors which the Commission is required to take into account for the purposes of establishing the existence of such aid (judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 103).

55 Consequently, where it appears that the private investor test could be applicable, the Commission is under a duty to ask the Member State concerned to provide it with all relevant information enabling it to determine whether the conditions governing the applicability and the application of that test are met, and it cannot refuse to examine that information unless the evidence produced has been established after the adoption of the decision to make the investment in question (judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 104). If the Member State does provide it with evidence, the Commission is required to carry out an overall assessment, taking into account all relevant evidence in the case enabling it to determine whether the recipient company would manifestly not have obtained comparable facilities from a private operator (judgment of 24 January 2013, *Frucona Košice* v *Commission*, C-73/11 P, EU:C:2013:32, paragraph 73).

56 That said, if a Member State relies on the private investor test during the administrative procedure, it must, where there is doubt, establish unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting as shareholder. That evidence must show clearly that, before or at the same time as conferring the economic advantage, the Member State concerned took the decision to make an investment, by means of the measure actually implemented, in the public undertaking. In that regard, it may be necessary to produce evidence showing that the decision is based on economic evaluations comparable to those which, in the circumstances, a rational private investor in a situation as close as possible to that of the Member State would have had carried out, before making the investment, in order to determine its future profitability (judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraphs 82 to 84).

57 By contrast, for the purposes of showing that, before or at the same time as conferring the advantage, the Member State took that decision as a shareholder, it is not enough to rely on economic evaluations made after the advantage was conferred, on a retrospective finding that the investment made by the Member State concerned was actually profitable, or on subsequent justifications of the course of action actually chosen (judgment of 5 June 2012, *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraph 85). Indeed, in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation (judgment of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 71). That is especially so where the Commission is seeking to determine whether there has been State aid in relation to a measure which was not notified to it and which, at the time when the Commission

carries out its examination, has already been implemented by the public body concerned (see, to that effect, the judgment of 25 June 2015, *SACE and Sace BT* v *Commission*, T-305/13, under appeal, EU:T:2015:435, paragraph 94).

58 Finally, with regard to the extent of judicial review of the contested decision in the light of Article 107(1) TFEU, it must be observed that the concept of State aid, as set out in that provision, is a legal concept which must be interpreted on the basis of objective factors. For that reason, the European Union judicature must in principle, having regard both to the specific features of the case before it and to the technical or complex nature of the Commission's assessments, carry out a comprehensive review as to whether a measure falls within the scope of Article 107(1) TFEU (see the judgment of 2 March 2012, *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 100 and the case-law cited).

59 Nevertheless, it has been established in the case-law that judicial review is limited, with regard to the question whether a measure comes within the scope of Article 107(1) TFEU, where the appraisals by the Commission are technical or complex in nature. It is, however, for the Court to decide whether that is the case (see the judgment of 2 March 2012, *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 101 and the case-law cited). Where the Commission is required to apply the private investor test in order to ascertain whether a measure falls within the scope of Article 107(1) TFEU, the application of that test generally does require the Commission to make a complex economic assessment (see, to that effect, the judgment of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 68).

60 However, although the Commission enjoys a broad discretion the exercise of which involves economic assessments which must be made in a European Union context, that does not imply that the European Union judicature must refrain from reviewing the Commission's interpretation of economic data. According to the case-law, not only must the European Union judicature establish, amongst other things, whether the evidence relied on is factually accurate, reliable and consistent, but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgments of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraphs 64 and 65, and of 2 March 2012, *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 102).

61 Notwithstanding, when conducting such a review, the European Union judicature must not substitute its own economic assessment for that of the Commission. The review by the European Union judicature of the complex economic assessments made by the Commission is necessarily limited and confined to verifying whether the rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of assessment or misuse of powers (judgments of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 66, and of 2 March 2012, *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 103).

62 It is in the light of that case-law that the Court must examine the arguments which the applicant puts forward with regard to each of the contested aid measures.

– *Measure No 2 (the 2008 guarantee)*

63 The applicant argues that the 2008 guarantee conferred no advantage, for the purposes of Article 107(1) TFEU, since it fulfilled the conditions set out in point 3.2(a) to (d) of the Guarantee Notice.

64 In the first place, the Commission erred in applying the condition set out in point 3.2(a) of the Guarantee Notice, which requires, in order for the presence of State aid to be ruled out, that the borrower should not be in financial difficulty.

65 Larko's economic situation worsened in mid-2008, but from 2004 to that time it was profitable and was showing positive economic figures. It was therefore not a 'firm in difficulty', within the meaning of the guidelines on rescuing and restructuring, until 2009 when its economic situation deteriorated following the fall in the international price of nickel.

66 The decisive date for the application of the private investor test, that is to say, the date on which the guarantee was provided, was some time in the second half of 2008, and thus before the end of the 2008 financial year and before negative results began to appear in its financial statements. Moreover, contrary to the Commission's allegations, Larko fulfilled its obligation under Greek law to adopt appropriate measures when its equity fell below 50%, convening a general meeting of the company within six months of the end of the 2008 financial year.

67 In the second place, the Commission erred in applying the condition set out in point 3.2(d) of the Guarantee Notice, which requires that a market-oriented price should be paid for the guarantee.

68 First of all, the annual guarantee premium of 1% reflected Larko's good solvency ratio at the time the guarantee was provided, account being taken of its profitability over the three preceding years. Next, in the same year, 2008, Larko obtained a loan from ATE Bank without a guarantee. Lastly, the premium was consistent with the premiums received by the Greek State in respect of loan guarantees which it provided to other companies in a comparable situation to its own.

69 In the third place, the Commission erred in applying the conditions set out in point 3.2(b) and (c) of the Guarantee Notice, which state that the guarantee must be linked to a specific financial transaction, must be for a fixed maximum amount and must be limited in time (point 3.2(b)) and that it should 'not cover more than 80% of the outstanding loan or other financial obligation, this limitation … not [applying] to guarantees covering debt securities' (point 3.2(c)).

70 The Commission overlooked the fact that the guarantee could be adequately measured and that the extent of cover, 100%, was justified, inasmuch as this was a guarantee provided to cover a debt security within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L 390, p. 38).

71 The Commission disputes the applicant's arguments.

72 It must be observed that, in the contested decision, the Commission concluded that the measure in question conferred a selective advantage on Larko since it did not fulfil the conditions set out in point 3.2(a) and (d) of the Guarantee Notice: Larko was a firm in difficulty and the premium of 1% did not reflect the risk of default for the guaranteed loans.

