

Official Journal

of the European Union

L 152



English edition

Legislation

Volume 57

22 May 2014

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⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 548/2014**of 21 May 2014****on implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to small, medium and large power transformers**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products ⁽¹⁾, and in particular Article 15 (1) thereof,

After consulting the Ecodesign Consultation Forum,

Whereas:

- (1) The Commission has carried out a preparatory study that analysed the environmental and economic aspects of transformers. The study was developed together with stakeholders and interested parties from the Union and the results have been made publicly available. Transformers are considered as energy related products within the meaning of Article 2(1) of Directive 2009/125/EC.
- (2) The study showed that energy in the use phase is the most significant environmental aspect that can be addressed through product design. Significant amounts of raw materials (copper, iron, resin, aluminium) are used in the manufacturing of transformers, but market mechanisms seem to be ensuring an adequate end-of-life treatment, and therefore it is not necessary to establish related ecodesign requirements.
- (3) Ecodesign requirements set out in Annex I apply to products placed on the market or put into service wherever they are installed. Therefore such requirements cannot be made dependant on the application in which the product is used.
- (4) Transformers are usually purchased under framework agreements. In this context, purchase refers to the act of contracting with the manufacturer for the delivery of a given volume of transformers. The contract is deemed to have come into force on the date of signature by the parties.
- (5) Certain categories of transformers should not be covered by this Regulation, due to their specific function. The energy consumption and saving potential of such transformers is negligible compared to other transformers.
- (6) Regulatory concessions are granted because of the weight limitations for mounting transformers on utility poles. In order to avoid misuse of transformers specifically manufactured for pole-mounted operation, they should include a visible display 'For pole-mounted operation only', so as to facilitate the work of national market surveillance authorities.

⁽¹⁾ OJ L 285, 31.10.2009, p. 10.

- (7) Regulatory concessions are granted to transformers equipped with equipment capable of performing voltage regulation functions to integrate distributed generation from renewable sources into the distribution grid. Such concessions should gradually be phased out as this emerging technology matures and measurement standards become available to separate the losses associated to the core transformer from those associated to the equipment performing additional functions.
- (8) Ecodesign requirements for the energy performance/efficiency of medium power transformers and for the energy efficiency of large power transformers should be set with a view to harmonising ecodesign requirements for these devices throughout the Union. Such requirements would also contribute to the efficient functioning of the internal market and to improving Member States' environmental performance.
- (9) Establishment of ecodesign requirements for medium and large power transformers is also necessary to increase the market penetration of technologies and design options improving their energy performance or efficiency. Total losses of the transformers fleet in the EU27 in 2008 amounted to 93,4 TWh per year. The cost-effective improvement potential through more efficient design has been estimated in about 16,2 TWh per year in 2025, which corresponds to 3,7 Mt of CO₂ emissions.
- (10) It is necessary to provide for a staged entry into force of the ecodesign requirements in order to provide an appropriate timeframe for manufacturers to redesign their products. Time limits for the implementation of those requirements should be set taking into account impacts on the costs for manufacturers, in particular small and medium size enterprises, while ensuring timely achievement of the policy objectives.
- (11) To allow an effective implementation of the regulation, National Regulating Authorities are strongly advised to take account of the effect of minimum efficiency requirements on the initial cost of the transformer and to allow for the installation of more efficient transformers than the regulation requires, whenever these are economically justified on a whole life cycle basis, including an adequate evaluation of losses reduction.
- (12) To facilitate compliance checks, manufacturers should be asked to provide information in the technical documentation referred to in Annexes IV and V to Directive 2009/125/EC.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 19(1) of Directive 2009/125/EC,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes ecodesign requirements for placing on the market or putting into service power transformers with a minimum power rating of 1 kVA used in 50 Hz electricity transmission and distribution networks or for industrial applications. The Regulation is only applicable to transformers purchased after the entry into force of the Regulation.
2. This Regulation shall not apply to transformers specifically designed and used for the following applications:
 - instrument transformers, specifically designed to supply measuring instruments, meters, relays and other similar apparatus,
 - transformers with low-voltage windings specifically designed for use with rectifiers to provide a DC supply,
 - transformers specifically designed to be directly connected to a furnace,
 - transformers specifically designed for offshore applications and floating offshore applications,

- transformers specially designed for emergency installations,
- transformers and auto-transformers specifically designed for railway feeding systems,
- earthing or grounding transformers, this is, three-phase transformers intended to provide a neutral point for system grounding purposes,
- traction transformers mounted on rolling stock, this is, transformers connected to an AC or DC contact line, directly or through a converter, used in fixed installations of railway applications,
- starting transformers, specifically designed for starting three-phase induction motors so as to eliminate supply voltage dips,
- testing transformers, specifically designed to be used in a circuit to produce a specific voltage or current for the purpose of testing electrical equipment,
- welding transformers, specifically designed for use in arc welding equipment or resistance welding equipment,
- transformers specifically designed for explosion-proof and underground mining applications ⁽¹⁾,
- transformers specifically designed for deep water (submerged) applications,
- medium Voltage (MV) to Medium Voltage (MV) interface transformers up to 5 MVA,
- large power transformers where it is demonstrated that for a particular application, technically feasible alternatives are not available to meet the minimum efficiency requirements set out by this Regulation,
- large power transformers which are like for like replacements in the same physical location/installation for existing large power transformers, where this replacement cannot be achieved without entailing disproportionate costs associated to their transportation and/or installation,

except as regards the product information requirements and technical documentation set out in Annex I, points 3 and 4.

Article 2

Definitions

For the purpose of this Regulation and its annexes the following definitions shall apply.

