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Information and Notices

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(Information)

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EUROPEAN COMMISSION

Authorisation for State aid pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union

Cases where the Commission raises no objections

(Text with EEA relevance)

(2016/C 220/01)

Date of adoption of the decision	12.10.2015	
Aid number	SA.40744 (2015/N)	
Member State	Italy	
Region	TRAPANI, SICILIA	-
Title (and/or name of the beneficiary)	Aeroporto Trapani-Birgi. Bando Finanziamento Rotte Comunitarie	
Legal basis	Legge Regione Siciliana n° 16 del 20/07/2011 art. 1 comma 4 sexies lett. a) ‘Norme in materia di riserve in favore degli enti locali’	
Type of measure	Individual aid	Airgest S.p.A - Società di gestione aeroporto civile
Objective	Other	
Form of aid	Direct grant	
Budget	Overall budget: EUR 1 (in millions)	
Intensity	50 %	
Duration (period)	01.06.2015 - 31.12.2018	

Economic sectors	Passenger air transport
Name and address of the granting authority	Regione Siciliana Piazza Indipendenza, 1 - Palermo
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	29.04.2016	
Aid number	SA.41033 (2016/N)	
Member State	Italy	
Region	TRENTO	Non-assisted areas
Title (and/or name of the beneficiary)	Disposizioni per favorire il trasporto integrato	
Legal basis	— Legge provinciale del 9 luglio 1993, n. 16 - articolo 16 bis (aggiunto dall'art. 66, comma 2, della l.p. del 19 febbraio 2002, n. 1 e modificato dall'art. 35 della l.p. del 14 maggio 2014, n. 3) — Deliberazione Giunta provinciale n. 2036 del 24 novembre 2014	
Type of measure	Scheme	-
Objective	Sectoral development, Environmental protection	
Form of aid	Direct grant	
Budget	Overall budget: EUR 1,2 (in millions) Annual budget: EUR 0,4 (in millions)	
Intensity	50 %	
Duration (period)	until 31.12.2018	
Economic sectors	Freight rail transport	

Name and address of the granting authority	Provincia autonoma di Trento — Servizio trasporti pubblici piazza Dante 6 - 38122 TRENTO
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	23.03.2016	
Aid number	SA.41815 (2015/N)	
Member State	Italy	
Region	SICILIA	-
Title (and/or name of the beneficiary)	Concessione di un contributo per l'avviamento di nuovi collegamenti aerei da/per l'aeroporto di Comiso (CIY)	
Legal basis	— Art. 13, commi 14 e 15, del D.L. del 23 dicembre 2013 n. 145 convertito, con modificazioni, in Legge del 21 febbraio 2014, n. 9. - Interventi urgenti di avvio del piano 'Destinazione Italia', per il contenimento delle tariffe elettriche e del gas, per la riduzione dei premi RC-auto, per l'internazionalizzazione, lo sviluppo e la digitalizzazione delle imprese, nonché' misure per la realizzazione di opere pubbliche ed EXPO 2015"; — 'Linee guida inerenti le incentivazioni per l'avviamento e lo sviluppo di rotte aeree da parte dei vettori ai sensi dell'art. 13, commi 14 e 15, del decreto legge del 23.12.2013, n. 145, come modificato dalla legge di conversione del 21.02.2014, n. 9', emanate dal M.I.T. con ministeriale n. 397 Gab. del 02.10.2014; — Deliberazione n. 5 del 12.03.2015, adottata dal Commissario Straordinario con i poteri del Consiglio Provinciale, avente ad oggetto 'Aggiornamento del Piano di cui all'articolo 1 della L.R. del 05.11.2004, n. 15, relativo all'utilizzo dei fondi assegnati alla Provincia regionale di Ragusa ai sensi dell'art. 77 della L.R. del 03.05.2011, n. 6, e ss. mm. ed ii. - Integrazioni, rettifiche e indirizzi attuativi'; — Atto di intesa fra la Provincia Regionale di Ragusa ed e la SO.A.CO. S.p.A. - Società di gestione dell'Aeroporto di Comiso, volto a definire 'Procedure e strumenti per una azione di promozione del territorio mediante la istituzione di nuove rotte e/o il potenziamento delle rotte esistenti facenti capo all'aeroporto "Pio La Torre" di Comiso', approvato con Deliberazione Commissariale n. 91/102RG del 31.07.2015 e sottoscritto in data 13 ottobre 2015.	
Type of measure	Scheme	-

Objective	Regional development, Employment, Promotion of export and internationalisation, Sectoral development
Form of aid	Direct grant
Budget	Overall budget: EUR 1,35 (in millions) Annual budget: EUR 0,675 (in millions)
Intensity	50 %
Duration (period)	01.04.2016 - 31.03.2020
Economic sectors	Passenger air transport
Name and address of the granting authority	Provincia regionale di Ragusa - Libero consorzio comunale Viale del Fante - 97100 RAGUSA
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	28.01.2016	
Aid number	SA.42847 (2015/N)	
Member State	United Kingdom	
Region	NORTHERN IRELAND	-
Title (and/or name of the beneficiary)	Invest NI Rescue and Restructuring Scheme 2016-2020	
Legal basis	The Industrial Development (Northern Ireland) Order 1982 The Industrial Development (Northern Ireland) Act 2002 The European Communities Act 1972	
Type of measure	Scheme	-
Objective	Rescuing firms in difficulty, Restructuring firms in difficulty	
Form of aid	Direct grant, Guarantee, Interest subsidy, Provision of risk capital, Soft loan	

Budget	Overall budget: GBP 10 (in millions) Annual budget: GBP 2 (in millions)
Intensity	50 %
Duration (period)	01.01.2016 - 31.12.2020
Economic sectors	All economic sectors eligible to receive aid
Name and address of the granting authority	Invest Northern Ireland Invest Northern Ireland, Bedford Square, Bedford Street, Belfast BT2 7ES
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	18.03.2016	
Aid number	SA.42889 (2016/N)	
Member State	Finland	
Region	-	-
Title (and/or name of the beneficiary)	Yksittäinen tuki nesteytetyn maakaasun terminaalille (Hamina)	
Legal basis	Act on Discretionary Government Transfers (Valtionavustuslaki) (688/2001) General Terms of Granting LNG Terminal Support (Valtioneuvoston asetus nesteytetyn maakaasun terminaalien investointituen myöntämisen yleisistä ehdoista) (707/2013)	
Type of measure	Individual aid	Haminan Energia Oy
Objective	Environmental protection	
Form of aid	Direct grant	
Budget	Overall budget: EUR 27,66 (in millions)	
Intensity	30 %	
Duration (period)	-	

Economic sectors	ELECTRICITY; GAS; STEAM AND AIR CONDITIONING SUPPLY
Name and address of the granting authority	Ministry of Employment and the Economy (Työ- ja elinkeinoministeriö) PL 32, FI-00023 Valtioneuvosto, Finland
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	04.12.2015	
Aid number	SA.43365 (2015/N)	
Member State	Greece	
Region	-	-
Title (and/or name of the beneficiary)	Amendment of the restructuring plan approved in 2014 and granting of new aid to National Bank of Greece	
Legal basis	Law 3864/2010 (Gov. Gazette A 119) Law 4340/2015 (Gov. Gazette A 134) Cabinet Act 36/2015 (Gov. Gazette A 135)	
Type of measure	Individual aid	NATIONAL BANK OF GREECE
Objective	Remedy for a serious disturbance in the economy	
Form of aid	Other - Additional restructuring aid to National Bank of Greece	
Budget	Overall budget: EUR 2 706 (in millions)	
Intensity	-	
Duration (period)	-	
Economic sectors	Financial service activities; except insurance and pension funding	
Name and address of the granting authority	Hellenic Financial Stability Fund 10, E. Venizelos Ave. (Panepistimiou), Athens 106 71, Greece	

Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	04.05.2016	
Aid number	SA.44479 (2016/N)	
Member State	Germany	
Region	ROSTOCK, KRFR.ST.	-
Title (and/or name of the beneficiary)	Ausbau des Überseehafens Rostock	
Legal basis	Koordinierungsrahmen der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur' ab 1. Juli 2014 ('GRW-Koordinierungsrahmen')	
Type of measure	Ad hoc aid	Hafen-Entwicklungsgesellschaft Rostock mbH
Objective	Sectoral development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 13,592 (in millions)	
Intensity	78,65 %	
Duration (period)	-	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Landesförderinstitut Mecklenburg-Vorpommern Werkstraße 213, D-19061 Schwerin	
Other information	-	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	20.04.2016
Aid number	SA.44846 (2016/N)
Member State	Germany

Region	NIEDERSACHSEN	-
Title (and/or name of the beneficiary)	NPorts GmbH & Co. KG	
Legal basis	Lower Saxony port financing law of 8. Dezember 2005 (promulgate it as Article 2 of the Lower Saxony port law of 8. Dezember 2005) § § 44, 23 of the Lower Saxony budgetary regulations as amended on April 30, 2001, as last amended by Act of 16. Dezember 2013	
Type of measure	Ad hoc aid	NPorts GmbH & Co. KG
Objective	Sectoral development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 9,5 (in millions)	
Intensity	76 %	
Duration (period)	-	
Economic sectors	Sea and coastal freight water transport	
Name and address of the granting authority	Federal state of Lower Saxony (Ministry for Economics, Labour and Transport of Lower Saxony) Friedrichswall 1, 30159 Hannover	
Other information	-	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Date of adoption of the decision	04.05.2016	
Aid number	SA.45129 (2016/N)	
Member State	Ireland	
Region	-	-
Title (and/or name of the beneficiary)	Third prolongation of the Credit Union restructuring and stabilisation Scheme	
Legal basis	Credit Union and Cooperation with Overseas Regulators Act 2012	
Type of measure	Scheme	-
Objective	Remedy for a serious disturbance in the economy	

Form of aid	-
Budget	-
Intensity	-
Duration (period)	01.05.2016 - 31.10.2016
Economic sectors	All economic sectors eligible to receive aid
Name and address of the granting authority	Minister for Finance Government Buildings, Merrion Street, Dublin 2, Ireland
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Authorisation for State aid pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union

Cases where the Commission raises no objections

(Text with EEA relevance, except for products falling under Annex I of the Treaty)

(2016/C 220/02)