73 It is therefore necessary to ascertain whether the Commission was entitled to conclude that the conditions set out in point 3.2(a) and (d) of the Guarantee Notice were not fulfilled in this case and, if so, whether the non-fulfilment of those conditions was sufficient to demonstrate that the measure in question conferred an advantage on Larko, for the purposes of Article 107(1) TFEU, irrespectively of the conditions specified in point 3.2(b) and (c) of the Guarantee Notice.

74 In the first place, in so far as concerns the condition set out in point 3.2(a) of the Guarantee Notice, it is necessary to ascertain whether the Commission was entitled to conclude that Larko was a firm in difficulty within the meaning of the Guarantee Notice and, if so, whether the Greek State had been aware of, or ought to have been aware of Larko's difficulties when it granted the 2008 guarantee.

75 In so far as concerns the classification of Larko as a 'firm in difficulty', it must be remembered that point 3.2(a) of the Guarantee Notice refers to the guidelines on rescuing and restructuring.

76 Those guidelines state, in so far as is relevant to the present case, the following:

– according to point 9, a firm is in difficulty 'where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term';

– according to point 10(a), a firm is, in principle and irrespective of its size, regarded as being in difficulty, 'in the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months';

– according to point 11, 'even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value'.

77 In the present case, in recitals 56 to 66 of the contested decision, the Commission concluded that Larko had been a 'firm in difficulty' at the time the contested measures, including the 2008 guarantee, were granted. The Commission based that conclusion on Larko's financial statements for the period from 2007 to the first half of 2012, and it referred to the following circumstances:

– first, with regard to the application of point 10(a) of the guidelines on rescuing and restructuring, in 2008, Larko's equity turned negative and its accumulated losses were greater than its registered capital; the fact that its registered capital had not decreased by more than half, as contemplated by point 10 of the guidelines, was solely due to the fact that the company had not adopted the appropriate measures provided for by Greek legislation;

– second, with reference to point 11 of the guidelines, Larko had experienced a significant decrease in turnover between 2007 and 2009 and significant losses in 2008 and 2009; in addition, although the company had increased its turnover and earnings in 2010 and 2011, those increases had not been sufficient to enable Larko to recover financially;

– third, contrary to the observations of the Greek authorities, the difficulties experienced by Larko in 2008 and 2009 were not due to the decrease in the price of ferronickel.

78 It must be observed that, given the economic results mentioned in the contested decision — which the applicant does not dispute — the applicant was showing negative equity, entailing a significant decrease in its registered capital, a reduction in turnover of almost a half by comparison with the previous year, and considerable losses.

79 In this connection, it must be pointed out, first of all, that the existence of negative own capital, as mentioned by the Commission, may be regarded as an important sign that an undertaking is in a difficult financial situation (see, to that effect, the judgment of 3 March 2010, *Freistaat Sachsen and Others* v *Commission*, T-102/07 and T-120/07, EU:T:2010:62, paragraph 106). The same applies to

Larko's significant decrease in turnover and the significant losses it accumulated in 2008, circumstances, moreover, that are mentioned in point 11 of the guidelines on rescuing and restructuring (see the third indent of paragraph 77 above).

80 Next, it is apparent from the documents annexed to the case file that the 2008 guarantee was provided by a ministerial decision of 22 December 2008. Consequently, the fact that the company's decline had only started to become apparent in mid-2008 did not preclude the Commission from concluding that Larko had been in difficulty at the end of 2008, when the guarantee was provided.

81 Lastly, as is emphasised in recitals 63 and 64 of the contested decision, the fact that Larko's difficulties had been caused by an unexpected fall in the price of ferronickel, assuming that fact to be established, does not in itself call into question the conclusion that it was a firm in difficulty.

82 It follows that, on the basis of the information available to it, and in view of its margin of discretion (see the case-law cited in paragraph 60 above), the Commission was entitled to conclude that Larko was a firm in difficulty when it was provided with the 2008 guarantee.

83 Given that, it is necessary to ascertain whether, at the time the 2008 guarantee was provided, the Greek State, as shareholder in Larko, ought to have been aware of the company's difficulties. Indeed, in accordance with the case-law cited in paragraph 56 above, the question whether a Member State has acted as a private investor would have acted must be assessed with reference to the time when it took its decision to invest.

84 The applicant argues that its difficulties became apparent only after the end of 2008, when they were recorded in the financial information prepared at the close of the financial year. In response to a question asked by the General Court, it stated that, as an unlisted company, it was under no obligation to prepare quarterly statements or other intermediate balance sheets, and it has produced no such information to the Court.

85 None of the evidence placed on the case file shows with certainty that the Member State was aware of Larko's difficulties at the time when it provided the 2008 guarantee. The question therefore arises whether the Commission has discharged its burden of proof by relying, essentially, on the presumption that the Greek State ought to have been aware of Larko's difficulties at the end of 2008, when it provided that guarantee.

86 It must be recalled that, in accordance with the case-law cited in paragraph 56 above, where a Member State relies on the private investor test during the administrative procedure, it must, where there is doubt, establish unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting as shareholder, in particular, evidence which shows that its decision was based on economic evaluations comparable to those which, in the circumstances, a rational private investor in a situation as close as possible to that of the Member State would have had carried out, before making the investment, in order to determine its future profitability.

87 In the present case, the Commission had already noted in the opening decision that Larko had been a firm in difficulty since 2008, this being apparent from its financial statements, as was noted in paragraph 78 above. Moreover, the applicant has confirmed in its pleadings that '[its] poor economic image … was beginning to be perceived in July 2008'. While it emphasises that '[it] was maintaining profitability and showing good economic figures until the middle of [that] year', it acknowledges that 'it [had] then [gone] on to show a sharp downturn which [had] finally left it, at the end of the year, with an extremely negative image'.

88 That being so, neither the Greek authorities during the administrative procedure, nor the applicant in the present proceedings may be said to have demonstrated that the Greek State took any steps whatsoever to inform itself about Larko's economic and financial situation at the time when the 2008 guarantee was provided. Nor have they demonstrated, on the basis of Larko's accounts in particular, that they had not been in a position to apprehend the financial difficulties with which the company was confronted.