- (1) 'Power transformer' means a static piece of apparatus with two or more windings which, by electromagnetic induction, transforms a system of alternating voltage and current into another system of alternating voltage and current usually of different values and at the same frequency for the purpose of transmitting electrical power.
- (2) 'Small power transformer' means a power transformer with a highest voltage for equipment not exceeding 1,1 kV.
- (3) 'Medium power transformer' means a power transformer with a highest voltage for equipment higher than 1,1 kV, but not exceeding 36 kV and a rated power equal to or higher than 5 kVA but lower than 40 MVA.
- (4) 'Large power transformer' means a power transformer with a highest voltage for equipment exceeding 36 kV and a rated power equal or higher than 5 kVA, or a rated power equal to or higher than 40 MVA regardless of the highest voltage for equipment.
- (5) 'Liquid-immersed transformer' means a power transformer in which the magnetic circuit and windings are immersed in liquid.
- (6) 'Dry-type transformer' means a power transformer in which the magnetic circuit and windings are not immersed in an insulating liquid.
- (7) 'Medium power pole mounted transformer' means a power transformer with a rated power of up to 315 kVA suitable for outdoor service and designed to be mounted on the support structures of overhead power lines.

⁽¹⁾ Equipment intended for use in potentially explosive atmospheres is covered by Directive 94/9/EC of the European Parliament and of the Council (OJ L 100, 19.4.1994, p. 1).

- (8) 'Voltage Regulation Distribution Transformer' means a medium power transformer equipped with additional components, inside or outside of the transformer tank, to automatically control the input or output voltage of the transformer for on-load voltage regulation purposes.
- (9) 'Winding' refers to the assembly of turns forming an electrical circuit associated with one of the voltages assigned to the transformer.
- (10) 'Rated voltage of a winding' (U_r) is the voltage assigned to be applied, or developed at no-load, between the terminals of an untapped winding, or of a tapped winding connected on the principal tapping.
- (11) 'High-voltage winding' refers to the winding having the highest rated voltage.
- (12) 'Highest voltage for equipment' (U_m) applicable to a transformer winding is the highest r.m.s phase-to-phase voltage in a three-phase system for which a transformer winding is designed in respect of its insulation.
- (13) 'Rated power' (S_r) is a conventional value of apparent power assigned to a winding which, together with the rated voltage of the winding, determines its rated current.
- (14) 'Load loss' (P_k) means the absorbed active power at rated frequency and reference temperature associated with a pair of windings when the rated current (tapping current) is flowing through the line terminal(s) of one of the windings and the terminals of the other windings are in short-circuit with any winding fitted with tappings connected to its principal tapping, while further windings, if existing, are open-circuited.
- (15) 'No load loss' (P_0) means the active power absorbed at rated frequency when the transformer is energised and the secondary circuit is open. The applied voltage is the rated voltage, and if the energized winding is fitted with a tapping, it is connected to its principal tapping.
- (16) 'Peak Efficiency Index' (PEI) means the maximum value of the ratio of the transmitted apparent power of a transformer minus the electrical losses to the transmitted apparent power of the transformer.

Article 3

Eco-design requirements

Small power transformers, medium power transformers and large power transformer shall meet the ecodesign requirements set out in Annex I.

Article 4

Conformity Assessment

Conformity assessment shall be carried out applying the internal design control procedure set out in Annex IV to Directive 2009/125/EC or the management system procedure set out in Annex V to that Directive.

Article 5

Verification procedure for market surveillance purposes

When performing the market surveillance checks referred to in Directive 2009/125/EC, Article 3(2), Member State authorities shall apply the verification procedure set out in Annex III to this Regulation.

Article 6

Indicative Benchmarks

The indicative benchmarks for the best-performing transformers technologically possible at the time of adoption of this Regulation are identified in Annex IV.

*Article 7***Review**

No later than three years after the entry into force, the Commission shall review this Regulation in the light of technological progress and present the results of this review to the Consultation Forum. Specifically, the review will assess, at least, the following issues:

- the possibility to set out minimum values of the Peak Efficiency Index for all medium power transformers, including those with a rated power below 3 150 kVA,
- the possibility to separate the losses associated to the core transformer from those associated with other components performing voltage regulation functions, where this is the case,
- the appropriateness of establishing minimum performance requirements for single-phase power transformers, as well as for small power transformers,
- whether concessions made for pole-mounted transformers and for special combinations of winding voltages for medium power transformers are still appropriate,
- the possibility of covering environmental impacts other than energy in the use phase.

*Article 8***Entry into force**

The Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 May 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Ecodesign requirements

1. Minimum energy performance or efficiency requirements for medium power transformers

Medium power transformers shall comply with the maximum allowed load and no-load losses or the Peak Efficiency Index (PEI) values set out in Tables I.1 to I.5, excluding medium power pole-mounted transformers, which shall comply with the maximum allowed load and no load losses values set out in Table I.6.

1.1. Requirements for three-phase medium power transformers with rated power $\leq 3\,150$ kVA

Table I.1: Maximum load and no-load losses (in W) for three-phase **liquid-immersed** medium power transformers with one winding with $U_m \leq 24$ kV and the other one with $U_m \leq 1,1$ kV

Rated Power (kVA)	Tier 1 (from 1 July 2015)		Tier 2 (from 1 July 2021)	
	Maximum load losses P_k (W) (*)	Maximum no-load losses P_o (W) (*)	Maximum load losses P_k (W) (*)	Maximum no-load losses P_o (W) (*)
≤ 25	C_k (900)	A_o (70)	A_k (600)	$A_o - 10\%$ (63)
50	C_k (1 100)	A_o (90)	A_k (750)	$A_o - 10\%$ (81)
100	C_k (1 750)	A_o (145)	A_k (1 250)	$A_o - 10\%$ (130)
160	C_k (2 350)	A_o (210)	A_k (1 750)	$A_o - 10\%$ (189)
250	C_k (3 250)	A_o (300)	A_k (2 350)	$A_o - 10\%$ (270)
315	C_k (3 900)	A_o (360)	A_k (2 800)	$A_o - 10\%$ (324)
400	C_k (4 600)	A_o (430)	A_k (3 250)	$A_o - 10\%$ (387)
500	C_k (5 500)	A_o (510)	A_k (3 900)	$A_o - 10\%$ (459)
630	C_k (6 500)	A_o (600)	A_k (4 600)	$A_o - 10\%$ (540)
800	C_k (8 400)	A_o (650)	A_k (6 000)	$A_o - 10\%$ (585)
1 000	C_k (10 500)	A_o (770)	A_k (7 600)	$A_o - 10\%$ (693)
1 250	B_k (11 000)	A_o (950)	A_k (9 500)	$A_o - 10\%$ (855)
1 600	B_k (14 000)	A_o (1 200)	A_k (12 000)	$A_o - 10\%$ (1080)
2 000	B_k (18 000)	A_o (1 450)	A_k (15 000)	$A_o - 10\%$ (1 305)
2 500	B_k (22 000)	A_o (1 750)	A_k (18 500)	$A_o - 10\%$ (1 575)
3 150	B_k (27 500)	A_o (2 200)	A_k (23 000)	$A_o - 10\%$ (1 980)

(*) Maximum losses for kVA ratings that fall in between the ratings given in Table I.1 shall be obtained by linear interpolation.