Date of adoption of the decision	30.04.2015	
Aid number	SA.41173 (2015/N)	
Member State	Estonia	
Region	-	-
Title (and/or name of the beneficiary)	Toetus nõustajate koolituseks - Eesti maaelu arengukava 2014-2020 meede 2.3	
Legal basis	Euroopa Liidu põllumajanduspoliitika rakendamise seadus § 71 Põllumajandusministri määrus 'Nõustajate koolitamise toetuse saamise nõuded ja toetuse saaja hindamiskriteeriumid'	
Type of measure	Scheme	-
Objective	Aid for knowledge transfer and information actions in rural areas, Rural development (AGRI)	
Form of aid	Subsidized services	
Budget	Overall budget: EUR 0,4 (in millions) Annual budget: EUR 0,06 (in millions)	
Intensity	100 %	
Duration (period)	01.05.2015 - 31.12.2021	
Economic sectors	All economic sectors eligible to receive aid	
Name and address of the granting authority	Põllumajanduse Registrite ja Informatsiooni Amet Tartu, Narva mnt 3	
Other information	-	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	26.04.2016
Aid number	SA.43425 (2015/NN)

Member State	Bulgaria	
Region	-	-
Title (and/or name of the beneficiary)	Помощ за отстраняване на умрели животни	
Legal basis	Закон за ветеринарномедицинската дейност Инструкция за събиране и обезвреждане на умрели животни от територията на Република България	
Type of measure	Scheme	-
Objective	Aid for fallen stock	
Form of aid	Direct grant/Interest rate subsidy	
Budget	-	
Intensity	100 %	
Duration (period)	01.01.2007 - 31.12.2014	
Economic sectors	Animal production	
Name and address of the granting authority	Bulgarian Food Agency	
Other information	-	

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm

Date of adoption of the decision	04.04.2016	
Aid number	SA.44148 (2016/N)	
Member State	Italy	
Region	PIEMONTE	Non-assisted areas
Title (and/or name of the beneficiary)	Contratto di Sviluppo Industriale - Centrale del latte di Torino & C. S.p.A.	
Legal basis	Decreto MISE del 09/12/2014; Decreto MISE del 9/06/2015	
Type of measure	Ad hoc aid	Centrale del latte di Torino & C. S.p.A.

Objective	Investment in processing and marketing
Form of aid	Direct grant, Soft loan
Budget	Overall budget: EUR 2,65 (in millions)
Intensity	7,9 %
Duration (period)	until 31.12.2020
Economic sectors	Manufacture of dairy products
Name and address of the granting authority	Ministero dello Sviluppo Economico Regione Piemonte Via Veneto 33 - Roma I Piazza Castello 165, Torino
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

EUROPEAN COMMISSION

STATE AID — IRELAND

State aid SA.29064 (2015/C) (ex 2011/NN) — Air Transport — Exemption from air passenger tax

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

(Text with EEA relevance)

(2016/C 220/03)

By means of the letter dated 28 September 2015 reproduced in the authentic language on the pages following this summary, the Commission notified Ireland of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned measure.

Interested parties may submit their comments on the measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
Directorate Transport, Post and other services
1049 Brussels
BELGIUM
Fax No:

These comments will be communicated to Ireland. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

TEXT OF SUMMARY

As of 30 March 2009, the Irish authorities introduced an excise duty on air passenger transport, which was to be levied in respect of 'every departure of a passenger on an aircraft from an airport' ('Air Travel Tax'). While the tax *in fine* was intended to be passed on to the passengers via the ticket price, it was the airline operators that were liable to collect and pay the tax in respect of passengers departing on their respective aircraft. The definition of 'passenger' in this context excludes transfer and transit passengers from the tax. A transfer passenger's flight to an airport and his or her departing flight from that airport must be part of a single booking. At the time of the introduction, the tax was levied on the basis of the distance between the airport where the journey began and the airport where the journey ended, at the rate of: (i) EUR 2 in the case of a journey from an airport to a destination located at most 300 km from Dublin airport; and (ii) EUR 10 in any other case. As of 1 March 2011, one single rate of EUR 3 applies to all distances.

According to a complaint received by the Commission, the non-application of the tax to transfer and transit passengers constituted illegal and incompatible State aid granted in particular to Dublin Airport Authority and to Aer Lingus, which operates a high proportion of flights carrying transfer and transit passengers. The complainant estimates the exclusion of transfer and transit passengers from the tax to result in State aid amounting to at least EUR 8,6 million per year.

According to the Irish authorities, the exclusion of transfer and transit traffic from the scope of the tax is intended to ensure clarity of application and to avoid over-application of the tax, i.e. to ensure that a person would not be discriminated against if he or she had to stopover in an airport that was not their final destination and such a stopover was required in order to get to the final destination or the airline journey to a final destination included a stopover. Information provided by Ireland suggests that the first leg of a journey with a stop-over in Ireland is exempt from the tax. The Irish authorities informed the Commission that they were willing to explore an appropriate amendment to their tax legislation to remove the 'single-booking' condition.

In this case, determining whether the alleged measures constitute State aid hinges on whether the measure is selective. Assuming that the reference system of taxation is a tax which is charged in respect of every departure of a passenger on an aircraft from an airport in Ireland, it is necessary to determine in relation to that tax regime whether any advantage granted by the tax measure at issue may be selective by demonstrating that the measure derogates from that common regime inasmuch as it differentiates between economic operators who, in light of the objective assigned to the tax system of the Member State concerned, are in comparable factual and legal situations. In particular, it may be appropriate to distinguish the legal and factual situation of airlines providing only point-to-point services from that of airlines that also provide services that involve a transfer or transit at airports in Ireland. The legal and factual situation of such undertakings however differs in various respects: For instance, the entire journey involving two or more segments is sold as one and can be travelled with a single ticket, passengers typically do not have to reclaim their luggage when transferring, and checks on passengers and luggage are typically different. Moreover, the business models of airlines focussing on point-to-point services and those operating services which may involve a transfer or transit are also very different.

In conclusion, the non-application of the tax on transfer and transit passenger traffic seems to constitute State aid for which there are doubts about the compatibility with the internal market.

In accordance with Article 14 of Council Regulation (EC) No 659/1999, all unlawful aid can be subject to recovery from the recipient.

TEXT OF LETTER

'The Commission wishes to inform Ireland that, following the partial annulment by judgment of the General Court [1], of the Commission decision of 13 July 2011 [2] on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU').

1. PROCEDURE

(1) By letter of 21 July 2009, registered at the Commission the following day under number CP 231/2009, the Commission received a complaint from airline operator Ryanair Ltd, regarding alleged unlawful and illegal State aid through five measures stemming from the air travel tax, which is an excise duty established by Ireland.

(2) By letter of 28 July 2009, the Commission forwarded the complaint to the Irish authorities and asked for their position on the claims brought forward therein.

(3) By letter of 26 August 2009, the Irish authorities asked for an extension of the deadline to reply, which the Commission accepted in letter of 3 September 2009.

(4) On 15 October 2009, the Irish authorities responded to the letter of the Commission. Their reply was registered at the Commission on the same day.

(5) Since the alleged aid had been implemented without prior notification to the Commission, the case was registered as a non-notified measure, 2011/NN. The Commission carried out a preliminary investigation of that measure, pursuant to Article 108(3) TFEU.

(6) By Decision of 13 July 2011, adopted at the end of the preliminary investigation stage, the Commission found that four of the alleged aid measures (including the non-application of the air travel tax to transfer and transit passengers) did not constitute State aid within the meaning of Article 107(1) TFEU. By the same decision, it initiated a formal investigation concerning the fifth alleged aid measure, which concerned the difference in rates for flights to destinations located no more than 300 kilometres from Dublin Airport and all other flights.

(7) By application lodged at the Registry of the General Court on 24 September 2011, Ryanair Ltd brought an action for annulment in part of aforementioned Commission Decision in so far as it finds that the non-application of the Irish air travel tax to transfer and transit passengers does not constitute State aid within the meaning of Article 107(1) TFEU.

(8) On 25 July 2012 the Commission adopted its decision on the fifth aid measure. It found that Ireland had granted State aid in the form of a lower air travel tax applicable to flights to destinations no more than 300 kilometres from Dublin Airport between 30 March 2009 and 2011. Since that State aid was unlawful and incompatible with the internal market, the decision ordered Ireland to recover the incompatible aid from the beneficiaries.

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(1) Judgment of 25.11.2014, *Ryanair* v *Commission*, T-512/11, EU:T:2014:989.

(2) C (2011) 4932 final of 13.7.2011, in State aid SA.29064 (2011/NN) – Ireland, *Air Transport — Exemptions from air passenger tax*, OJ C 306, 18.10.2011, p. 10.

(9) By judgment of 25 November 2014 in Case T-512/11, the General Court annulled the Commission decision of 13 July 2011 in so far as it found that the non-application of the Irish air travel tax to transfer and transit passengers does not constitute State aid within the meaning of Article 107(1) TFEU. The General Court concluded that the Commission should have initiated the formal investigation procedure provided for in Article 108(2) TFEU.

(10) By judgment of 5 February 2015, the General Court annulled the decision of 25 July 2012 in so far as it ordered the recovery of aid from the beneficiaries for an amount which is set at EUR 8 per passenger ([3]). The Commission has appealed that judgment to the Court of Justice ([4]).

(11) The present decision is taken to comply with the judgment in Case T-512/11 and relates to the alleged aid stemming from the non-application of the tax to transfer and transit passengers. It does not concern the amount of the aid to be recovered from the beneficiaries under the decision of 25 July 2012.

2. DETAILED DESCRIPTION OF THE MEASURE

(12) As of 30 March 2009, the Irish authorities introduced an excise duty referred to as the '*air travel tax*' (hereinafter 'ATT') which airline operators are liable to pay in respect of '*every departure of a passenger on an aircraft from an airport*' located in Ireland. The tax is based on section 55(2) of the Finance (No 2) Act 2008 ('the Finance Act').

(13) It is apparent from section 55(1) of the Finance Act that the definition of 'passenger' exempts transfer and transit passengers from payment of the tax. Pursuant to that provision, a transfer passenger is '*a passenger who arrives on a flight to an airport and who departs from the airport on a further flight, other than to the airport where the passenger's journey originated, where both flights are part of a single booking and where the length of time between the scheduled time of arrival of the flight to the airport and the scheduled time of departure of the flight from that airport is not more than 6 hour*'. Likewise, a transit passenger is '*a passenger who is on board an aircraft which lands at an airport in the course of its journey and who continues his or her journey on that aircraft.*'

(14) At the time of the introduction of the tax, it was levied on the basis of the distance between the airport where the journey began and the airport where the journey ended, at the rate of (i) EUR 2 in the case of a journey from an airport to a destination located no more than 300 km from Dublin airport and (ii) EUR 10 in any other case.

(15) As of 1 March 2011, the rates were changed into one single rate of EUR 3 applicable to all departures, regardless of the distance travelled.