89 In the circumstances, it must be concluded that it was reasonable, or at the very least not manifestly wrong of the Commission to take the view that a prudent shareholder would at least have informed itself about the company's current economic and financial situation before providing it with a guarantee such as the 2008 guarantee. Moreover, this was the majority shareholder in the company, and the measure was granted toward the end of the accounting year.

90 In the light of those considerations, it must be found that the Commission did not make a manifest error of assessment in regarding Larko as a firm in difficulty at the time when measure No 2 was granted and in consequently establishing that the condition set out in point 3.2(a) of the Guarantee Notice was not fulfilled.

91 In the second place, it must be recalled that point 3.2(d) of the Guarantee Notice states, in substance, that risk-carrying should normally be remunerated by an appropriate guarantee premium on the guaranteed amount.

92 More specifically, according to point 3.2(d) of the Guarantee Notice, the price paid for the guarantee must be compared with the corresponding guarantee premium benchmark that can be found on the financial markets. If no such benchmark can be found, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, is to be compared to the market price of a similar non-guaranteed loan. In either case, the characteristics of the guarantee and of the underlying loan should be taken into consideration, in particular, the amount and duration of the transaction, the security given by the borrower and other factors affecting the recovery rate evaluation, the probability of default of the borrower due to its financial position, its sector of activity and prospects, as well as other economic conditions. This analysis should notably allow the borrower to be classified by means of a risk rating, which may be provided by an internationally recognised rating agency or by the internal rating used by the bank providing the underlying loan.

93 In the present case, in recital 73 of the contested decision, the Commission concluded that the annual guarantee premium of 1% '[could not] be considered as reflecting the risk of default for the guaranteed loans, given the significant financial difficulties of [Larko] and in particular its high debt-to-equity ratio'.

94 While that statement is not particularly detailed, it is not vitiated by any manifest error of assessment.

95 It is true that the Commission established neither the guarantee premium benchmark that could be found on the financial markets nor the market price of a similar non-guaranteed loan. Nor did it classify Larko by means of a risk rating established by an international agency or by the bank providing the underlying loan.

96 Nevertheless, given Larko's difficult economic and financial situation, it was not manifestly incorrect to conclude that the company would not have been able to obtain the 2008 guarantee against payment of such a low premium — which generally applies to operations that do not involve a high risk — without State intervention.

97 In addition, although the Commission had clearly stated in paragraph 37 of the opening decision that it did not appear at first sight that a premium of 1% reflected the risk of default for the guaranteed loans, given Larko's considerable financial difficulties and, in particular, its high debt-to-equity ratio and its

negative equity, neither the applicant nor the Greek authorities adduced evidence during the formal investigation procedure capable of showing that the premium in question corresponded to a premium that could be found on the financial markets or to the market price of a similar non-guaranteed loan.

98 In those circumstances, the Commission was entitled merely to state that, given Larko's economic situation, an annual guarantee premium of 1% could not be regarded as reflecting the risk of default for the guaranteed loans.

99 In so far as concerns the other specific arguments raised by the applicant, first of all, it must be observed that, given Larko's difficulties, it is hard to believe that a private investor would have provided the guarantee in question simply on the basis of its profitability over the three preceding years, without any other evidence of the company's current robustness and without any reference to its future prospects.

100 Secondly, it must be observed that the fact that ATE Bank provided Larko with a loan without a guarantee is not sufficient evidence of the company's good solvency ratio, since ATE Bank belongs to the Greek State. Moreover, as the Commission points out, the fact that, after obtaining a loan from ATE Bank without a guarantee, Larko obtained the loan for which the guarantee at issue was necessary demonstrates that the company's economic situation had further deteriorated in the course of the year.

101 Thirdly, the Greek State's provision of guarantees to other companies at similar premiums does not in itself equate to the conduct of a private investor.

102 It follows that the Commission did not make a manifest error of assessment in concluding that the annual guarantee premium of 1% was not consistent with the conduct of a private investor.

103 In the third place, the question arises of whether, as the applicant claims, fulfilment of the conditions set out in point 3.2(b) and (c) of the Guarantee Notice is sufficient to rule out the presence of an advantage, for the purposes of Article 107(1) TFEU, even if the conditions set out in point 3.2(a) and (d) of the Guarantee Notice are not fulfilled.

104 It must be recalled in this connection that point 3.2 of the Guarantee Notice states that the 'fulfilment of all the conditions' set out in subpoints (a) to (d) is 'sufficient to rule out the presence of State aid'. The fulfilment of one or some of the conditions does not, therefore, suffice to rule out the presence of State aid.

105 As the applicant argues, point 3.6 of the Guarantee Notice admittedly states that failure to comply with one or other of the conditions set out therein does not mean that a guarantee will automatically be regarded as State aid. However, as is clear from paragraphs 74 to 102 above, in the contested decision, the Commission did not automatically classify the guarantee as aid, but instead based its decision on hard evidence that the measure in question was not consistent with the private investor principle.

106 In the light of those considerations, it must be found that the applicant's arguments regarding fulfilment of the conditions set out in point 3.2(b) and (c) of the Guarantee Notice are ineffective. Indeed, the fulfilment of these two conditions, even if proved, is not in itself sufficient to rule out the existence of an advantage, for the purposes of Article 107(1) TFEU.

107 The first part of the first plea in law must therefore be rejected in so far as measure No 2 is concerned.

– *Measure No 3 (the 2009 increase in share capital)*

108 The applicant argues that the 2009 increase in share capital did not confer any advantage, for the purposes of Article 107(1) TFEU, inasmuch as it was consistent with the private investor principle. It puts forward the following matters:

– first, by means of the increase in share capital, the Greek State, as shareholder, intended to ensure Larko's long-term profitability, protecting the company's economic value during a period of recession and obtaining a medium-term and long-term benefit by means of the sale of the company;

– second, the increase in share capital was accompanied by the adoption of measures to reduce production costs and increase Larko's competitiveness;

– third, the State was seeking to acquire a majority shareholding so that it could launch the sale of the company;

– fourth, the contested decision is vitiated by an error in its reporting of NBG's participation in the increase in share capital;

– fifth, the contested decision wrongly drew distinctions between NBG's participation and the State's participation; in the alternative, the 2009 increase in share capital should not have been regarded as an advantage, for the purposes of Article 107(1) TFEU, of a value equivalent to the amount that was required to maintain the same level of participation as the Greek State had had in Larko prior to the increase in share capital, and thus to defend its 'dynamic position as shareholder'.