Table I.2: Maximum load and no-load losses (in W) for three –phase **dry-type** medium power transformers with one winding with $U_m \leq 24$ kV and the other one with $U_m \leq 1,1$ kV.

Rated Power (kVA)	Tier 1 (1 July 2015)		Tier 2 (1 July 2021)	
	Maximum load losses P_k (W) (*)	Maximum no-load losses P_o (W) (*)	Maximum load losses P_k (W) (*)	Maximum no-load losses P_o (W) (*)
≤ 50	B_k (1 700)	A_o (200)	A_k (1 500)	$A_o - 10\%$ (180)
100	B_k (2 050)	A_o (280)	A_k (1 800)	$A_o - 10\%$ (252)
160	B_k (2 900)	A_o (400)	A_k (2 600)	$A_o - 10\%$ (360)
250	B_k (3 800)	A_o (520)	A_k (3 400)	$A_o - 10\%$ (468)
400	B_k (5 500)	A_o (750)	A_k (4 500)	$A_o - 10\%$ (675)
630	B_k (7 600)	A_o (1 100)	A_k (7 100)	$A_o - 10\%$ (990)
800	A_k (8 000)	A_o (1 300)	A_k (8 000)	$A_o - 10\%$ (1 170)
1 000	A_k (9 000)	A_o (1 550)	A_k (9 000)	$A_o - 10\%$ (1 395)
1 250	A_k (11 000)	A_o (1 800)	A_k (11 000)	$A_o - 10\%$ (1 620)
1 600	A_k (13 000)	A_o (2 200)	A_k (13 000)	$A_o - 10\%$ (1 980)
2 000	A_k (16 000)	A_o (2 600)	A_k (16 000)	$A_o - 10\%$ (2 340)
2 500	A_k (19 000)	A_o (3 100)	A_k (19 000)	$A_o - 10\%$ (2 790)
3 150	A_k (22 000)	A_o (3 800)	A_k (22 000)	$A_o - 10\%$ (3 420)

(*) Maximum losses for kVA ratings that fall in between the ratings given in Table I.2 shall be obtained by linear interpolation.

Table I.3: Correction of load and no load losses in case of other combinations of winding voltages or dual voltage in one or both windings (rated power $\leq 3 150$ kVA)

One winding with $U_m \leq 24$ kV and the other with $U_m > 1,1$ kV	The maximum allowable losses in Tables I.1 and I.2 shall be increased by 10 % for no load losses and by 10 % for load losses
One winding with $U_m = 36$ kV and the other with $U_m \leq 1,1$ kV	The maximum allowable losses in Tables I.1 and I.2 shall be increased by 15 % for no load losses and by 10 % for load losses
One winding with $U_m = 36$ kV and the other with $U_m > 1,1$ kV	The maximum allowable losses indicated in Tables I.1 and I.2 shall be increased by 20 % for no load losses and by 15 % for load losses

Case of dual voltage on one winding	In case of transformers with one high-voltage winding and two voltages available from a tapped low-voltage winding, losses shall be calculated based on the higher voltage of the low-voltage winding and shall be in compliance with the maximum allowable losses in Tables I.1 and I.2. The maximum available power on the lower voltage of the low-voltage winding on such transformers shall be limited to 0,85 of the rated power assigned to the low-voltage winding at its higher voltage.
	In case of transformers with one low-voltage winding with two voltages available from a tapped high-voltage winding, losses shall be calculated based on the higher voltage of the high-voltage winding and shall be in compliance with the maximum allowable losses in Tables I.1 and I.2., The maximum available power on the lower voltage of the high-voltage winding on such transformer shall be limited to 0,85 of the rated power assigned to the high-voltage winding at its higher voltage.
	If the full nominal power is available regardless of the combination of voltages, the levels of losses indicated in Tables I.1 and I.2 can be increased by 15 % for no load losses and by 10 % for load losses.
Case of dual voltage on both windings	The maximum allowable losses in Tables I.1 and I.2 can be increased by 20 % for no load losses and by 20 % for load losses for transformers with dual voltage on both windings. The level of losses is given for the highest possible rated power and on the basis that the rated power is the same regardless of the combination of voltages.

1.2. Requirements for medium power transformers with rated power > 3 150 kVA

Table I.4: Minimum Peak Efficiency Index (PEI) values for **liquid immersed** medium power transformers

Rated Power (kVA)	Tier 1 (1 July 2015)	Tier 2 (1 July 2021)
	Minimum Peak Efficiency Index (%)	
$3\ 150 < S_r \leq 4\ 000$	99,465	99,532
5 000	99,483	99,548
6 300	99,510	99,571
8 000	99,535	99,593
10 000	99,560	99,615
12 500	99,588	99,640
16 000	99,615	99,663
20 000	99,639	99,684
25 000	99,657	99,700
31 500	99,671	99,712
40 000	99,684	99,724

Minimum PEI values for kVA ratings that fall in between the ratings given in Table I.4 shall be calculated by linear interpolation.

Table I.5: Minimum Peak Efficiency Index (PEI) values for **dry type** medium power transformers

Rated Power (kVA)	Tier 1 (1 July 2015)	Tier 2 (1 July 2021)
	Minimum Peak Efficiency Index (%)	
$3\,150 < S_r \leq 4\,000$	99,348	99,382
5 000	99,354	99,387
6 300	99,356	99,389
8 000	99,357	99,390
$\geq 10\,000$	99,357	99,390

Minimum PEI values for kVA ratings that fall in between the ratings given in Table I.5 shall be calculated by linear interpolation.