3. STATE AID COMPLAINT

(16) The complainant claimed that the ATT, through a number of measures, resulted in illegal and incompatible State aid. As set out above, the present decision only concerns the non-application of the ATT to transfer and transit passengers.

(17) According to the complainant, the non-application of the tax to transfer and transit passengers constituted illegal and incompatible State aid granted in particular to Dublin Airport Authority (DAA) and to Aer Lingus, which operates a high proportion of flights carrying transfer and transit passengers.

(18) The complainant estimates the exclusion of transfer and transit passengers from the tax to result in State aid amounting to at least EUR 8,6 million per year.

4. OPINION OF THE IRISH AUTHORITIES AS COMMUNICATED TO THE COMMISSION IN THE PRELIMINARY ASSESSMENT PROCEDURE

(19) In the preliminary assessment procedure, the Irish authorities informed the Commission, by letter of 15 October 2009, that in their opinion none of the alleged aid measures amount to aid within the meaning of Article 107(1) of the TFEU.

([3]) Judgment of 5 February 2015, *Aer Lingus Ltd* v *European Commission*, T-473/12, ECLI:EU:T:2015:78.
([4]) C-165/15 P *Commission* v *Ryanair*, pending.

(20) With respect to the non-application of the ATT to transfer and transit passengers, the Irish authorities declared that it is intended to ensure clarity of application and to avoid over-application of the ATT, i.e. to ensure that a person would not be discriminated against if they had to stopover in an airport that was not their final destination and such a stopover was required in order to get to the final destination *or* the airline journey to a final destination included a stopover. The Irish authorities illustrated their view with the example of the route Dublin-Shannon-New York:

— If there was no exemption for *transit passengers*, the view might be taken that there is a liability for the tax in respect of a passenger travelling from Shannon to Dublin where that passenger originally boarded the Dublin-bound plane in the United States. According to Ireland, that would not be appropriate as the flight is clearly US-Dublin, and the fact of the stopover should not generate any ATT liability. For flights leaving Ireland with a stopover, the only aim of the exemption would be to ensure that both legs of the journey do not have to be taxed separately. In the case of a Dublin-New York flight with a Shannon stop, the appropriate rate of ATT is EUR 10, and the exemption simply provides that the question of the Dublin-Shannon element of the journey being separately subject to the EUR 2 rate of ATT does not arise.

— According to the Irish authorities, '*In respect of transfer passengers, the exemption merely ensures that the first leg of an overall journey isn't subject to ATT*' ([5]).

— Based on information provided by the Irish authorities in the preliminary investigation stage, the detailed rules for the taxation of a flight from New York to Dublin and vice versa, with a stopover in Shannon can be summarised as follows:

Flight	**Tax payable (EUR)**
New York-Shannon-Dublin	Zero
New York-Dublin	Zero
Dublin-Shannon-New York	10
Dublin-New York	10

— Moreover, the Irish authorities pointed out that transfer and transit passengers exclusions are normal in air travel taxes operated by other countries, for example the United Kingdom.

5. COMMISSION DECISION AFTER THE PRELIMINARY ASSESSMENT AND THE RULING BY THE GENERAL COURT

(21) In order to determine whether the measure at issue constitutes State aid within the meaning of Article 107(1) TFEU, the Commission assessed the selective character of the measure in application of Article 107(1) TFEU, which stipulates that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. That provision requires assessment of whether, under a particular legal regime, a national measure is such as to favour '*certain undertakings or the production of certain goods*' in comparison with others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation ([6]).

([5]) See point 13 of the letter from the Irish authorities dated 15 October 2009.
([6]) See e.g. Case C-143/99 Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke [2001] ECR I-8365, paragraph 41; Case C-308/01 GIL Insurance and Others [2004] ECR I-4777, paragraph 68; and C-172/03 Heiser [2005] ECR I-1627, paragraph 40.

(22) In order to assess whether the measures at issue are selective, the Commission first identified the relevant tax system of reference. It noted that the taxable event of the ATT is the departure of a passenger from an airport situated in Ireland and concluded that the relevant tax system of reference is the taxation of air passenger transport. It considered that transfer and transit passengers are passengers departing form an Irish airport and thus would appear to be part of that reference system and that the exclusion of transfer and transit passengers departed from the normal application of that general tax framework ([7]).

(23) In accordance with the selectivity analysis set out by the Court, the Commission then examined whether the exclusion of transfer and transit passengers from the tax is justified by the nature or the general principles of the tax system in the Member State ([8]). It noted that the objective of the Irish system for taxation of air passenger transport is to raise revenue for the State budget. It referred to the arguments by the Irish authorities regarding neutrality between passengers, who cannot always determine itself the route to its final destination, and avoidance of double taxation for journeys to countries with similar taxes. The Commission also recalled that it, in a staff working document in 2005, had drawn Member States' attention to treatment of passengers in transit and of connecting flights and recommended the exclusion of such passengers from such taxes due to tax neutrality reasons and avoidance of double taxation. It concluded that the exclusion of transfer and transit passengers from the ATT was in the nature and logic of the identified tax system, mainly because it resulted in passengers being taxed the same way independently of the route travelled, instead of subjecting transfer and transit passengers to the tax twice for the same journey ([9]).

(24) In the action for the annulment of the Commission decision, the General Court examined whether the length and circumstances of the preliminary investigation procedure constitute indicia that the Commission encountered serious difficulties which ought to have given rise to doubts on its part, by verifying whether the procedure conducted by the Commission considerably exceeded what is normally required for a preliminary investigation carried out pursuant to Article 108(3) TFEU ([10]).

(25) It concluded that the excessive length of the preliminary examination procedure and the partially incomplete and insufficient content of the investigation carried out by the Commission permitted the inference that the Commission was not able, at the date of adoption of the contested decision, to resolve all the serious difficulties identified concerning the question whether the disputed measure submitted for its appraisal was selective and therefore constituted State aid within the meaning of Article 107(1) TFEU. The General Court found that in those circumstances, and in the absence of any analysis of the possible compatibility of the disputed measure with the internal market, the Commission should have initiated the formal investigation procedure in order to gather any relevant information for verifying that the disputed measure was not selective and to possibly conclude that that measure did not constitute State aid, and to allow the applicant and the other parties concerned to present their observations in connection with that procedure.

(26) The General Court concluded that, in so far as it relates to the ATT exemption for transfer and transit passengers, the contested decision was adopted in breach of the applicant's procedural rights and must therefore be annulled. ([11])

6. **PRELIMINARY ASSESSMENT OF THE MEASURE**

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

6.1.1. *Introduction*

(27) Pursuant to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

([7]) See e.g. Case C-487/06 P British Aggregates, [2008] ECR I-10505, paragraphs 81-83.
([8]) See e.g. Case 173/73 Italy v Commission [1974] ECR 709, as well as point 13 *et seq* of Commission Notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3.
([9]) Reasoning in recitals (30)-(32), conclusion in recital (37) of the Commission decision C (2011) 4932 final of 13.7.2011.
([10]) Judgment of 25.11.2014, *Ryanair* v *Commission*, T-512/11, EU:T:2014:989, paragraph 67.
([11]) Judgment of 25.11.2014, *Ryanair* v *Commission*, T-512/11, EU:T:2014:989, paragraph 106.

(28) In order to be caught by Article 107(1) TFEU, a measure must be selective [12]. The Court has held that that provision requires assessment of whether, under a particular legal regime, a national measure is such as to favour 'certain undertakings or the production of certain goods' in comparison with others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation [13].

(29) The selective advantage may derive from an exception to the tax provisions of a legislative, regulatory or administrative nature or from a discretionary practice on the part of the tax authorities. However, the selective nature of a measure may be justified by *'the nature or general scheme of the system'* [14]. The Commission must therefore examine whether such exemptions are justified by the nature or the general principles of the tax system in the Member State. If that is the case, the measure is not considered to be aid within the meaning of Article 107(1) TFEU.

(30) In particular, and as the General Court recalled in its judgment of 25 November 2014, in order to classify a domestic tax measure as 'selective', it is necessary to begin by identifying and examining the common or 'normal' tax regime applicable in the Member State concerned. It is in relation to that common or 'normal' tax regime that it is necessary, secondly, to assess and determine whether any advantage granted by the tax measure at issue may be selective by demonstrating that the measure derogates from that common regime inasmuch as it differentiates between economic operators who, in light of the objective assigned to the tax system of the Member State concerned, are in comparable factual and legal situations.

(31) However, a measure which, although conferring an advantage on its recipient, is justified by the nature or general scheme of the system of which it is part does not fulfil the condition of selectivity. Thus, a measure which constitutes an exception to the application of the general tax system may be justified if it is shown that that measure results directly from the basic or guiding principles of the tax system of the Member State concerned.

(32) The question whether the non-application of the ATT to transfer and transit passengers constitutes State aid must be assessed in the light of those principles.

6.1.2. *The precise scope of the ATT, the reasons for the ATT, and the reasons for the non-application of the ATT in relation to transfer and transit passengers*

(33) Before determining whether the non-application of the ATT to transfer and transit passengers appears to constitute State aid, it is necessary to further investigate the ATT in the light of the judgment of the General Court in Case T-512/11.

(34) The General Court found that, by including in recital 9 of the decision of 13 July 2011 a table intended to summarize the detailed rules for the taxation of a flight from New York to Dublin and vice versa, with a stopover in Shannon, the Commission had endorsed the view of the Irish authorities that it is the first leg of the journey which is exempt from payment of the ATT [15].

(35) The table at hand (reproduced also in recital (20) above) suggests that such a conclusion may not be correct. In the example of passengers travelling from New York to Dublin with a stopover in Shannon, the exclusion of transfer and transit passengers would seem to affect the second leg (Shannon – Dublin), instead of the first leg (New York – Shannon).

(36) The Commission therefore invites the Irish authorities to set out in detail how Section 55 must be interpreted, to illustrate with clear examples how it applies to all relevant categories of routes, to clarify whether it exempts specifically the second leg of a journey or more generally exempts all transfer and transit passengers, and to provide all other information which they consider useful in that respect. It also invites them to provide those examples in relation to the periods before and after the 2011 amendments.

(12) See Case C-66/02 Italy v Commission [2005] ECR I-10901, paragraph 94.
(13) See e.g. Case C-143/99 Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke [2001] ECR I-8365, paragraph 41; Case C-308/01 GIL Insurance and Others [2004] ECR I-4777, paragraph 68; and C-172/03 Heiser [2005] ECR I-1627, paragraph 40.
(14) See e.g. Case 173/73 Italy v Commission [1974] ECR 709, as well as point 13 *et seq*. of Commission Notice on the application of the state aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3.
(15) Paragraph 83 of the judgment.