109 The Commission disputes the applicant's arguments.

110 In the contested decision, the Commission concluded that the 2009 increase in share capital conferred an advantage, for the purposes of Article 107(1) TFEU, since, first of all, no restructuring plan had been provided to the shareholders prior to the capital increase, despite Larko's being a firm in difficulty, and, secondly, the final amount of the capital increase had been insufficient to cover Larko's negative equity and could therefore not be seen as a measure protecting the company's value and supporting its restructuring. The Commission also pointed out, first, that NBG's participation was not sufficient evidence of the concomitance of the State's participation and the participation of private shareholders, since NBG was bound to Larko not only as a shareholder, but also as a creditor, next, that the State had already provided Larko with the 2008 guarantee and, lastly, that the other shareholder, Public Power Corporation, had stated that it would not participate in the increase in share capital.

111 It must be observed in this connection that, as the Commission claims, the applicant has produced no evidence, and in particular no real business plan, that demonstrates that the Greek State had considered Larko's long-term profitability. In response to a question from the General Court, the applicant produced the minutes of an extraordinary meeting of its Board of Directors of 18 March 2009, which indicate that the Chairman of the Board had stated that a business plan had been tabled at a meeting held on 19 December 2008 with the Ministry of Finance and other shareholders. Nevertheless, it is not apparent from the case file that any such plan — which, moreover, has not been communicated to the Court and the existence of which is disputed by the Commission — was sent to the Commission during the administrative procedure. Therefore, whatever the content may have been, no significance is to be attached to the existence of this plan, assuming it did exist, in the assessment of the lawfulness of the contested decision.

112 That being so, the absence of any proof that the Greek State had considered Larko's long-term profitability is a significant indication of the absence of any economic rationale for the 2009 increase in share capital.

113 Admittedly, contrary to the Commission's assertion in recital 80 of the contested decision, the actual increase in share capital, which recital 16 of the decision reports to have been EUR 65.5 million, including approximately EUR 45 million contributed by the State, was not insufficient to cover Larko's negative equity, which, as is apparent from the table set out in recital 56 of the contested decision, stood at EUR 35 million. Nevertheless, that mistake is not such as to call into question the merits of the Commission's assessment, which rests principally on the absence of a restructuring plan.

114 Therefore, it was reasonable, or at very least not manifestly incorrect to conclude that, in the circumstances of the present case, a prudent investor, acting as a shareholder, would not have entered into such a significant recapitalisation without having any information at all about the company's economic and financial prospects or a restructuring plan, given that Larko was a firm in difficulty.

115 That conclusion is not called into question by the other specific arguments raised by the applicant.

116 First of all, the alleged fact that measures to reorganise the company and to make it viable had, in principle, been planned is not in itself capable of demonstrating the profitability of the 2009 increase in share capital, especially in the absence of any real restructuring plan. The same is true of the document, produced by the applicant in response to the Court's questions, which contains a list of very general cost reduction measures, even if that list was produced by the Greek authorities during the administrative procedure, which has not been proven.

117 Next, the applicant has adduced no evidence pre-dating the 2009 increase in share capital to show that, by means of that measure, the State was actually intending to acquire a majority holding in the capital of Larko, with a view to launching the sale of the company, and that that strategy was consistent with the private investor principle. Moreover, the minutes of Larko's 2009 general shareholders' meeting, which the applicant has produced, provide no specific information to that effect.

118 In addition, there is no indication in the documents on the case file that the acquisition by the Greek State of a majority shareholding would have furthered the sale of Larko on more favourable terms and that that acquisition was therefore consistent with the conduct of a private shareholder.

119 Lastly, as regards NBG's concomitant participation in the 2009 increase in share capital, first of all it must be remembered that the simultaneity of public and private investments cannot in itself, even where significant private investments have been made, suffice for a finding that there has been no aid within the meaning of Article 107(1) TFEU without consideration being given to the other relevant facts and points of law (see, to that effect, the judgment of 11 September 2012, *Corsica Ferries France* v *Commission*, T-565/08, EU:T:2012:415, paragraph 122).

120 Secondly, it must be also observed that the State's contribution was twice that of NBG and that NBG, which had been the largest shareholder in Larko before the increase in capital, became the second largest shareholder following that operation. In addition, NBG's annual financial report for 2008, which has been lodged by the Commission, confirms that NBG wrote off entirely the book value of its holding in Larko's capital because, given Larko's financial difficulties, it did not expect to recover the book value of its investment. In the circumstances, the fact of NBG's participation can lend no support to the applicant's arguments.

121 The first part of the first plea in law must therefore be rejected in so far as measure No 3 is concerned.

– *Measure No 4 (the 2010 guarantee)*

122 The applicant argues that the 2010 guarantee conferred no advantage, for the purposes of Article 107(1) TFEU, since it was consistent with the private investor principle, given the following:

– first, the provision of a guarantee in these particular circumstances was a common practice, particularly so in that the Areios Pagos (Court of Cassation) had taken the view in the judgment by which it stayed execution that Larko would probably be successful in the underlying proceedings;

– second, Larko was a firm in difficulty and would have suffered irreparable harm if, in the absence of a guarantee, the seizure of assets had accelerated; consequently, the Greek State, as shareholder, had to support the company, in order to prepare its privatisation;

– third, the cover, the duration and the premium of the 2010 guarantee corresponded to market conditions;

– fourth, contrary to what is stated in recital 42 of the contested decision, there was no indication that NBG would not have provided its letter of guarantee in the absence of a guarantee from the State; in any event, NBG was in a quite special position, since it was the majority shareholder of the company to which Larko owed the debt and which was Larko's adversary in the legal proceedings in the context of which the 2010 guarantee was provided.

123 The applicant argues in passing that this measure did not confer an advantage since the State owed it debts, despite the fact that the Greek authorities did not raise this argument during the administrative procedure, as they did with reference to measure No 6.

124 The Commission contests the applicant's arguments.

125 In the contested decision, the Commission concluded that, while it might be common business practice to provide guarantees in such circumstances, in this instance the State had assumed the entire risk and provided a guarantee for a debt while Larko was in difficulty, and the shareholder NBG had not shared the exposure proportionately. In addition, the measure in question did not fulfil the conditions set out in point 3.2 of the Guarantee Notice, since the premium of 2% did not reflect the risk of Larko's defaulting.