1.3. Requirements for medium power transformers with rated power $\leq 3\,150$ kVA equipped with tapping connections suitable for operation while being energised or on-load for voltage adaptation purposes. Voltage Regulation Distribution Transformers are included in this category.

The maximum allowable levels of losses set out in Tables I.1 and I.2 shall be increased by 20 % for no load losses and 5 % for load losses in Tier 1 and by 10 % for no load losses in Tier 2.

1.4. Requirements for medium power pole-mounted transformers

The levels of load and no load losses indicated in Tables I.1 and I.2 are not applicable to liquid immersed pole-mounted transformers with power ratings between 25 kVA and 315 kVA. For these specific models of medium power pole-mounted transformers, the maximum levels of allowable losses are set out in Table I.6.

Table I.6: Maximum load and no-load losses (in W) for medium power liquid immersed pole-mounted transformers

Rated Power (kVA)	Tier 1 (1 July 2015)		Tier 2 (1 July 2021)	
	Maximum load losses (in W) (*)	Maximum no-load losses (in W) (*)	Maximum load losses (in W) (*)	Maximum no-load losses (in W) (*)
25	C_k (900)	A_o (70)	B_k (725)	A_o (70)
50	C_k (1 100)	A_o (90)	B_k (875)	A_o (90)
100	C_k (1 750)	A_o (145)	B_k (1 475)	A_o (145)
160	$C_k + 32\%$ (3 102)	C_o (300)	$C_k + 32\%$ (3 102)	$C_o - 10\%$ (270)

Rated Power (kVA)	Tier 1 (1 July 2015)		Tier 2 (1 July 2021)	
	Maximum load losses (in W) (*)	Maximum no-load losses (in W) (*)	Maximum load losses (in W) (*)	Maximum no-load losses (in W) (*)
200	C _k (2 750)	C _o (356)	B _k (2 333)	B _o (310)
250	C _k (3 250)	C _o (425)	B _k (2 750)	B _o (360)
315	C _k (3 900)	C _o (520)	B _k (3 250)	B _o (440)

(*) Maximum allowable losses for kVA ratings that fall in between the ratings given in Table I.6 shall be obtained by linear interpolation.

2. Minimum energy efficiency requirements for large power transformers

The minimum efficiency requirements for large power transformers are set out in Tables I.7 and I.8.

Table I.7: Minimum Peak Efficiency Index requirements for liquid immersed large power transformers

Rated Power (MVA)	Tier 1 (1 July 2015)	Tier 2 (1 July 2021)
	Minimum Peak Efficiency Index (%)	
≤ 4	99,465	99,532
5	99,483	99,548
6,3	99,510	99,571
8	99,535	99,593
10	99,560	99,615
12,5	99,588	99,640
16	99,615	99,663
20	99,639	99,684
25	99,657	99,700
31,5	99,671	99,712
40	99,684	99,724
50	99,696	99,734
63	99,709	99,745
80	99,723	99,758
≥ 100	99,737	99,770

Minimum PEI values for MVA ratings that fall in between the ratings given in Table I.7 shall be calculated by linear interpolation.

Table I.8: Minimum Peak Efficiency Index requirements for dry-type large power transformers

Rated Power (MVA)	Tier 1 (1 July 2015)	Tier 2 (1 July 2021)
	Minimum Peak Efficiency Index (%)	
≤ 4	99,158	99,225
5	99,200	99,265
6,3	99,242	99,303
8	99,298	99,356
10	99,330	99,385
12,5	99,370	99,422
16	99,416	99,464
20	99,468	99,513
25	99,521	99,564
31,5	99,551	99,592
40	99,567	99,607
50	99,585	99,623
≥ 63	99,590	99,626

Minimum PEI values for MVA ratings that fall in between the ratings given in Table I.8 shall be calculated by linear interpolation.

3. Product information requirements

From 1 July 2015, the following product information requirements for transformers included in the scope of this Regulation (Article 1) shall be included in any related product documentation, including free access websites of manufacturers:

- (a) information on rated power, load loss and no-load loss and the electrical power of any cooling system required at no load;
- (b) for medium power (where applicable) and large power transformers, the value of the Peak Efficiency Index and the power at which it occurs;
- (c) for dual voltage transformers, the maximum rated power at the lower voltage, according to Table I.3;

- (d) information on the weight of all the main components of a power transformer (including at least the conductor, the nature of the conductor and the core material);
- (e) For medium power pole mounted transformers, a visible display 'For pole-mounted operation only'.

The information under a); c) and d) shall also be included on the rating plate of the power transformers.

4. Technical documentation

The following information shall be included in the technical documentation of power transformers:

- (a) manufacturer's name and address;
- (b) model identifier, the alphanumeric code to distinguish one model from other models of the same manufacturer;
- (c) the information required under point 3.

If (parts of) the technical documentation is based upon (parts of) the technical documentation of another model, the model identifier of that model shall be provided and the technical documentation shall provide the details of how the information is derived from the technical documentation of the other model, e.g. on calculations or extrapolations, including the tests undertaken by the manufacturer to verify the calculations or extrapolations undertaken.

ANNEX II

Measurement and calculation methods**Measurement method**

For the purpose of compliance with the requirements of this Regulation, measurements shall be made using a reliable, accurate and reproducible measurement procedure, which takes into account the generally recognised state of the art measurement methods, including methods set out in documents the reference numbers of which have been published for that purpose in the *Official Journal of the European Union*.

Calculation methods

The methodology for calculating the Peak Efficiency Index (PEI) for medium and large power transformers is based on the ratio of the transmitted apparent power of a transformer minus the electrical losses to the transmitted apparent power of the transformer.

$$PEI = 1 - \frac{2(P_0 + P_{c0})}{S_r \sqrt{\frac{P_0 + P_{c0}}{P_k}}}$$

Where:

P_0 is the no load losses measure at rated voltage and rated frequency, on the rated tap

P_{c0} is the electrical power required by the cooling system for no load operation

P_k is the measured load loss at rated current and rated frequency on the rated tap corrected to the reference temperature

S_r is the rated power of the transformer or autotransformer on which P_k is based

ANNEX III

Verification procedure

When performing the market surveillance checks referred to in Article 3(2) of Directive 2009/125/EC, the authorities of the Member States shall apply the following verification procedure for the requirements set out in Annex I.