(37) The General Court also found that there were inconsistencies between the content of the letter of the Irish authorities of 15 October 2009 and the Commission's decision of 13 July 2011 [16]. Under those circumstances, the Commission invites the Irish authorities to set out again its reasons for the adoption of the ATT and to explain why the ATT is not charged in relation to transfer and transit passengers.

(38) In absence of the necessary further information, the following preliminary assessment of the measure is, at this stage, necessarily tentative.

6.1.3. *The 'normal' or reference system of taxation*

(39) First, it is necessary to identify the reference system of taxation.

(40) In its decision of 13 July 2011, the Commission found that the system of reference is the taxation of air passengers departing from an airport situated in Ireland [17]. Thus, the reference system was understood as tax that is charged in respect of every departure of a passenger on an aircraft from an airport in Ireland.

(41) Another possible reference system may be a tax charged in respect of air travel from an airport in Ireland, the notion of 'air travel' being understood as a journey from an airport in Ireland to a final destination that may consist of one or more segments. If this were the correct reference system, it seems obvious that the ATT should not apply to transfer or transit passengers. Hence the measure would not be selective.

(42) At this stage, however, the Commission takes the preliminary view that the reference system of taxation is a tax which is charged in respect of every departure of a passenger on an aircraft from an airport in Ireland.

6.1.4. *Does the non-application of the ATT in relation to transfer and transit passengers derogate from the system of reference?*

(43) Assuming that the reference system of taxation is a tax which is charged in respect of every departure of a passenger on an aircraft from an airport in Ireland, it is necessary to determine in relation to that tax regime whether any advantage granted by the tax measure at issue may be selective by demonstrating that the measure derogates from that common regime inasmuch as it differentiates between economic operators who, in light of the objective assigned to the tax system of the Member State concerned, are in comparable factual and legal situations.

(44) The non-application of the ATT in relation to transfer and transit passengers derogates from the common regime under which every departure of a passenger on an aircraft from an airport in Ireland is subject to the tax. It is open to question, however, whether that derogation involves differentiation between economic operators who are, in the light of the objective assigned to the ATT, in comparable factual and legal situations. If the objective of the ATT is to tax air journeys starting at an airport in Ireland, it may be appropriate to distinguish the legal and factual situation of airlines providing only point-to-point services from that of airlines that also provide services that involve a transfer or transit at such airports.

(45) In that respect, the Commission notes that services that involve a transfer or transit constitute, from the perspective of the customer, a journey from the airport of origin to the airport of destination, and not two separate journeys [18]. The legal and factual situation differs in various respects; for instance, the entire journey involving two or more segments is sold as one and can be travelled with a single ticket, passengers typically do not have to reclaim their luggage when transferring, and checks on passengers and luggage are typically different. The business models of airlines focussing on point-to-point services and those operating services which may involve a transfer or transit are also very different.

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[16] Paragraph 83-102 of the judgment.

[17] Recital (26), last clause of the Commission decision C (2011) 4932 final of 13.7.2011.

[18] See Section 6 on relevant markets and in particular recital 63 in Commission Decision of 27.6.2007 declaring a concentration to be incompatible with the common market and the EEA Agreement in Case No COMP/M.4439 – Ryanair/Aer Lingus, OJ C 47, 20.2.2008, p. 9.The General Court of the European Union upheld that decision in its judgment of 6.7.2010, *Ryanair Holdings plc* v *European Commission*, T-342/07, [2010] ECR II-03457.

(46) The Commission therefore doubts whether the non-application of the ATT derogates from the reference system of taxation by differentiating between economic operators who, in light of the objective assigned to the tax system of the Member State concerned, are in comparable factual and legal situations, and consequently confers an advantage on certain airlines.

6.1.5. *Does the non-application of the ATT to transfer and transit passengers result directly from its basic and guiding principles?*

(47) Assuming that the measure conferred an advantage on certain airlines, it would be necessary to determine whether the non-application of the ATT to transfer and transit passengers directly results from its basic and guiding principles.

(48) As noted in recitals 12 to 16 in their letter of 15 October 2009, the Irish authorities declared that it is intended to ensure clarity of application and to avoid over-application of the ATT, i.e. to ensure that a person would not be discriminated against if they had to stopover in an airport that was not their final destination and such a stopover was required in order to get to the final destination *or* the airline journey to a final destination included a stopover. They also pointed out that transfer and transit passengers exclusions are normal in air travel taxes operated by other countries, for example the United Kingdom.

(49) Moreover, the name and indeed the wording of the ATT may suggest that its guiding principle is to tax air journeys from an airport in Ireland, rather than each departure from an airport in Ireland. Since an air journey may involve more than one departure from an airport in Ireland, the non-application of the tax to transfer and transit passengers seems to directly follow from that principle.

(50) Thus, the Commission preliminary concludes that even if the ATT conferred an advantage on certain airlines, the non-application of the tax in relation to transfer and transit passenger may be justified by the nature and general scheme of that tax. That conclusion may, however, have to be revised in view of the information gathered in the formal investigation procedure.

6.1.6. *Conclusion on existence of aid*

(51) In light of the above, the Commission cannot at this stage exclude that the measure at issue is selective.

(52) The non-application of the ATT for transport of transfer and transit passengers results in a loss of tax revenue for the State and is therefore financed from State resources. Since such relief is decided upon by the national authorities, it is imputable to the State. The airline operators benefiting from the exclusion of transfer and transit passengers are undertakings that compete on markets that are open for competition and the reduced rate therefore distorts or threatens to distort competition on the internal market and is likely to affect trade between Member States.

(53) Since all criteria in Article 107(1) TFEU *a priori* could be fulfilled, the measure may constitute State aid to airline operators that have operated the routes benefitting from the exclusion of transport of transfer and transit passengers from the ATT.

6.2. **Compatibility of the aid with the TFEU**

(54) If the measure constitutes State aid, it is necessary to consider whether it can be declared compatible with the internal market.

(55) According to Article 107(3)(c) TFEU, aid may be considered to be compatible with the internal market if it aims at facilitating the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(56) Any potential State aid stemming from the exclusion of transfer and transit passengers from the ATT does not appear to fall within the scope of any Commission Communication that was in force when such aid was granted and that sets out how it will exercise its discretion regarding the compatibility of State aid with the internal market pursuant to Article 107(3)(c) TFEU. The measure at issue is in force since 30 March 2009 (see recital (12) above). In particular, the alleged illegal aid does not seem to fall within the scope of either the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports of 2005 ([19]), or the Guidelines on State aid to airports and airlines of 2014 ([20]).

(57) Equally, any aid stemming from the exclusion of transfer and transit passengers from the ATT does not appear to fall within any other exemption specified in paragraphs (2) or (3) of Article 107 TFEU.

(58) Consequently, the Commission has, at this stage, doubts as to the compatibility of the measure with the TFEU and in accordance with Article 4(4) of Regulation (EC) No 659/1999 the Commission has decided to initiate the formal investigation procedure, thereby inviting Ireland to submit its comments.

7. **DECISION**

(59) The Commission takes the preliminary view that the non-application of the ATT on transport of transfer and transit passengers may constitute State aid within the meaning of Article 107(1) TFEU.

(60) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests Ireland to submit its comments and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

(61) The Commission wishes to remind Ireland that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

(62) The Commission warns Ireland that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.'

([19]) OJ C 312, 9.12.2005, p. 1. Those Guidelines entered into force on 9 January 2005 and expired on 3 April 2014. They provided for rules for the financing of airport infrastructure, for aid for the operation of airport infrastructure, for aid for airport services and for start-up aid to airlines.

([20]) OJ C 99, 4.4.2014, p. 3. Those Guidelines entered into force on 4 April 2014 and replaced the Guidelines of 2005. They provide for rules for investment aid for airports, operating aid for airports, start-up aid for airlines and aid of social character. They would apply to illegal operating aid for airports even if such aid was granted before 4 April 2014. Pursuant to point 172 of the Guidelines, '*the Commission will apply the principles set out in these guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014 and the beginning of the transitional period*.' Consequently, the Guidelines of 2005 apply to all other forms of airport and airline aid that was granted between 9 January 2005 and 3 April 2014 and that falls within its scope.

STATE AID — DENMARK

State aid No SA.34720 (2015/C) (ex 2013/NN) — Restructuring of Vestjysk Bank

Invitation to submit comments pursuant to Article 108(2) of the TFEU

(Text with EEA relevance)

(2016/C 220/04)

By means of the letter dated 4 December 2015 reproduced in the authentic language on the pages following this summary, the Commission notified the Kingdom of Denmark of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned aid.

Interested parties may submit their comments on the aid measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Fax + 32 2 296 12 42
Stateaidgreffe@ec.europa.eu

These comments will be communicated to Denmark. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

TEXT OF SUMMARY

PROCEDURE

On 25 April 2012, the Commission temporarily approved three State aid measures in respect of Vestjysk Bank and Aarhus Lokalbank ([1]) which amounted to DKK 8 941 million (EUR 1,2 billion) by the Danish State (the Rescue Decision ([2])) and adhered to the State aid rules which were in place in 2012. According to the Rescue Decision, Denmark committed itself to submitting a restructuring plan for Vestjysk within six months of the decision, to restore the viability of the bank, this included adequate burden-sharing measures and measures to limit distortions of competition. A preliminary restructuring plan was submitted to the Commission on 18 April 2012 and revised versions of the restructuring plan were sent to the Commission on 5 September 2014, 12 November 2014, 9 February 2015 and 10 June 2015.

DESCRIPTION

Vestjysk bank is currently the tenth largest bank in Denmark with its main regional presence in Jutland and Funen. Vestjysk bank is listed on the Copenhagen Stock Exchange. In June 2015, the bank held a total balance sheet of DKK 22 102 million.

In 2012, Vestjysk bank received State aid measures which consisted of: (1) a capital injection of DKK 166 million (EUR 22 million); (2) the sale of a minority shareholding in the amount of DKK 175 million (EUR 23 million) the bank owns in a Danish Mortgage Credit Institution to the Danish Central Bank; and (3) Individual State guarantees for new bonds up to DKK 6 800 million (EUR 906 million). The overall State aid measures amounted to DKK 8 941 million (EUR 1,2 billion).

([1]) On 28 February Vestjysk Bank and Aarhus Lokalbank merged to become Vestjysk bank as Aarhus Lokalbank ceased to exit after the merger.

([2]) Comission decision in case SA.34423, OJ C 348, 3.10.2014, p. 2.