126 It must be held that the applicant's arguments cannot call that conclusion into question.

127 First of all, there is no indication that the Areios Pagos (Court of Cassation) had taken the view in the judgment by which it stayed execution that Larko would probably be successful in the underlying proceedings. Contrary to what the applicant argues, the fact that that court will dismiss an application for a stay of execution 'where there is no probable likelihood of harm' does not necessarily mean that, where, by contrast, the court does grant a stay of execution, as it did in this case, it considers that the applicant will probably be successful in the underlying proceedings: the judgment merely concerns the likelihood of harm and does not address the existence of the debt in the underlying proceedings.

128 The argument is, in any event, ineffective. Indeed, irrespectively of the probability of success in the national proceedings, and thus of the existence of the debt, the Commission concluded that there had been State aid because the State had assumed the entire risk and provided a guarantee for a debt while Larko was in difficulty, the shareholder NBG had not shared the exposure proportionately and the premium of 2% did not reflect the risk of Larko's defaulting (see paragraph 125 above).

129 Secondly, the fact that Larko was a firm in difficulty did not, from the point of view of a private shareholder, justify the fact that, while action on the part of the shareholders was necessary, the State should assume the entire risk, against payment of a very low premium.

130 Thirdly, the applicant has not demonstrated that the Commission made a manifest error of assessment in concluding that a premium of 2% did not correspond to market conditions, given the fact that the premium was small and Larko was a firm in difficulty and therefore at risk of defaulting.

131 Fourthly, irrespectively of whether or not the Greek authorities acknowledged, as is asserted in recital 42 of the contested decision, that NBG would not have provided its letter of guarantee in the absence of a guarantee from the State, it must be observed that, contrary to what might reasonably be expected of a private shareholder, NBG did not share with the State the exposure resulting from the guarantee in question.

132 In any event, even taking the view that NBG could not have been expected to share the risk resulting from the 2010 guarantee, given its special position, the fact remains that, as the Court has already held, Larko could not have obtained such a guarantee on the market and the premium of 2% did not reflect the risk of its defaulting. Consequently, the Commission did not make a manifest error of assessment in concluding that Larko had gained an advantage which it would not have been able to obtain on the market.

133 The first part of the first plea in law must therefore be rejected in so far as measure No 4 is concerned.

– *Measure No 6 (the 2011 guarantees)*

134 The applicant argues that the 2011 guarantees conferred no advantage, for the purposes of Article 107(1) TFEU, inasmuch as any aid element contained in those guarantees was offset by the tax debts owed it by the Greek State.

135 More specifically, in the contested decision, the Commission wrongly rejected the Greek authorities' argument relating to the possibility of offsetting the Greek State's debt to Larko, which was connected with the reimbursement of taxes, by the amount of the aid. The assessment of the measure in question stands in contradiction with that of measure No 5 (see paragraph 5 above), in which the Commission recognised that such offsetting did not entail any selective advantage.

136 The applicant clarifies that this argument does not refer to the offsetting of the debt which the Greek State owed Larko by any future debt, but to the offsetting of that debt by the possible aid element contained in the 2011 guarantees, which existed at the time when that aid was granted at the end of 2011. In addition, the argument is not contradictory, inasmuch as, following the set-off effected in the context of measure No 5, there existed a balance of debts which the State owed it.

137 The Commission disputes the applicant's arguments.

138 In so far as concerns its assessment of the 2011 guarantees, the Commission referred in the contested decision to its assessment of measures Nos 2 and 4, which it had concluded conferred a selective advantage on Larko, given that it was a firm in difficulty and that the premium of 1% did not reflect the risk of default for the guaranteed loans.

139 First of all, it must be observed that the Commission's assessment of measures Nos 2 and 4 is not vitiated by any manifest error of assessment, as is clear from paragraphs 63 to 107 and 122 to 133 above.

140 Next, it must be held that the applicant can derive no argument from the Commission's assessment of measure No 5, in which it established that the replacement, in the context of legal proceedings, of the pre-payment of the additional tax with letters of guarantee did not constitute State aid.

141 Indeed, regarding measure No 5, the Commission acknowledged, in recital 97 of the contested decision, that the right to replace the pre-payment of the additional tax with letters of guarantee had been granted to Larko by a court on the basis of objective criteria and in accordance with national legislation that applied to all companies in a similar situation.

142 That was not, however, the case with measure No 6, in relation to which the applicant argues that, as the Greek authorities have stated, the advantage conferred was offset by the debt which the State owed it by way of the reimbursement of taxes. Indeed, it is settled case-law that a measure cannot escape classification as State aid when the beneficiary of the aid is subject to a specific charge which is different from and unconnected with the measure in question (see the judgment of 26 February 2015, *Orange* v *Commission*, T-385/12, not published, EU:T:2015:117, paragraph 40 and the case-law cited).

143 It must therefore be concluded that the Commission did not make a manifest error of assessment in concluding in the contested decision that measure No 6 conferred an advantage on Larko, for the purposes of Article 107(1) TFEU.

144 The first part of the first plea in law must therefore be rejected in so far as measure No 6 is concerned and, consequently, the first part of the plea in its entirety.

The second part of the plea, concerning the use of State resources, within the meaning of Article 107(1) TFEU, in so far as measures Nos 2, 4 and 6 are concerned

145 By the second part of the plea, the applicant takes issue with the Commission's assessment concerning the use of State resources in so far as measures Nos 2, 4 and 6 are concerned.

146 The applicant argues that these measures did not entail the use of State resources since they did not create any sufficiently certain risk for the State budget, given its good solvency ratio, the fact that no calls had previously been made on guarantees and the fact that the guarantees were not subsequently triggered.

147 The applicant adds that measure No 6 did not cause State resources to be used, since, at the time when the measure was granted, the Greek State owed debts of approximately EUR 60 million to Larko by way of the reimbursement of taxes such as value added tax (VAT).

148 The Commission disputes the applicant's arguments.

149 It must immediately be stated that, in the present case, the assessment of the condition relating to the use of State resources is secondary to the assessment of the condition relating to the existence of a selective advantage, which is the subject of the first part of the first plea. Indeed, it is settled case-law that any State guarantee that is not remunerated in accordance with market conditions may imply the loss of State resources, even if the guarantee is not triggered, inasmuch as it can entail an additional burden on the State (see, to that effect, the judgment of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 95 and the case-law cited).

150 Consequently, since the 2008, 2010 and 2011 guarantees were not provided in accordance with market conditions, it must be held that those measures entailed the use of State resources, within the meaning of Article 107(1) TFEU.