- (1) Member States authorities shall test one single unit per model;
- (2) The model shall be considered to comply with the applicable requirements set out in Annex I of this Regulation if the values in the technical documentation comply with the requirements set out in Annex I, and if the measured parameters meet the requirements set out in Annex I within the verification tolerances indicated in the Table of this Annex;
- (3) If the results referred to in point 2 are not achieved, the model shall be considered not to comply with this Regulation. The Member States authorities shall provide all relevant information, including the test results if applicable, to the authorities of the other Member States and the Commission within one month of the decision being taken on the non-compliance of the model.

Member States authorities shall use the measurement methods and calculation methods set out in Annex II.

Given the weight and size limitations in the transportation of medium and large power transformers, Member States authorities may decide to undertake the verification procedure at the premises of manufacturers, before they are put into service in their final destination.

The verification tolerances set out in this Annex relate only to the verification of the measured parameters by Member States authorities and shall not be used by the manufacturer or importer as an allowed tolerance to establish the values in the technical documentation.

Table

Measured parameter	Verification tolerances
Load losses	The measured value shall not be greater than the declared value by more than 5 %.
No load losses	The measured value shall not be greater than the declared value by more than 5 %.
The electrical power required by the cooling system for no load operation	The measured value shall not be greater than the declared value by more than 5 %.

ANNEX IV

Indicative Benchmarks

At the time of adoption of this Regulation, the best available technology on the market for medium power transformers was identified as follows:

- (a) Liquid-immersed medium power transformers: $A_o - 20 \%$, $A_k - 20 \%$
- (b) Dry-type medium power transformers: $A_o - 20 \%$, $A_k - 20 \%$
- (c) Medium power transformers with amorphous steel core: $A_o - 50 \%$, $A_k - 50 \%$

The availability of material to manufacture transformers with amorphous steel core needs further development, before such values of losses can be considered to become minimum requirements in the future.

COMMISSION IMPLEMENTING REGULATION (EU) No 549/2014**of 21 May 2014****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 May 2014.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	59,1
	MA	39,6
	MK	58,8
	TR	50,7
	ZZ	52,1
0707 00 05	AL	41,5
	MK	36,1
	TR	124,7
	ZZ	67,4
0709 93 10	TR	115,8
	ZZ	115,8
0805 10 20	EG	44,3
	IL	74,1
	MA	45,2
	TR	49,7
	ZA	53,8
	ZZ	53,4
0805 50 10	TR	99,9
	ZA	141,8
	ZZ	120,9
0808 10 80	AR	82,8
	BR	84,5
	CL	97,0
	CN	98,8
	MK	25,2
	NZ	147,1
	US	204,6
	UY	70,3
	ZA	111,9
ZZ	102,5	

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 22 February 2012

on the State aid No SA.29608 (C37/10) implemented by Hungary for the recapitalisation of FHB Jelzálogbank Nyrt

(notified under document C(2012) 1021)

(Only the English text is authentic)

(Text with EEA relevance)

(2014/296/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 25 March 2009, Hungary granted FHB Jelzálogbank Nyrt (hereinafter 'FHB' or the 'bank') a mid-term State loan of 120 billion Hungarian Forint (HUF) (approximately EUR 410 million ⁽²⁾) under the liquidity scheme for Hungarian banks which had been approved by the Commission on 14 January 2010 ⁽³⁾. On 31 March 2009 the Hungarian authorities recapitalised FHB in the sum of HUF 30 billion (approximately EUR 100 million) in the form of newly-issued Special Dividend Preference Shares plus one voting share, granted on 31 March 2009 under the guarantee and recapitalisation scheme approved by the Commission ⁽⁴⁾.
- (2) By letters dated 3 April, 13 May, 14 July and 11 September 2009, the Commission requested information from the Hungarian authorities regarding the terms of the recapitalisation. The Hungarian authorities replied by letters dated 24 April, 2 June, 12 August and 9 October 2009.
- (3) Because of doubts as to the soundness of the bank at the time of the recapitalisation the Commission requested Hungary on 19 October 2009 to submit a restructuring plan for FHB in line with the Commission's 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 ⁽⁵⁾ (hereinafter the 'Restructuring Communication'). Hungary provided further information on 12 and 19 November 2009 and a draft restructuring plan on 26 January 2010.
- (4) On 19 February 2010, FHB repaid the full amount of the recapitalisation to the State.

⁽¹⁾ OJ C 178, 18.6.2011, p. 7.

⁽²⁾ Based on the exchange rate of 15 February 2012 of EUR/HUF (289,63).

⁽³⁾ OJ C 47, 25.2.2010, p. 16.

⁽⁴⁾ OJ C 147, 27.6.2009, p. 2.

⁽⁵⁾ OJ C 195, 19.8.2009, p. 9.