In light of the aid measures, the Rescue Decision highlighted that the restructuring plan would need to demonstrate the bank's long term viability. The revised versions of the restructuring plan focussed on: the bank's profit and loss balance sheet projections which amongst other issues assumes that the bank will continue to reduce its significant impairment losses and its operational costs to return to profitability.

ASSESSMENT

The Rescue Decision was based on Article 107(3)(b) TFEU to 'remedy a serious disturbance in the economy of a Member State', and in particular the 2008 Banking Communication ([3]) and the 2011 Prolongation Communication ([4]).

The restructuring plan has to comply with the Restructuring Communication ([5]), according to which long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. As such, the bank has to cover all its costs and provide an appropriate return on equity taking into account the risk profile of the bank, as well as repay over time or adequately remunerate the received State aid. The return to viability should firstly derive from internal measures, and secondly should identify the causes of the bank's difficulties and weaknesses and explain how the restructuring is addressing them.

At this stage, the Commission is not in a position to conclude that the current restructuring plan is apt at ensuring the long-term viability of Vestjysk bank as a whole and the repayment of the State aid. That evaluation is based on a number of shortcomings of the draft restructuring plan. Significant loan impairments in one of the bank's main areas of activity, agriculture, hunting, forestry and fishing, in combination with a high competitive pressure on margins suggests that the bank's risk profile and long term viability continue to be under pressure.

Moreover, the current restructuring plan raises concerns as it does not provide sufficient information to ensure the bank's return to viability and does not allow the Commission to conclude that the competition distortions are limited to a minimum. The Commission also concludes that one of the repurchasing transactions by the bank led to an insufficient amount of burden-sharing.

The Commission therefore decides to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

([3]) Communication from the Commission — Application of the State Aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8 ('2008 Banking Communication') - which was in force at the time the measure was granted.

([4]) Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (2011 Prolongation Communication) OJ C 356, 6.12.2011, p 7.

([5]) Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

TEXT OF LETTER

'The Commission wishes to inform Denmark that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

I. **PROCEDURE**

(1) During 2012, the Danish authorities entered into a dialogue with the Commission to discuss the problems which were being faced by the Danish bank Vestjysk Bank A/S ("Vestjysk Bank" or the "the Bank").

(2) On 25 April 2012, the Commission found three measures in favour of Vestjysk Bank and Aarhus Lokalbank to constitute State aid within the meaning of Article 107(1) TFEU. However, on the basis of the assessment, the measures were found to be temporarily compatible with the internal market for reasons of financial stability. The measures were accordingly approved for six months or, if Denmark submitted an in-depth restructuring plan within six months from the date of the Decision, until the Commission has adopted a final decision on that restructuring plan. The temporary approval and the three aid measures are detailed in Commission Decision SA.34423 ("the Rescue Decision") ([1]). The Danish authorities submitted a preliminary version of the restructuring plan for Vestjysk Bank on 18 April 2012 which included a set of commitments as the starting point for discussions concerning the restructuring plan.

(3) Between April 2012 and August 2013, the Commission and the Danish authorities discussed the restructuring plan in a series of meetings, phone conferences and written correspondence.

(4) In August 2013, the Danish authorities informed the Commission that […] (*) and the discussions concerning the restructuring of the Bank were suspended. However, discussions concerning the restructuring of the Bank resumed in April 2014 when the Danish authorities informed the Commission that […].

(5) The Danish authorities subsequently submitted revised versions of the restructuring plan for the Bank to the Commission on 5 September 2014, 12 November 2014 and 9 February 2015.

(6) On 6 May 2015 the Commission sent a letter to the Danish authorities which formally requested information concerning the long-term viability of Vestjysk Bank. The Commission received a response on 10 June 2015 including the latest version of the restructuring plan. The Danish authorities also informed the Commission that the Danish Financial Services Authority (DFSA) was due to conduct an on-site inspection into the Bank during the summer of 2015. The Commission received a summary of the report concerning the DFSA's site inspection on 4 November 2015.

(7) By letter of 6 November 2015, Denmark agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation (EC) No 1/1958 ([2]) and to have the present decision adopted and notified in English.

([1]) Commission Decision SA.34423, OJ C 348, 3.10.2014, p. 2.
(*) Confidential information.
([2]) Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

II. DESCRIPTION

2.1 The beneficiary

(8) Vestjysk Bank was formed in 1874 and is a regional bank in Denmark with branches in Jutland and Funen; Aarhus Lokalbank started operating in 1908, and at the end of 2011 those banks had a balance sheet of DKK 29,2 billion (EUR 39 billion) and DKK 4,4 billion (EUR 600 million) respectively.

(9) The Danish State became a major shareholder in both banks (it had a stake of 53,1 % in Vestjysk Bank and 45,2 % in Aarhus Lokalbank) following a recapitalisation under the recapitalisation scheme in 2009 and a conversion of the capital injection into share capital on 20 February 2012 ([3]).

(10) On 28 February 2012, the Danish authorities informed the Commission that Vestjysk Bank and Aarhus Lokalbank were about to merge as each faced an increased risk of becoming a distressed bank. The resulting merged entity was subsequently known as Vestjysk Bank as Aarhus Lokalbank ceased to exist after the merger.

(11) The Danish State's share capital in Vestjysk Bank has increased since 20 February 2012, as on 31 October 2013 Vestjysk Bank performed two consecutive conversions of government-held hybrid debt instruments ([4]) into equity in line with the conditions set out in the recapitalisation scheme of 2009. The Danish State currently holds 80,62 % of the shares of Vestjysk Bank. In addition, the Danish Financial Stability Company, which is wholly owned by the Danish State, holds 0,86 % of the share capital, which means the Danish State currently holds 81,48 % of the share capital and voting rights in Vestjysk Bank.

(12) According to the Bank's half-year report, at June 2015 Vestjysk Bank was the tenth-largest bank in Denmark and its consolidated Financial Statements showed a total balance sheet of DKK 22 102 million, of which the loan portfolio amounted to DKK 14 035 million. In addition, total retail deposits amounted to DKK 16 844 million.

(13) Vestjysk Bank is active in all business segments, but focusses on loans and guarantees to real estate (20 % of outstanding loans and guarantees) and agriculture, hunting forestry and fisheries (another 20 % of the outstanding loan and guarantees).

(14) The shares of Vestjysk Bank are listed on the Copenhagen Stock Exchange.

([3]) **Vestjysk Bank** raised State hybrid core capital with an original principal of DKK 1,44 billion (EUR 194 million), of which DKK 287.6 million (EUR 39 million) plus accrued interest of approximately DKK 8,7 million (EUR 1,2 million) was converted into shares in Vestjysk Bank. In the period 2009 - 2011 Vestjysk Bank has paid coupons amounting to a total of DKK 312,8 million (EUR 42 million) to the Danish State. The coupon interest rates were set at 9,69 % and 10,19 % per annum, depending on whether they included the conversion option fee.
Aarhus Lokalbank has raised State hybrid core capital with an original principal of DKK 177.8 million (EUR 24 million), of which DKK 142.2 million (EUR 19 million) plus accrued interest totalling DKK 5 million (EUR 0,7 million) was subsequently converted into shares in Aarhus Lokalbank. In the period 2009 - 2011 Aarhus Lokalbank paid coupons amounting to a total of DKK 25.9 million (EUR 3,5 million) to the Danish State. The coupon interest rates were set at 10,92 % and 11,42 % per annum, depending on whether they included the conversion option fee.

([4]) On 31 October 2013, the conversion of DKK 323 million plus the accrued interest (approximately DKK 15 million) of State hybrid capital was concluded, increasing the Danish State's shareholding to 65,96 %, while the stake of the Danish Financial Stability Company reached 1,5 %. Including the latter, the Danish State's shareholding increased to 67,46 %. On 20 January 2014, the conversion of DKK 575 million plus the accrued interest (approximately DKK 12.6 million) was concluded, increasing the Danish State's shareholding to 80,62 %. In addition, the Danish Financial Stability Company held 0,86 %.

2.2 The aid measures examined in the Rescue Decision

(15) On 13 April 2012 the Danish authorities notified to the Commission the following measures for Vestjysk Bank:

— Measure 1 — Completion of a capital raise of the Bank with net proceeds of between DKK 250 and DKK 300 million;

— Measure 2 — Raising of new subordinated loan capital with a principal of DKK 200 million ([5]);

— Measure 3 — Sale of a minority shareholding in the amount of DKK 175 million (EUR 23 million) that the Bank owned in a Danish mortgage credit institution to the Danish Central Bank;

— Measure 4 — Individual State guarantees for new bonds for up to DKK 8,6 billion (EUR 1,154 million).

(16) In April 2012 the Commission temporarily approved for six months measures 1, 3 and 4 ([6]). The subordinated loan in Measure 2 was funded entirely by private investors and was thus not considered to be State aid.

(17) On 28 June 2012, Vestjysk Bank received a final binding undertaking from the Danish Financial Stability Company in respect of Measure 4, which limited the individual State guarantees for liabilities to DKK 6.8 billion (EUR 914 million).

(18) The gross proceeds from Measure 1 amounted to DKK 318.7 million, (net proceeds of DKK 300 million) and the State participated with DKK 166 million (EUR 22 million). Measure 3 gave rise to a capital relief effect of 0,60 % by reducing the risk weighted assets (“RWAs”) of the Bank.

(19) The final amount of support resulting from the implementation of the three measures described in the Rescue Decision was DKK 7 293,7 million (EUR 979 million).

2.3 Capital shortfall in Q2 2014

(20) The DFSA fixed Vestjysk Bank’s individual capital adequacy requirement at 10,9 % as at 31 December 2013 as part of the individual capital adequacy requirements of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) ([7]).

(21) On 1 April 2014, Vestjysk Bank informed the DFSA and the Commission that as at 31 March 2014 Vestjysk Bank’s individual capital adequacy stood at 10 %, thus breaching the requirement. The DFSA therefore ordered Vestjysk Bank to file a plan for the re-establishment of capital (“the Capital Plan”) before 7 April 2014.

([5]) The Commission raised no objections to Measure 2 as described in the Rescue Decision on the basis it did not constitute State aid.
([6]) A detailed description is given in the Rescue Decision.
([7]) Directive of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013 p, 338.

(22) On 20 May 2014, Vestjysk Bank and Denmark informed the Commission of the Bank's Capital Plan. The Capital Plan included a Liability Management Exercise (LME) ([8]) and a further sale of Vestjysk Bank's shareholding in the Danish mortgage credit institution (DLR Kredit A/S) for a value of approximately DKK 250 million ([9]).

(23) On 23 October 2014, all transactions related to the Capital Plan were concluded, which resulted in an individual capital adequacy of 12,7 %.