151 In addition, in so far as measure No 6 is concerned, that conclusion is not called into question by the existence of debts which the State owed Larko, assuming that to be established, by way of the reimbursement of taxes. Indeed, as is clear from the case-law cited in paragraph 142 above, a measure cannot escape classification as State aid when the beneficiary of the aid is subject to a specific charge which is different from and unconnected with the measure in question.

152 The second part of the first plea must therefore be rejected.

The third part of the plea, alleging a failure to find measures Nos 3, 4 and 6 to be compatible with the internal market in accordance with Article 107(2)(b) TFEU

153 The applicant argues that measures Nos 3, 4, and 6 should have been regarded as aid compatible with the internal market in accordance with Article 107(2)(b) TFEU, since they were granted in order to make good the damage caused by exceptional occurrences:

– the first was the withdrawal from operation of several electric furnaces in Larko plants following two fatal work accidents that occurred on 2 and 26 August 2009, which significantly reduced its production capacity;

– the second was the cessation of payment of tax debts owed by the Greek State because of the economic and financial crisis in Greece, which caused it serious liquidity problems and, consequently, difficulties in accessing borrowing.

154 The Commission disputes the applicant's arguments.

155 As a preliminary point it must be noted that, in accordance with Article 107(2)(b) TFEU, 'aid to make good the damage caused by natural disasters or exceptional occurrences' is compatible with the internal market.

156 Since this is an exception to the general principle, stated in Article 107(1) TFEU, that State aid is incompatible with the common market, Article 107(2)(b) TFEU must be interpreted narrowly. Therefore, only economic damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible must be made of the damage suffered (see the judgment of 25 June 2008, *Olympiaki Aeroporia Ypiresies* v *Commission*, T-268/06, EU:T:2008:222, paragraph 52 and the case-law cited).

157 In the contested decision, the Commission did not examine the compatibility of the contested measures with the provision in question, since the Greek authorities had not relied on that provision.

158 Admittedly, the two circumstances mentioned above were, as the applicant argues, referred to sporadically in connection with measures Nos 3 and 4 in the Greek authorities' observations in the administrative procedure.

159 Nevertheless, it must be observed, first, that the Greek authorities did not rely on the justification laid down in Article 107(2)(b) TFEU with reference to these circumstances. Secondly, contrary to the requirements established by the case-law cited in paragraph 156 above, there is no correspondence between the amount of damage allegedly caused by the two occurrences which the applicant mentions and the size of the guarantees and of the increase in share capital in question, which, moreover, were measures of a general nature unsuited to the kind of use contemplated by the applicant.

160 There was therefore nothing to suggest that the abovementioned exception might apply in the circumstances of the present case and the Commission cannot therefore be criticised for not having examined, of its own initiative, the compatibility of measures Nos 3 and 4 with that provision, still less the compatibility of measure No 6, in relation to which the circumstances were not even mentioned (see, by analogy, the judgment of 15 June 2005, *Regione autonoma della Sardegna* v *Commission*, T-171/02, EU:T:2005:219, paragraphs 166 to 168).

161 In the light of those considerations it must be concluded that the Commission did not make a manifest error of assessment in not finding that the contested measures were compatible with the internal market in accordance with Article 107(2)(b) TFEU.

162 The third part of the first plea must therefore be rejected.

The fourth part of the plea, alleging a failure to find measure No 6 to be compatible with the internal market in accordance with Article 107(3)(b) TFEU

163 The applicant argues that measure No 6 should have been regarded as aid compatible with the internal market in accordance with Article 107(3)(b) TFEU, since it was compatible with the Commission's Communication on a temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (OJ 2009 C 83, p. 1, 'the 2009 temporary framework'), as extended by the Commission's Communication on a temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ 2011 C 6, p. 5, 'the 2011 temporary framework'). The applicant states that, in accordance with the conditions laid down in the 2011 temporary framework, interpreted in the light of the 2009 temporary framework, it was not a firm in difficulty on 1 July 2008 and that the 2011 temporary framework provides for safe-harbour premiums, such as the 1% premium provided for by the measure in question.

164 In the alternative, the applicant argues that the measure in question should be regarded, in whole or in part, as being compatible with the internal market in accordance with Article 107(3)(b) TFEU and the guidelines on rescuing and restructuring. It states that, as is clear from their observations, the Greek authorities had notified the Commission of the measure by means of a document appended to an email of 16 March 2012.

165 The Commission disputes the applicant's arguments.

166 It must be remembered, as a preliminary point, that it is settled case-law that the Commission enjoys a broad discretion in the application of Article 107(3) TFEU the exercise of which involves complex economic and social assessments (see the judgment of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraph 68 and the case-law cited). In that context, judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with, and to verifying the accuracy of the facts relied on and that there has been no error of law, manifest error in the assessment of the facts or misuse of powers (see the judgment of 11 September 2008, *Germany and Others* v *Kronofrance*, C-75/05 P and C-80/05 P, EU:C:2008:482, paragraph 59 and the case-law cited).

167 However, in adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its discretion and cannot, in principle, depart from those rules under pain of being found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations, unless it gives reasons justifying, in the light of those principles, its departure from its own rules (see the judgment of 10 July 2012, *Smurfit Kappa Group* v *Commission*, T-304/08, EU:T:2012:351, paragraph 84 and the case-law cited).

168 In the first place, it must be remembered that, in recital 115 of the contested decision, the Commission stated that measure No 6 did not meet the conditions of the 2011 temporary framework, since Larko was a firm in difficulty. The Commission also found that the total amount of the two guarantees exceeded Larko's annual wage bill, the guarantee exceeded 90% of the loan and 1% per annum could not be considered as a market premium reflecting the risk of default for the guaranteed amount.

169 In this connection, it must first of all be noted that, contrary to the applicant's assertions, the 2011 guarantees fall solely within the scope of the 2011 temporary framework, which was in effect when the 2011 guarantees were provided, and not also within the scope of the 2009 temporary framework.