- (5) By letters dated 24 and 25 March 2010, Hungary submitted further information to the Commission. FHB held a general assembly of shareholders on 21 April 2010, in which FHB decided on the payment of remuneration to the State for the recapitalisation, following which the Commission requested information by letter dated 22 April 2010.
- (6) The Commission requested further information by letters dated 2 June and 1 October 2010. The Hungarian authorities provided additional information by letter of 11 June 2010.
- (7) On 15 June 2010, Hungary submitted an updated restructuring plan, which was supplemented by a further essential data submitted on 30 September 2010.
- (8) The Hungarian authorities submitted further information by letters dated 18 June, 28 July and 5 October 2010 and informed the Commission by letter dated 29 October 2010 that FHB had paid remuneration for the recapitalisation.
- (9) On 16 December 2010 the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter the 'Treaty') in respect of the aid measures in favour of FHB. Subsequently, the Hungarian authorities requested the Commission to amend that decision as some parts of it were incorrect and not up to date. The decision was therefore replaced by a new decision of 24 January 2011 ⁽¹⁾ hereinafter the 'opening Decision'. By letter dated the 24 January 2011 the Commission informed the Hungarian authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the aid measure. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 18 June 2011. The Commission invited interested parties to submit their comments on the measure.
- (10) By letter dated 2 March 2011, the Hungarian authorities submitted their comments on the Commission opening decision of 24 January 2011, opening a formal investigation procedure with regard to the measure granted to FHB. Those observations were supplemented by comments received from FHB by letter dated 11 July 2011.
- (11) By letter dated 18 July 2011, a third party (the Magyar Jelzálogbank Egyesület — the Association of Hungarian mortgage banks) submitted its comments on the opening decision to the Commission.
- (12) A further update of the restructuring plan and additional information on the repayment of the recapitalisation to the Hungarian State was submitted by the Hungarian authorities on by letter dated 3 October 2011.
- (13) On 15 December 2011, a new agreement was signed between FHB and the Hungarian State, under which the bank committed to pay to the State the remuneration which had initially been agreed in the recapitalisation agreement.

II. DESCRIPTION OF THE BENEFICIARY

1.1. THE BENEFICIARY

- (14) FHB was set up by the State in 1997. The State gradually sold off its stake in FHB. In 2003 FHB was listed on the Budapest Stock Exchange and in August 2007 the State reduced its majority stake in the bank to just over 4 %.
- (15) FHB was originally set up as a mortgage bank in order to promote the use of mortgage bonds. It was subject to strict rules regarding limited activity, collateral and specific supervision in order to ensure the maximum safety of mortgage bonds. FHB was initially allowed only to provide long-term mortgage loans and guarantees in connection to mortgage loans and to conclude some types of derivative transactions to hedge its own position deriving from its mortgage lending activity. Mortgage bonds were the main funding source of its lending activity. The bank also refinanced mortgage loans extended by other banks.

⁽¹⁾ OJ C 178, 8.6.2011, p. 7.

- (16) In 2006, FHB introduced the New Strategic Plan to expand its banking activity and branch network, aiming to widen its funding and operational base by entering the retail market through FHB Commercial Bank. Over time, FHB started selling various retail and corporate loan products, as well as offering account management, deposit-taking and card services, thereby expanding its product range on the liability side.
- (17) FHB is a group consisting of a mother company, FHB Mortgage Bank Co. Plc, and wholly-owned subsidiaries: FHB Commercial Bank Ltd, FHB Service Ltd, FHB Real Estate Ltd and FHB Life Annuity Real Estate Investment Ltd. It is active mainly on the mortgage bond market. In that market, FHB has a market share of 23 % (2009) and is the second-largest player on the Hungarian market (after OTP Bank with 74 % market share). FHB has a market share of 4,6 % in the retail mortgages market and 0,6 % in retail deposits.
- (18) When the bank was recapitalised in March 2009, its total balance sheet amounted to HUF 746,2 billion. At the same date, the bank's capital adequacy ratio (hereinafter 'CAR') amounted to 10,5 %. The capital injection by the State increased FHB's CAR to 16,1 % at the end of 2009 (computed under Hungarian accounting rules).

1.2. THE CONTEXT

- (19) Hungary is one of the Member States most severely affected by the financial crisis. Years of excess government spending and a credit-fuelled construction and consumption boom led to serious imbalances in the economy even before the crisis. The prevalence of Euro- and Swiss franc-denominated household loans as well as the continued reliance on external financing made the country and its banking sector especially vulnerable to fluctuations in the value of the Hungarian forint, which weakened significantly during the crisis.
- (20) The financial crisis affected Hungary to the point that the International Monetary Fund (hereinafter 'IMF'), the European Union (hereinafter 'EU') and the World Bank had to provide emergency loans to Hungary in November 2008 in order to calm tensions on the country's financial markets.
- (21) As a response to the serious disturbance in the Hungarian economy caused by the crisis, the Hungarian government introduced several measures aimed at supporting the financial sector and financed jointly from IMF/EU/World Bank package. The measures included a liquidity support scheme and a guarantee and recapitalisation scheme.
- (22) The liquidity support scheme (hereinafter the 'liquidity scheme'), established in the Hungarian Act on Public Finance provides for liquidity in the form of loans to financial institutions. It was approved by the Commission on 14 January 2009 ⁽¹⁾ and prolonged several times thereafter, most recently until 31 December 2011 ⁽²⁾.
- (23) By decision of 12 February 2009 ⁽³⁾ the Commission approved the Hungarian guarantee and recapitalisation scheme. Under the scheme, the Hungarian State could subscribe preference shares, which are considered as Tier 1 capital in banks. The recapitalisation part of the scheme has been prolonged several times, most recently until 31 December 2011.
- (24) Under the guarantee and recapitalisation scheme if a recapitalisation exceeds 2 % of a bank's risk weighted assets (hereinafter 'RWA'), the Hungarian authorities must first inform the Commission and provide a detailed assessment on why they believe such a bank should still be regarded as a fundamentally sound institution. If the Commission does not accept the assessment of the bank as fundamentally sound, the recapitalisation may still take place, but the remuneration must be increased in order to reflect the higher risk and a restructuring plan must be submitted to the Commission within six months of the recapitalisation.

Reasons for FHB's difficulties

- (25) Hungary was severely affected by the financial crisis, which, coupled with other internal problems in the banking sector, aggravated the situation for Hungarian banks.

⁽¹⁾ OJ C 47, 25.2.2010, p. 16.

⁽²⁾ OJ C 236, 12.8.2011, p. 1.

⁽³⁾ OJ C 147, 27.6.2009, p. 2.

- (26) FHB required State support because, unlike many other Hungarian banks, it did not have a parent company in the Eurozone and thus could not obtain cheap funding provided by the European Central Bank (hereinafter 'ECB'). The ECB facilities, including various repo facilities, were available in the Eurozone as from autumn 2008. The National Bank of Hungary created a facility in early 2010 but it only increased access to Hungarian forint funding and not to Euro funding, which, according to FHB, was crucial during the hardest time of crisis ⁽¹⁾.
- (27) According to the Hungarian authorities, the recapitalisation of FHB was required to ensure the solvency of the bank and to counteract the liquidity difficulties faced by the whole banking sector in Hungary.