2.4 **The draft restructuring plan**

(24) Denmark committed to submit an in-depth restructuring plan for Vestjysk Bank within six months from the date of the Rescue Decision. To ensure compliance with the Restructuring Communication ([10]), the submission of a restructuring plan would need to demonstrate how the viability of the Bank would be restored, contain adequate burden-sharing measures and contain provisions to limit competition distortion ([11]).

2.4.1 *The principles of restructuring*

(25) Vestjysk Bank's draft restructuring plan has been updated several times because Vestjysk Bank failed to achieve its projected profitability. The latest version was received in June 2015. Overall, the Danish authorities consider that Vestjysk Bank's past efforts and the restructuring plan have led to a viable yet still vulnerable bank.

Profit & Loss and Balance sheet projections

(26) The restructuring plan covers the period up until 2017 and assumes that the balance sheet of the Bank will continue to reduce until 2017. The restructuring plan also projects a steady positive evolution in the Bank's profitability, aiming at a return to profitability in 2015, albeit at a low level. The key figures of the financial projections from the June 2015 restructuring plan are shown in Table 1.

Table 1

Financial projections (P&L and Balance sheet) for Vestjysk Bank (in DKK million)

P&L	2012	2013	2014	2015	2016	2017
Interest Income	1 494	1 262	1 022	[900-950]	[850-900]	[850-900]
Interest Expense	727	520	365	[300-350]	[250-300]	[250-300]
Net Interest Income	892	814	697	[600-650]	[600-650]	[600-650]

([8]) Transaction 1: Issuance of a new subordinated loan of DKK 87,5 million provided by Nykredit Bank A/S and a separate loan of DKK 12,5 million provided by Arbejdernes Landsbank A/S. The new loans replaced an existing loan of DKK 100 million by Nykredit Bank A/S redeemed at par;
Transaction 2: Modification of the terms and conditions of DKK 75 million hybrid core capital in order to comply with CRD IV rules and eligibility.
Transaction 3: Issuance of a new subordinated loan of DKK 50 million provided by […]. The new subordinated loan replaces an existing loan of DKK 50 million that shall be redeemed at par.

([9]) The sale agreement of sector shares in DLR Kredit A/S was completed on 23 October 2014. The shares were sold to […] private banks ([…]). The completion resulted in an increase in Vestjysk Bank's surplus solvency in relation to its individual capital adequacy requirement at the level of DKK 200 million, equivalent to 1.0 percentage point.

([10]) Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules OJ C 195, 19.8.2009, p 9 (Restructuring Communication).

([11]) See footnote 10 of the Restructuring Communication.

P&L	2012	2013	2014	2015	2016	2017
Total Income	1 282	1 235	1 053	[900-1 000]	[900-1 000]	[900-1 000]
Total Provisions	1 478	1 028	535	[250-300]	[250-300]	[200-250]
Operational costs	588	542	509	[450-500]	[450-500]	[450-500]
Profit after tax	- 1 399	-442	-191	[25-75]	[100-150]	[150-200]
Cost-to-Income Ratio	55,30 %	48,90 %	53,20 %	[50-60 %]	[50-60]	[50-60 %]
Return on Equity after tax	- 106,30 %	- 46,90 %	- 17,50 %	[0-5 %]	[5-10 %]	[5-10 %]
FTE	621,3	562,9	524	[480-510]	[470-500]	[460-490]
Branches	24	20	20	[18-22]	[18-22]	[18-22]
Balance sheet	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
Net Loan Book	20 697	17 360	14 714	[13 000-14 000]	[13 000-14 000]	[13 000-14 000]
Total assets	32 765	26 112	21 804	[20 000-22 000]	[19 000-21 000]	[19 000-21 000]
Deposits	18 057	17 877	18 768	[17 000-19 000]	[16 000-18 000]	[16 000-18 000]
Central Bank Funding	3 002	4 700	0	[0-10]	[0-10]	[0-10]
Own funds (Capital + reserves)	992	887	1 287	[1 350-1 450]	[1 450-1 550]	[1 550-1 650]
RWAs	25 595	20 335	17 927	[16 000-17 000]	[16 000-17 000]	[15 000-16 000]
Loan-to-Deposit ratio	114,6 %	97,1 %	78,4 %	[70-80 %]	[70-80 %]	[70-80 %]
TIER 1 ratio	10,90 %	11,30 %	9,90 %	[10-11 %]	[11-12 %]	[12-13 %]

(27) Taking into account the restructuring efforts undertaken by Vestjysk Bank since the Rescue Decision, the projected total balance sheet reduction is [30-40 %] in 2017 compared to its 2012 level. The Bank expects to achieve that reduction through (i) a decrease of the net loan portfolio by [30-40 %]; (ii) a [90-100 %] reduction of Central Bank funding; and (iii) a [5-10 %]decline in deposits.

(28) The net income of Vestjysk Bank is expected to be improved by the projected steady decrease of loan loss provisions ([40-50 %] decrease year-on-year 2014-2015) and a projected decrease in interest expenses (decrease of [20-30 %] between 2014 and 2017). At the same time, net interest income is expected to continue falling (in particular in 2015 while more or less stable thereafter), while net fee income is expected to rise over the projection period.

(29) The restructuring plan projects a weak return to profitability in 2015 ([25-75]). Taking into account the projected decrease in impairments, costs and increasing profits, the Bank projects DKK [150-200] profits after tax in 2017 (compared to a DKK 1 399 million loss in 2012), a cost-to-income ratio of [50-60 %] (compared to 55,3 % in 2012) and capital ratio under Basel III (CET1) rules of [12-13 %].

Loan impairments

(30) Vestjysk Bank has faced significant impairment losses since the Rescue Decision. Loan impairments amounted to DKK 1 515 million in 2012, to DKK 1 073 million in 2013 and DKK 683 million in 2014.

(31) The majority of the loan impairments derive from the real estate segment and the agriculture, hunting, forestry and fishing segment. Those segments make up respectively 20,5 % and 54,6 % of Vestjysk Bank's total impairments from 2012 until 2015.

(32) The Bank recognises that the significant amount of loan impairments adversely affects its viability. The restructuring plan projects that Vestjysk Bank will be able to rebalance its loan portfolio towards the retail segment, allowing for a better risk diversification.

(33) Vestjysk Bank intends to achieve that outcome by minimising its exposure through a reduction in lending in its most troubled portfolios: (1) agriculture, hunting, forestry and fishing; (2) building and construction; and (3) real estate. According to the latest restructuring plan, Vestjysk Bank will cap its gross lending in those three categories so as to decrease its gross lending in agriculture, hunting, forestry and fishing by [30-40 %]; in building and construction by [20-30 %]; and in real estate by [30-40 %].

(34) It should however be noted that the restructuring plan projects that agriculture, hunting forestry and fishing segment and the real estate segment will remain strategic segments for the Bank.

Operational costs

(35) Vestjysk Bankprojects to reduce its operational costs by a reduction in Full Time Equivalents (FTE) and a reduction of its number of branches.

(36) The restructuring plan projects a decrease of FTE from 501 in 2015 to [460-490] in 2017, which is a reduction of [3-4 %]. Taking into account the restructuring efforts already performed since 2012 (621.3 FTE), the total FTE reduction is [20-30]%.

(37) Vestjysk Bank also intends to reduce its operational costs by a reduction of its commercial footprint. Vestjysk Bank projects to further reduce its branch network to [18-22] branches by the end of 2017, compared to 24 in 2012. That fall represents a reduction of [10-20 %].

(38) On 14 September 2015, Vestjysk Bank announced that it intended to carry out further staff redundancies in its branch network and central services. Vestjysk Bank will reduce the number of FTE from 510 to around [450-480]. Taking the efforts from 2012 until 2015 into account, the total reduction will be [20-30]%. Vestjysk Bank expects the staff reduction to save at least DKK 25 million annually. The impact of that announcement was not included in the June 2015 restructuring plan.

Credit policy

(39) As explained in recital ((27), Vestjysk Bank projects a reduction of its balance sheet until 2017 and a rebalancing of the loan book (see recital ((33)). To achieve those ambitious goals, Vestjysk Bank has updated its credit policy:

a. the Bank will not enter in agreements with new customers within the […] business. However, a change of debtors can be accepted if the Bank obtains a lower credit risk and better settlement prospects. Existing customers may (to a limited extent) obtain financial support for the completion of projects, provided that the target for reducing exposure within real property is observed;

b. no financing of assets outside the scope of the Bank's ordinary market area; i.e. areas where the Bank has no representation by way of branches or has not established sufficient market knowledge, unless the customer provides own financing of at least [40-50 %], and the Bank obtains a charge against realisable securities that are regarded as unconditionally good;

c. no expansion of the overall loans/guarantees within the agricultural sector. The only exception would be transfers of distressed agricultural properties to new/existing customers resulting in the Bank's credit position being strengthened. The Bank will continue to help good customers with smaller projects/expansions provided that the Bank's target for reducing exposure within agriculture is observed; and

d. the Bank will create a complete reporting of all the credit engagements towards its credit committee, which will have the final decision power on all loans starting from DKK [5-10] million. Loans starting from DKK [0-5] million will also be subject to the final decision power of a modified form of the credit committee which does not include the executive managers of the Bank. Loans which fall below that latter threshold will be approved based on strict and prudent guidelines. The board of directors always has the final responsibility to grant loans.

(40) Taking Vestjysk Bank's updated credit policy and the reduced loan book into account, the restructuring plan projects that the volume of RWAs in Vestjysk Bank will decrease by [30-40 %] by the end of 2017 as compared to 2012 (from DKK 25,595 billion in 2012 to DKK [15 000-16 000] in 2017).

2.4.2 *Liability Management Exercises*

(41) During the past years, Vestjysk Bank performed several LMEs to strengthen Vestjysk Bank's capital.

(42) On 13 December 2012 the DFSA gave its approval for Vestjysk Bank to repurchase two Tier 2 instruments ([12]), up to a nominal value of NOK 135 million (approximately EUR 18,36 million) and NOK 180 million (approximately EUR 24,48 million) on a continuous basis until 31 March 2013. The approval was conditional upon a purchase rate of 55 % of the principal or lower.

(43) On 18 February 2013, the DFSA gave its approval for Vestjysk Bank to repurchase two different subordinated loans of DKK 25 million and DKK 50 million granted by […], which is affiliated with […]. The Bank repurchased DKK 50 million of the subordinated debt, plus non-accrued interest at a rate of 66,67 % of the principal. At the same time, released DKK 75 million deposits plus non-accrued interest from Vestjysk Bank.