170 Next, it is sufficient to observe that the 2011 guarantees did not meet at least some of the cumulative conditions set out in the 2011 temporary framework, which are applicable in this case, and in particular the following:

– section 2.3, second paragraph, point (b), of the 2011 temporary framework, which provides that, for large companies (such as Larko), Member States may calculate the annual premium for new guarantees on the basis of the safe-harbour provisions set out in the annex to the temporary framework; however, for undertakings rated CCC and below, the lowest safe-harbour premium is set at 380 basis points, whereas the premium for the 2011 guarantees was 1%, or 100 basis points;

– section 2.3, second paragraph, point (d), of the 2011 temporary framework, which requires that the maximum loan should not exceed the total annual wage bill of the beneficiary for 2010, whereas, in their observations, as summarised in recital 51, second sentence, point (d), of the contested decision, the Greek authorities admitted that the total amount of the two guaranteed loans exceeded Larko's annual wage bill by EUR 3 million;

– section 2.3, second paragraph, point (f), of the 2011 temporary framework, which requires that the guarantee should not exceed 80% of the loan for the duration of the loan, whereas the guarantees covered 100% of the loan, as the Greek authorities admitted in their observations, as summarised in recital 51, second sentence, point (e), of the contested decision; the circumstance, raised by the Greek authorities, that the measure in question was 'the only possibility for [Larko] to access financing, due to the particular situation of the Greek economy', is of no effect;

– section 2.3, second paragraph, point (i), of the 2011 temporary framework, which states that firms in difficulty are excluded from the scope of application of the measure, whereas it has been established that Larko was a firm in difficulty when measure No 6 was granted; the applicant's argument that the reference to 'firms in difficulty' must be interpreted in the light of section 4.3.2, second paragraph, point (i), of the 2009 temporary framework, which refers to firms that were not in difficulty on 1 July 2008, must be rejected because that argument contradicts the wording of section 2.3, second paragraph, point (i), of the 2011 temporary framework, which applies in this case.

171 Lastly, it must be observed that the fifth paragraph of section 2.1 of the 2011 temporary framework states that Member States must show that State aid measures notified under the framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned, whereas it is not apparent from the documents on the case file that the Greek authorities gave proper notification of the measure in question or that they furnished the required evidence.

172 In the second place, it must be recalled that, in recital 116 of the contested decision, the Commission concluded that measure No 6 could not be classified as rescue aid, since the Greek authorities had not put forward that argument or given any notification in that regard. In recital 117 of the decision, the Commission went on to state that the conditions laid down in the guidelines on rescuing and

restructuring had not been fulfilled either, inasmuch as the guarantees in question were not terminated after six months, the Greek authorities had not notified a restructuring plan or a liquidation plan and there was no evidence that the aid was limited to the necessary minimum.

173 Suffice it to observe, first, that the Greek authorities did not notify measure No 6 with reference to the guidelines on rescuing and restructuring and, secondly, that, at the very least, it is not clear from the case file that those authorities had presented, within six months of the measure's implementation, a restructuring plan or a liquidation plan or proof that the loan had been entirely repaid or that the guarantee had been terminated, contrary to the requirements of paragraph 25(c) of those guidelines.

174 In the light of those considerations, it must be concluded that the Commission did not make a manifest error of assessment in finding that measure No 6 was not State aid compatible with the internal market in accordance with the 2011 temporary framework or the guidelines on rescuing and restructuring.

175 The fourth part of the first plea must therefore be rejected, and consequently, the first plea in its entirety.

The third plea, put forward in the alternative, alleging errors in the quantification of the amount of aid to be recovered in so far as measures Nos 2, 4 and 6 are concerned

176 By its third plea, which draws together arguments dispersed throughout the application, the applicant pleads infringement of Article 14(1) of Regulation No 659/99 with regard to measures Nos 2, 4 and 6, being aid in the form of guarantees, in that the Commission made errors in its quantification of the amount of aid to be recovered and ordered recovery of the aid in breach of fundamental principles of the European Union.

177 The applicant alleges, first, that the guarantees were not triggered and that the guaranteed loans have already been repaid, either in full or in part.

178 Secondly, the Commission has not proven the existence of the 'exceptional circumstances' referred to in point 4.1, third subparagraph, point (a) of the Guarantee Notice, the classification of Larko as a firm in difficulty not being sufficient to prove the existence of such circumstances. In addition, it would have been possible in the present case to compare the premiums at issue with other market premiums or, failing that, to calculate such premiums in accordance with the relevant stipulations of the Commission's Communication on the revision of the method for setting the reference and discount rates (OJ 2008 C 14, p. 6) and the annexes to the 2009 temporary framework and the 2011 temporary framework. Moreover, the mere assertion that it was 'doubtful' that Larko would have found any guarantees on the market without the State's intervention does not meet the requisite standard of proof.

179 The Commission disputes the applicant's arguments.

180 It should be observed at the outset that no provision of European Union law requires the Commission, when ordering the recovery of aid declared incompatible with the common market, to fix the exact amount of the aid to be recovered (judgments of 12 October 2000, *Spain* v *Commission*, C-480/98, EU:C:2000:559, paragraph 25, and of 12 May 2005, *Commission* v *Greece*, C-415/03, EU:C:2005:287, paragraph 39). However, if the Commission, pursuant to its obligation to conduct a diligent and impartial examination of the case under Article 108 TFEU, does decide to order the recovery of a specific amount, it must assess as accurately as the circumstances of the case will allow, the actual value of the benefit received from the aid by the beneficiary. In restoring the situation existing prior to the payment of the aid, the Commission is obliged to ensure that the real advantage resulting from the aid is eliminated and it must thus order recovery of the aid in full. The Commission may not order

recovery of an amount which is less than or more than the value of the aid received by the beneficiary (see the judgment of 29 March 2007, *Scott* v *Commission*, T-366/00, EU:T:2007:99, paragraph 95 and the case-law cited).

181 In the first place, it must be recalled that, in accordance with the case-law cited in paragraph 57 above, in order to examine whether or not the State has adopted the conduct of a prudent investor operating in a market economy, it is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation.

182 It is therefore with reference to the time when the guarantee is provided, not the time when it is triggered or the time when it results in payments being made, that it must be determined whether or not it constitutes State aid and, if so, that the amount of aid must be calculated (see, to that effect, the judgment of 17 December 2015, *SNCF* v *Commission*, T-242/12, under appeal, EU:T:2015:1003, paragraph 332). Furthermore, the fact that the guarantees were not triggered and that the guaranteed loans were allegedly repaid, in full or in part, as the applicant claims, are subsequent circumstances that may not be taken into account in the calculation of the incompatible aid.

183 In the second place, it must be established whether the Commission was entitled to conclude, in recitals 77, 94 and 104 (which implicitly refers to recital 77) of the contested decision, that Larko had received an advantage equal to the total amount of the guaranteed loans, because without the State guarantee it would not have been able to receive that funding from the market.