III. DESCRIPTION OF THE AID MEASURES

- (28) The aid measures granted by Hungary to FHB, described in the Commission opening decision of 24 January 2011, consist of:
- A mid-term State loan under the liquidity scheme of HUF 120 billion (approximately EUR 410 million) granted on 25 March 2009, with a maturity date of 11 November 2012;
 - A recapitalisation of HUF 30 billion (approximately EUR 100 million), in the form of newly-issued Special Dividend Preference Shares plus one voting share, granted on 31 March 2009 under the guarantee and recapitalisation scheme.
- (29) A recapitalisation agreement between Hungary and FHB fixed the formula for the calculation of the State's remuneration rate for the shares at 10,49 %, which is in line with the remuneration rate for fundamentally sound banks fixed in the guarantee and recapitalisation scheme, to be paid in the form of dividends. The recapitalisation amounted to 9 % of the RWA of FHB, which is above the 2 % threshold defined in the guarantee and recapitalisation scheme under which the beneficiary institutions can be considered as fundamentally sound. Since the measure was not notified to the Commission before implementation, the Commission had no opportunity to check whether the bank should have been considered as fundamentally sound under the guarantee and recapitalisation scheme. Where the beneficiary is deemed not sound under the guarantee and recapitalisation scheme, a restructuring plan is required and the remuneration rate must reflect the non-fundamentally sound character of the bank, and be higher than the remuneration rate for a fundamentally sound bank.
- (30) In spite of its difficulties, the bank managed to cope well during that period: it had a strong capital position (CAR of 10,5 % in March 2009) and it had a rating of Baa3 by Moody's Investors Service (hereinafter 'Moody's') which is still in the investment grade category. In February 2010, less than nine months following the recapitalisation, the bank bought back the Special Dividend Preference Shares held by the State.
- (31) The bank decided to repay the recapitalisation on the basis of a reviewed consolidated current and expected CAR, considering the macroeconomic forecast used in its 2010 planning and the expected volumes, balances and risk information from the bank's 2010 financial plan. The review concluded that despite the global financial crisis, the situation of the bank by the end of the year was remarkably better than expected at the time of the agreement with the Hungarian State on the recapitalisation of the bank in early 2009.
- (32) FHB repaid the recapitalisation to the State and did not pay any remuneration to the State, resulting in a violation of the recapitalisation agreement ⁽²⁾. However, the bank considered that the Special Dividend Preference Shares held by the State were not automatically entitled to the payment of dividends and their preference meant only that the bank had to pay the stated dividend to the State prior to paying dividends on common stock. Given that common shareholders did not receive any dividends in the period during which the State held the Special Dividend Preference Shares, according to the bank there was no obligation to pay preference dividends. Furthermore, FHB argued that in any event the State was not in possession of the Special Dividend Preference Shares when dividends were declared for the year 2009, given that the repurchase of shares took place beforehand.

⁽¹⁾ For a more detailed explanation of FHB's difficulties, see recital 39 seq. of the opening decision of 24 January 2011.

⁽²⁾ See above recital 28, second indent.

- (33) FHB informed the Commission that it had participated in the 2010 EU-wide stress test exercise coordinated by the Committee of European Bank Supervisors, in cooperation with the ECB and the Hungarian Financial Supervisory Authority. The stress test was focused on capital adequacy while liquidity risks were not directly stress-tested. The results of the test, based on the consolidated year-end 2009 figures, suggested a buffer of EUR [above 50] million (*) of Tier 1 Capital against the threshold of 6 % of Tier 1 adequacy ratio for FHB.
- (34) By Act CX of 2010 on the Amendment of Certain Acts Pertaining to the Economy and Finance (hereinafter 'Act CX of 2010'), which entered into force on 21 August 2010, Hungary amended Act CIV of 2008 on the stability of the financial intermediary system (hereinafter the 'Stabilisation Act'). Act CX of 2010 retroactively created a legal title for the Hungarian State to claim remuneration from FHB concerning the recapitalisation even though the Hungarian State was no longer a shareholder at the time of the FHB shareholders' meeting deciding on the payment of dividends.
- (35) On 28 October 2010, the Hungarian State and FHB signed an agreement according to which FHB was to pay remuneration of HUF 890 million to the Hungarian State for the recapitalisation plus late payment interest of HUF 11 726 786.
- (36) The level of remuneration was allegedly determined on the basis of the terms of the liquidity scheme. The Hungarian authorities argued that the recapitalisation had been provided from the same funding source as the liquidity support in the form of the loan and for those reasons the remuneration for the recapitalisation and for the liquidity support should be the same. The capital was made available to FHB on 6 May 2009 and it was reimbursed on 19 February 2010. The interest rate ultimately applied was the same as the interest rate paid for the loan of approximately EUR 400 million. According to the information provided by Hungary, the monthly average interest rate which resulted amounted to between 3,79 % and 4,08 %; the actual amount was calculated on a weekly basis. According to information provided by Hungarian authorities the total remuneration amount of HUF 890 million was paid at the end of 2010.
- (37) Late payment interests were charged in line with the Hungarian reference rate of 5,97 % as published by the Commission (1), increased by 100 basis points. The late payment interest was calculated for the period from 21 August 2010, when the amended Stabilisation Act entered into force, until 28 October 2010, when the agreement was signed.
- (38) On 15 December 2011, the Hungarian State and FHB entered into a new agreement by which the bank agreed to pay to the State an aggregate amount of 10,49 % of the total recapitalisation amount (i.e. total payment amount of HUF 2 491 742 552). Under that new agreement, FHB thus committed to pay to the State by 31 December 2011 an additional amount of HUF 1 601 742 552, calculated as the difference between the total remuneration amount of HUF 890 million mentioned above in recital 36 and the remuneration that had already been paid on 28 October 2010.