(44) The DFSA simultaneously gave its approval for Vestjysk Bank to repurchase an additional amount of the Tier 2 instruments described in recital ((42) up to a nominal value of DKK 100 million at a maximum rate of 55 % of the principal That repurchase could take place until 31 March 2013.

(45) On 13 June 2013, the DFSA approved another repurchase of subordinated loan capital granted by […] (ISIN NO0010313349) on a continuous basis until 30 June 2013 up to a nominal value of NOK 40 million (approximately EUR 5,2 million). The DFSA approval was conditional upon a rate significantly below par, with a maximum of 62 % of the principal plus accrued interest.

2.4.3 *The DFSA inspection*

(46) The DFSA conducted an on-site inspection into the Bank during the summer of 2015. The inspection consisted of a functional examination in which the Bank's loan book and a number of other areas were reviewed against a risk-based assessment.

(47) As part of the inspection, the DFSA reviewed 63 of the largest loans in the Bank (all were in excess of DKK 43,6 million); only 6 % of the loans reviewed were subject to normal credit risk without signs of weakness, and the inspection identified Objective Evidence of Impairment (OEI) for approximately 76 % of the loans reviewed. The DFSA found that for 30 of the largest agricultural loans 69 % of loans displayed OEI, and only 3 % were subject to normal credit risk without signs of weakness – the DFSA did not identify any evidence of additional impairments for those loans.

([12]) With ISIN NO 0010331499 and ISIN NO 0010313349.

(48) The DFSA inspection report concludes that the risk profile of the Bank is influenced by its lending to the agricultural and real estate sectors and defines both segments as high risk areas. According to the DFSA report, Vestjysk Bank's lending to the agricultural segment and the real estate segment is clearly above its peers in the Danish banking market (22,6 % and 19,4 % of the Bank's lending operations compared to 10,7 % and 13,3 % of the lending operations of its peers, respectively.)

(49) The DFSA concludes that as of 31 March 2015, a further DKK 116,5 million impairments had been discovered and needed to be provisioned for. Vestjysk Bank has informed the DFSA that DKK 61,7 million of the amount was already recognised in the half year report 2015.

III. ASSESSMENT OF THE MEASURES

Existence of State aid

(50) In recitals (47) to (67) of the Rescue Decision, the Commission assessed whether measures 1, 3 and 4 could be considered as State aid ([13]). It concluded there that measures 1, 3 and 4 constituted State aid within the meaning of Article 107(1) TFEU.

Compatibility of the aid

(51) In recitals (74) to (107) of the Rescue Decision, the Commission found measures 1, 3 and 4 to be temporarily compatible with the internal market for reasons of financial stability. The measures were accordingly approved for six months or, if Denmark submitted an in-depth restructuring plan within six months from the date of that Decision, until the Commission had adopted a final decision on that restructuring plan.

(52) The Restructuring Communication explains that in order to be compatible with the internal market on the basis of Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the financial crisis must lead to a restoration of the viability of the bank, or a demonstration of how it can be wound up in an orderly fashion.

Restoration of long-term viability

(53) The latest draft restructuring plan anticipates that Vestjysk Bank's viability will be restored within a reasonable time frame, based on the operational measures referred to in recitals (35) to (38).

(54) However, the Commission doubts whether the latest draft restructuring plan provides sufficient grounds to ensure the viability of Vestjysk Bank within the restructuring period.

(55) The Bank's balance sheet is projected to decrease from DKK 32 765 million in 2012 to DKK [19.000-21.000] at the end of 2017. The strong decrease ([35-45 %]) is a consequence of the Bank's efforts to reduce its loan book, but also of the macroeconomic environment (which includes increasing losses in the agricultural sector) which has resulted in customers either leaving the Bank or defaulting on their loans.

(56) In 2014, Vestjysk Bank recorded a loss of DKK 191 million. For the first half of 2015 the Bank was able to report a profit of DKK 45 million. The core income of the Bank reached DKK 495 million, compared to DKK 564 million in the first half of 2014. However, taking into account the Bank's recent history, it is the Commission's view that the mid-year profit for 2015 is not sufficient to assume a durable return to profitability. Since 2012, Vestjysk Bank's end-year results have been heavily influenced by the impairments on the bank's credit portfolio; Table 2 compares the Bank's mid-year and end-year profits:

([13]) Measure 2 as described in the Rescue Decision was deemed to not constitute State aid.

Table 2

Mid-Year and End-Year profits

Year	Profit
2012 Mid-Year End-Year	DKK 1 million (profit) DKK 1 448 million (loss)
2013 Mid-Year End-Year	DKK 98 million (loss) DKK 442 million (loss)
2014 Mid-Year End -Year	DKK 41 million (profit) DKK 191 million (loss)

Net income

(57) Net income has decreased between 2012 (DKK 782 million) and 2015 (DKK [500-550] million). The Bank however projects net income to remain more or less stable (DKK [500-550] in 2015, DKK [500-550] in 2016 and DKK [500-550] in 2017). Net income is projected to be influenced by a stabilisation of the net interest income, an increase in net fees and commissions and a decrease in the operational costs.

(58) Net interest income is expected to remain stable as well (DKK [600-650] in 2015 to DKK [600-650] in 2017). The stabilisation of the net interest income is caused by a stabilisation of the loan book of Vestjysk Bank and a projected decrease in interest expenses.

(59) The majority of Vestjysk Bank's loan book matures within one year ([60-65 %] of the loans to clients). In consequence, the stabilisation of the loan book is largely dependent on Vestjysk Bank's ability to generate sufficiently new business at sufficiently high margins. The Danish authorities have not been able to provide clear and sufficiently granular information on how that replenishment of the loan book will be realised and at which margins. As such, the Commission cannot verify the projections.

(60) The Financial Stability Report for the first half of 2015 by the Danish Central Bank confirms that lending margins in Denmark will remain under pressure and will continue to limit banks' capacity to increase their net interest income by raising lending rates.

(61) The restructuring plan projects interest expenses to decrease by [20-30 %] between 2014 and 2017. That fall results from the full repayment of the Individual State Guarantees (Measure 4 of the Rescue Decision) and a projected decrease of the Bank's deposit rates.

(62) Vestjysk Bank currently has a deposit surplus of DKK 4.8 billion (loan-to-deposit ratio of 75 %). Its deposit base has remained fairly stable during the past year due to Vestjysk Bank's pricing policy and its loyal customer base. That stable deposit base has allowed the Bank to change its funding profile from a large dependence on wholesale and central bank funding to being fully funded by deposits. The Bank is therefore more resilient towards stresses on the interbank markets, but it is also an indication of the Bank's limited profitable investment opportunities.

(63) The Commission considers that the high amount of high priced deposits will have a negative impact on the Bank's net interest income. While deposit rates are falling in the Union, high competitive pressure on deposit rates in Denmark pushes the Bank to offer an average deposit rate that is higher than that of its competitors. Vestjysk Bank projects that its deposit surplus will allow it to gradually decrease the cost of deposits (while remaining above average market prices) but the size of the interest rate decrease and the impact thereof is not clear from the information submitted to the Commission.

(64) The projected decrease of deposit rates and strong competitive pressures do not seem to align with each other and the Commission questions how Vestjysk Bank will reduce the deposit rates in a competitive deposit market. The Commission also questions the potential competition distortions that arise if Vestjysk Bank offers higher deposit rates than its unaided competitors.

(65) The Bank projects its net fee and commission income to increase over the projection period (from DKK [250-300] in 2015 to DKK [300-350] in 2017). The increase reflects a higher level of activity in the areas of customers' securities trading and an extraordinarily high level of re-mortgaging seen in the first half of 2015.

(66) The Commission questions the sustainability of the increased net fee and commission income. Re-mortgaging is an activity typically only undertaken when interest rates are decreasing. Vestjysk Bank projects the interest rate level to remain low (and stable) in Denmark. The consequence would be that re-mortgaging activity will slow down as soon as interest rates have stabilised or start to increase. The Commission also questions the long-term impact of the re-mortgaging activity on the net interest income of Vestjysk Bank. The new (and probably lower) mortgage rates will lower the Bank's future profit-generating capacities.

(67) Vestjysk Bank projected a minor decrease in operating expenses from DKK [500-550] in 2015 to DKK [500-550] in 2017. That decrease is explained by a reduction in the number of employees (see recitals ((35) to ((37)) and a tight cost management.

(68) That slight decrease in operational costs is reflected in the cost-to-income ratio of the Bank ([50-60 %] in 2015 and [50-60 %] in 2017). However, those figures do not take into account the additional restructuring measures Vestjysk Bank announced in a press release of 14 September 2015. The Commission acknowledges that the decrease in operational costs will be larger when the additional measures described in that press release materialise.

(69) Due to the projected stabilisation of net income and the decrease of loan impairments and provisions (see recitals ((70) to ((76)), the Bank expects to achieve a return on equity (ROE) after tax of [5-10 %] in 2017 (compared to - 106,3 % in 2012) according to the restructuring plan. The Commission questions whether that sharp increase in ROE after tax is realistic, taking into account the large uncertainties related to the profitability of the new business and the reduction in impairments.

Loan impairments and provisions

(70) As stated in recital ((30) Vestjysk Bank has had to book significant provisions since the Rescue Decision (DKK 1 515 million in 2012, DKK 1 073 million in 2013 and DKK 683 million in 2014). As a result, the accumulated impairment ratio stood at 16,4 % in the first half of 2015 and 16,7 % at the end of 2014.

(71) According to the latest restructuring plan, Vestjysk Bank's 2017 loan book will be largely composed of loans to retail customers (households, excl. mortgages: ([30-40 %]); agriculture, hunting, forestry and fishing ([10-20 %]); real estate ([20-30 %]); and building and construction ([0-5 %]). Taking into account that the majority of the provisions the Bank had to book since 2012 derive from the real estate segment and the agriculture, hunting, forestry and fishing segment (respectively 20,5 % and 41,6 % of Vestjysk Bank's total impairments from 2012 until 2015) the Commission questions whether Vestjysk Bank's projected loan book composition will lead to a return to viability.

(72) Vestjysk Bank projects a strong decrease in the annual flows of provisions (new provisions) that have to be recorded and ultimately a decrease of the stock of provisions. In 2012, Vestjysk Bank had to record new provisions for DKK 1 478 million, while the projections for 2017 are limited to DKK [200-250]. Vestjysk Bank states such a decrease is possible due to improving macroeconomic circumstances and an improved risk management.

(73) Comparing the flow of new provisions since 2012, an overall decline is evident. The latest restructuring plan provides however no further information on the reasons behind the projected decrease of impairments. Based on the current macroeconomic circumstances the Commission questions whether the projected decrease in impairments is not overly optimistic. The Commission's doubts are based on the macroeconomic evolutions, the conclusion of the DFSA Inspection Report and the Financial Stability Report by the Danish Central Bank.