184 It must be remembered in this connection that, in recitals 56 to 66 of the contested decision, the Commission analysed the applicant's economic and financial situation at the time when the aid measures were granted and concluded that it had been a firm in difficulty and indeed in an extremely challenging position. On the basis of the company's key financial data for the period from 2007 to the first half of 2012, it noted a steady and significant decrease in its turnover and the existence of negative equity.

185 In recital 77 of the contested decision, the Commission concluded that the 2008 guarantee (measure No 2) constituted State aid and that the aid was equal to the amount of the guaranteed loan, because 'it [was] doubtful that [Larko], in view of its economic difficulties, would have found any funding in the market irrespective of the conditions'. The same conclusion was drawn in recital 104 of the decision with regard to the 2011 guarantees (measure No 6). In so far as concerns the 2010 guarantee (measure No 4), the Commission asserted in recital 94 of the decision that the amount of the aid was equal to the guaranteed amount, because 'it [was] clear that no reasonable market player would have been able to guarantee that amount for [Larko], in view of its economic difficulties'.

186 First of all, in so far as measures Nos 2 and 6 are concerned, it must be observed that the word 'doubtful' had already been used, appropriately, in the preliminary assessment formulated by the Commission in paragraph 39 of the opening decision and that the use of that word admittedly seems less appropriate in the Commission's final assessment, in the contested decision, that Larko would not have been able to find measures comparable to the contested measures in the market, especially since, in substantially identical assessments, the Commission used the word 'doubtful' with regard to these measures and the word 'clear' with regard to measure No 4. Moreover, in its pleadings, the Commission states that 'a fact is regarded as established when its existence appears to be more likely than its inexistence', which implies an obligation to assess the facts adequately.

187 That said, it must be observed that, in the context of the contested decision and of recital 77 thereof, of which the applicant could not be unaware, it is sufficiently clear that the Commission regarded it as unlikely, at very least, that Larko would have been able to obtain a loan on the market without the intervention of the Greek State, because of its economic difficulties. Furthermore, in so far as measure No 2 is concerned, after stating that 'it [was] doubtful that [Larko], in view of its economic difficulties,

would have found any funding in the market irrespective of the conditions', recital 77 goes on to state that, 'in other words, the Commission considers that [Larko] received an advantage equal to the amount of the guaranteed loan, because without the State guarantee it would not have been able to receive that financing from the market'. The same is true of recital 104, with regard to measure No 6, that recital referring to the assessment of measure N 2.

188 Consequently, in the circumstances of the present case, the use of the word 'doubtful' is not in itself capable of calling into question the merits of the Commission's assessment of measures Nos 2 and 6.

189 Next, it must be noted that, while it is not impossible that the advantage resulting from a State guarantee may, under certain circumstances, be equal to the total amount of the guaranteed loan, such a conclusion cannot be based on the circumstance that the loan would not have been provided without the guarantee, since that circumstance pertains to the classification of a measure as State aid and not to the quantification of the aid. In addition, contrary to the Commission's allegations, the fact that the beneficiary is a firm in difficulty is not sufficient justification for concluding that the advantage resulting from a State guarantee is equal to the total amount of the guaranteed loan, given the serious implications of that approach and, in particular, the likelihood that the beneficiary will be compelled to pay the State an amount equivalent to the loan, even where it has been able to repay the loan to the lender.

190 That interpretation is confirmed by the Commission itself in point 4.1, third subparagraph, point (a), of the Guarantee Notice, which reads as follows:

'… For companies in difficulty, a market guarantor, if any, would, at the time the guarantee is granted, charge a high premium given the expected rate of default. If the likelihood that the borrower will not be able to repay the loan becomes particularly high, this market rate may not exist and in exceptional circumstances the aid element of the guarantee may turn out to be as high as the amount effectively covered by that guarantee[.]'

191 It is clear from point 4.1, third subparagraph, point (a), of the Guarantee Notice, which the Commission maintains it applied in this case, that the evaluation of the aid element of a guarantee will result in outcomes of varying severity, to the point of considering the aid element to be equivalent to the total amount of the guaranteed loan, which may occur if there are 'exceptional circumstances' such that it is thought impossible for the borrower to repay the guaranteed loan from its own resources.

192 Lastly, it is true that, in recitals 77, 94 and 104 of the contested decision, the Commission stated only very succinctly the reasons for its conclusion that Larko had received an advantage equal to the amount of the guaranteed loans, mentioning only Larko's 'economic difficulties'.

193 Nevertheless, it is clear from the contested decision as a whole, and from recitals 56 to 66 in particular, that, at the time when the aid measures were granted, Larko was in an extremely tricky position, particularly because of the steady decrease in its turnover and the existence of negative equity, which gave the impression that all of the company's capital would be lost. That being so, the Commission cannot be said to have made an error in concluding that there were 'exceptional circumstances' such that it would be impossible for Larko to repay the entirety of the loan from its own resources. Moreover, that is not contradicted by any evidence adduced by the Greek authorities or by the applicant during the administrative procedure and placed on the case file, and so the Commission was entitled to assess the contested measures by reference to the information available to it when it adopted the contested decision (see, to that effect, the judgment of 24 September 2002, *Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, EU:C:2002:524, paragraph 168). Furthermore, an applicant cannot rely before the Court on information which it did not put forward in the course of the administrative procedure provided for by Article 108 TFEU (judgment of 13 June

2002, *Netherlands* v *Commission*, C-382/99, EU:C:2002:363, paragraphs 49 and 76; see also, to that effect, the judgment of 14 September 1994, *Spain* v *Commission*, C-278/92 to C-280/92, EU:C:1994:325, paragraph 31).

194 In the light of all the foregoing, it must be held that, despite the imperfect formulation of some of the recitals of the contested decision, the Commission did not make an error of assessment in concluding that, in the circumstances of the present case, the amount of the State aid granted to the applicant in the form of State guarantees was equal to the full amount of the guaranteed loans.

195 The third plea must therefore be rejected and, consequently, the action must be dismissed in its entirety, without it being necessary to consider the admissibility of the second head of claim by which the applicant seeks an order 'that whatever amount may have been "recovered" directly or indirectly from [it] in execution of the contested decision be reimbursed with interest'.

Costs

196 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been substantially unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Larko Geniki Metalleftiki kai Metallourgiki AE to pay the costs.

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 1 February 2018.

[Signatures]

Table of contents