(74) The most critical sector of the Bank's loan book, namely agriculture, hunting, forestry and fishing has suffered an increased need for impairments. That increase is especially clear in the sub-sectors of pork (+ 319 % between 2013 and 2014) and milk (+ 25 % between 2013 and 2014), which are the two most important sub-segments of the agriculture, hunting, forestry and fishing segment. The overall development of the agricultural segment and the low level of settlement prices remains a challenge for the Bank.

(75) The Commission's doubts on the projected decrease in provisions are also confirmed by Vestjysk Bank's report for the first half of 2015. That report shows a provisioning level that is still unsatisfactorily high, but slightly decreasing. The impairment ratio ([14]) reached 0,8 % for the first half of 2015, compared to 0,9 % in H1 2014. The agriculture, hunting, forestry and fishing segment remained the largest contributor to the impairment charges.

(76) The conclusion of the DFSA's inspection report and the additional impairments reported therein confirm the Commission's point of view that Vestjysk Bank's risk profile and viability are under pressure due to its lending to the agricultural and real estate sectors. The DFSA inspection report also notes that impairments could significantly increase in the event of further adverse economic trends, or in the event of inadequate control. The DFSA recommends Vestjysk Bank to strengthen its capital to cover for those potential future impairments.

(77) The Danish Central Bank's Financial Stability Report for the first half of 2015 confirms that the agricultural sector has experienced increasing losses. It also mentions that margins will remain under pressure and will continue to limit banks' capacity to decrease impairments.

Capital requirements

(78) According to the 2015 half-year results, the Bank's CET1 capital totalled DKK 1 319 million at the end of June 2015, giving a CET1 ratio of 7,5 %, compared to 7,8 % in June 2014. At the same time, the Bank's total Tier 1 capital ratio increased to 10,3 % compared to 9,6 % at the end of June 2014.

(79) The overall CET1 capital requirement for the Bank (minimum requirement + additional solvency requirement) is 7 %. Thus, according to the half year report the Bank had a very small surplus (0,5 % or DKK 84 million) at the end of June 2015. Compared to end 2014, the surplus decreased from DKK 125 million to DKK 84 million. That drop can be explained by the combination of realised losses and an increase of the minimum CET1 capital requirement from 4 % to 4,5 %.

(80) As stated in recital (76), the DFSA informed Vestjysk Bank through its DFSA inspection report that if any additional impairments have to be accounted for due to further adverse economic trends (or in the event of inadequate control), the Bank should strengthen its capital.

(81) As a result of the identified loan impairments in the DFSA inspection report, the Bank has calculated the individual solvency need as being 10,5 % as of 30 June 2015. The DFSA concludes by stating that the solvency need of 10,5 % covers the current risks of the Bank.

(82) The Danish Central Bank's Financial Stability report for the first half of 2015, states that the combination of increasing capital requirements, very low interest rates and limited demand for new loans will create extremely competitive conditions for customers. The Financial Stability Report further explains that the implementation of the requirements in CRD IV/CRR has entailed an enhanced framework for the Danish requirements. At end-2014, all systemic and non-systemic credit institutions except Vestjysk Bank and one other Danish financial institution complied with the fully phased-in 2019 capital requirements. Vestjysk Bank would therefore have to continue to strengthen its capital to comply with capital requirements.

(83) Based on the DFSA inspection report and the Danish Central Bank's Financial Stability report for the first half of 2015, the Commission questions whether Vestjysk Bank's capital position is sufficiently strong to endure additional impairments.

Burden-sharing

(84) To be in line with the Restructuring Communication, a restructuring plan must demonstrate how the viability of the Bank would be restored, contain adequate burden-sharing measures and contain provisions to limit competition distortion.

([14]) Impairments booked in the period over the total loan book.

(85) The Danish authorities and Vestjysk Bank have tried to ensure sufficient burden-sharing through conducting several LMEs, providing a sufficient remuneration for the recapitalisation and the individual government guarantees.

(86) The different LME transactions described in recitals ((41) to (45) have been the main contributors to burden-sharing. According to Commission guidance ([15]) LMEs should significantly reinforce the viability of the Bank while the bank and the investors contribute to the greatest possible extent to the restructuring costs. That outcome is translated into the following two operational consequences:

a. The premium to the market price reflected in the buyback price should not exceed 10 percentage points of the principal; and

b. The buyback prices should not exceed 90 % of principal.

(87) The LMEs described in recital (42) were concluded at an average price of 48,72 % of the principal and 45,05 % of the principal respectively. Both prices were well below the DFSA's limit of 55 of the principal and respect the boundary of 90 % of the principal. Market research has shown that the average price offered for each instrument was less than 10 percentage points of premium to the market price.

(88) The repurchase of the subordinated capital granted by […] and described in recital (43) was performed at an average price of 66,67 % of the principal (67 % if the non-accrued interest is included), well below 90 % of the principal. The Commission's assessment of the repurchase price has shown that the premium that was offered to the investors was below 10 %.

(89) The repurchases of subordinated capital described in recital (44) were completed on 3 April 2013 for a price of 52,39 % of the principal, well below 90 % of the principal and within the boundaries of 10 % premium to the market price.

(90) The repurchase described in recital (45) was completed on 13 June 2013 and was performed at an average price of 62 % of the principal, 2 percentage points above the market price of 50 % plus the premium of 10 %. Vestjysk Bank thereby overpaid the holders of the subordinated debt instruments by an amount corresponding to 2 % of the principal (or NOK 800,000, approximately EUR 104,000). The Commission thus concludes that that transaction was not in line with the Restructuring Communication's goal of adequate burden-sharing.

(91) The transactions described in recital (22), which were part of Vestjysk Bank's plan to address its capital shortfall in 2014, cannot be classified as a pure buy-back as they involve the subscription of new subordinated debt in parallel. In addition they were part of a capital plan that if not approved would have left Vestjysk Bank with a capital shortfall, potentially requiring additional State aid. The Commission therefore concludes that those transactions are in line with the Restructuring Communication.

(92) The Danish State participated in the capital raise on the basis of its stake in both Vestjysk Bank A/S and Aarhus Lokalbank A/S. As a result, the State provided 52,1 % of capital injected in Vestjysk Bank. The gross proceeds from the issue amounted to DKK 318.7 million, while the Danish State participated with DKK 166 million.

(93) As regards remuneration to the State for its participation in the capital raise, it is noted that the 2011 Prolongation Communication ([16]) provides guidance on the conditions for State recapitalisations in the form of ordinary shares. According to that Communication, the remuneration for such recapitalisations should be assessed on the basis of the discount to the share price adjusted for the dilution effect or the TERP ([17]) (theoretical ex-rights price) immediately prior to the announcement of the capital injection.

(94) The subscription rate of the rights issue in which the State participated was set at DKK 10.4 per share. That subscription rate entails a discount of 43,1 % from a stock price of DKK 17,1 in the beginning of 2012, representing a discount on the TERP of 24,5 %. On the day of the completion of the rights issue stock price per share was DKK 16, meaning the discount on the TERP was 21 %. The Commission concludes that the discount ensures that the State will receive an adequate remuneration for its participation in the capital raise.

([15]) See Commission memo 09/441 and the accompanying press release by the Commission on 8 October 2009.
([16]) Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (2011 Prolongation Communication) OJ C 356, 6.12.2011, p 7.
([17]) See footnote 16 of the 2011 Prolongation Communication.

(95) Vestjysk Bank had to pay a risk-based guarantee commission for the individual guarantee described in recital (34) of the Rescue Decision. The base rate for determining the guarantee commission was set at 1,35 %, to which an incremental additional guarantee charge of 0,65 % in the first year, 0,75 % in the second and 0,90 % in the third year and onwards for the duration of the guarantee must be added. That remuneration of the guarantee is well above what the 2011 Prolongation Communication requires.

(96) The sale of the minority stake in a Danish mortgage credit institution to the Danish Central Bank had a capital release effect which is similar to a recapitalisation. The measure has not been remunerated separately. According to recital (94) of the Rescue Decision, the Commission will take the lack of remuneration for Measure 3 into account when determining the depth of the restructuring of Vestjysk Bank. Nevertheless, the Commission will also take into account the following mitigating factors: the nature of Measure 3, the fact that the remuneration received for Measure 4 exceeds Commission requirements for compatibility of guarantees with the internal market and the limited distortion of competition caused by the aid amount in Measure 3.

Limiting distortions of competition

(97) According to the Restructuring Communication, a restructuring plan should propose effective and proportionate measures which limit distortions of competition. Such measures should be specifically designed to address distortions identified on the market where a beneficiary bank operates. The nature and form of such measures depends on two criteria: (1) the amount of aid and the conditions and circumstances under which the aid was granted; and (2) the characteristics of the market, or markets on which the beneficiary bank will operate. Finally, the Commission is careful to pay attention to the risk that restructuring measures may undermine the internal market.

(98) As mentioned in recitals (25) to (40), Vestjysk Bank intends to reduce its commercial footprint by reducing its branch network. The combination of a reduction of the branch network and the characteristics of the Danish banking market will affect Vestjysk Bank's capacity to generate new business and gather new deposits, thereby contributing to a limitation of the distortions of competition. However, taking into account the large amount of aid received by Vestjysk Bank, the Commission questions the impact of the proposed staff reduction of 25,96 % between 2012 and 2017 in its branch network and central services on the risk of competition distortion

IV. **CONCLUSION**

The Commission concludes that the draft restructuring plan does not provide sufficient information to ensure the Bank's return to viability and does not allow the Commission to conclude that the competition distortions are limited to a minimum. The Commission also concludes that one of the repurchasing transactions led to an insufficient amount of burden-sharing. The Commission has therefore decided to open the formal investigation procedure pursuant to Article 4(4) of Regulation (EC) No 2015/1589 ([18]).

In the light of the foregoing considerations, the Commission requires Denmark, within one month of receipt of this letter, to provide all documents, information and data needed for assessment of the compatibility of the aid/measure. Otherwise the Commission will adopt a decision on the basis of the information in its possession. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission notes that Denmark agreed to have the present decision adopted and notified in English

The Commission wishes to inform Denmark that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.'

([18]) With effect from 14 October 2015, Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1, was repealed and replaced by Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), OJ L 248, 24.9.2015, p. 9. All the procedural steps taken during the course of the proceedings were adopted under Regulation (EC) No 659/1999. Any reference to Regulation (EC) No 659/1999 may be construed as a reference to Regulation (EU) 2015/1589 and should be read in accordance with the correlation table in Annex II to the latter regulation.

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