IV. THE RESTRUCTURING PLAN

- (39) On 30 September 2010 Hungary submitted an updated restructuring plan for FHB to the Commission. Additional information on the restructuring plan was submitted to the Commission by letter dated on 3 October 2011. The main aspects of the restructuring plan have been already described in the Commission opening decision. Additional elements were submitted on 3 October 2011 and are described in sections 4.1 to 4.3.

(*) Business secret.

(1) OJ C 14, 19.1.2008, p. 6, and 'Base rates (since 1.7.2008, EUR27) calculated in accordance with the Commission Communication of 19.1.2008' available at http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

4.1. VIABILITY

- (40) In 2010 the international and domestic economic environment was rather difficult, though there were signs of improvement. In 2010, profitability of the Hungarian banking sector lagged far behind that of the previous year. By virtue of Act XC of 2010 that entered into effect on 13 August 2010, the Hungarian government introduced a special tax payable by financial organisations amounting to a cumulative HUF 187 billion and mainly paid by credit institutions.
- (41) Retail customers' demand for loans was severely reduced throughout 2010; at the same time, the supply side was weakened by unfavourable changes in the regulatory environment and in the market conditions. Corporate lending also suffered overall in the sector, though some banks — including FHB — expanded their corporate activities.
- (42) The most important event concerning both operations and financial results of FHB was its acquisition of Allianz Commercial Bank Ltd (hereinafter 'Allianz Bank') and the long-term strategic cooperation agreement between Allianz Hungaria Insurance Co. Ltd (hereinafter 'Allianz Hungaria Insurance') and FHB. The acquisition was closed by 30 September 2010. At the same time an integration project was launched in FHB in order to merge Allianz Bank and FHB Commercial Bank and to rationalize and optimize the operations of the entire group (branch network, distribution channels, product portfolio, IT operations, organization structure and HR, etc.).
- (43) The acquisition positively affected FHB Group's net profit for 2010; one-off items related to the acquisition counterbalanced the negative impact of the special banking tax, losses on the loan portfolio and the increasing cost of funding. The total profit of FHB in year 2010 amounted to HUF 11,2 billion, representing an increase of 58,9 % compared to 2009.
- (44) As a result of the acquisition of Allianz Bank the number of retail and corporate bank accounts in FHB significantly increased, from [...] in December 2009 to [...] in December 2010 (+[...] %). However, due to the large number of dormant accounts, the amount of deposits did not increase proportionately, but increased from HUF [...] billion in December 2009 to HUF [...] billion in December 2010 (+[...] %). The market share of FHB on the retail and corporate deposit markets, increased respectively from [...] % to [...] %, and from [...] % to [...] %. The acquisition of Allianz Bank thus increases the share of deposits in FHB's funding mix and reduces the amount of mortgage bonds from HUF [...] billion in 2010 to HUF [...] billion in 2011.
- (45) FHB forecast that, based on the estimated consolidated balance sheet and income statement for 2011, its CAR should be around [...] % in December 2011. That forecast takes into account the additional payment to be made to the Hungarian State with regard to the recapitalisation carried out in March 2009, which additional payment was made on 15 December 2011 in agreement with the Hungarian State.

4.2. BURDEN-SHARING

- (46) For the recapitalisation of HUF 30 billion, FHB has paid remuneration of HUF 890 million in October 2010. The interest rate originally applied was the same interest rate which was paid for the loan of HUF 120 billion or a monthly average of between 3,79 % and 4,08 %.
- (47) Under the new agreement signed on 15 December 2011 between FHB and the Hungarian State, the bank committed to pay to the State a total remuneration of HUF 2 491 742 552, representing 10,49 % of the recapitalisation amount, as initially agreed between the bank and the State in the recapitalisation agreement.

4.3. MEASURES TO LIMIT DISTORTIONS OF COMPETITION

- (48) The additional information provided in October 2011 did not specifically address distortions of competition, aside from underlining the fact that, despite the purchase of Allianz Bank, the market share of FHB regarding retail and commercial deposits remains limited (at [0,7 %-1,3 %] and [0,4 %-0,95 %], respectively, on 31 December 2010 and [0,65 %-1,3 %] and [1 %-1,35 %], respectively, on 30 June 2011).

V. REASONS FOR THE OPENING OF THE FORMAL PROCEDURE

- (49) The Commission opened a formal investigation procedure because it considered that the main assumptions underlying the restructuring plan and business forecast of FHB were not sufficiently justified and did not take into account the recent purchase by FHB of Allianz Bank. Furthermore, the Commission also expressed doubts as to the long-term viability of FHB given its strong exposure to wholesale funding and the real estate market in Hungary.
- (50) In addition, given the low level of remuneration to the State paid in October 2010 on the recapitalisation amount (corresponding to the average interest rate of 3,79 % to 4,08 % as set out in the liquidity scheme), the Commission also expressed doubts whether the bank's own contribution to its restructuring effort was sufficient. FHB's purchase of Allianz Bank and agreement with Allianz Hungaria Insurance also raised doubts on whether the aid was limited to the minimum amount necessary.
- (51) Finally, the Commission also considered that the Hungarian authorities had not demonstrated that sufficient measures were undertaken in order to limit the distortions of competition caused to the market by the aid received by FHB, in particular in view of its expansion strategy, its recent acquisition of Allianz Bank, and the insufficient remuneration paid for the recapitalisation by the State.

VI. COMMENTS FROM INTERESTED PARTIES

- (52) The Commission received comments from the Association of Hungarian mortgage banks (hereinafter The 'Association') on 18 July 2011. In its comments, the Association recalled the scale of the crisis that hit the Hungarian economy and banking sector in 2008-09, and pointed out that the recapitalisation of FHB took place as a result of the difficult macroeconomic environment deriving from the crisis. The State intervention in favour of FHB was aimed at addressing serious risks to the Hungarian mortgage credit sector and the mortgage bond market. Indeed, as a result of vulnerability to currency fluctuation, the strengthening of the Swiss franc against the Hungarian forint decreasing consumer income and the rise in unemployment, there was a rapid and severe degradation of the quality of the mortgage credit stock and an increase in the number of 'bad credits' and dwindling funding possibilities for banks. It was especially true in the case of FHB, which is financed from the capital market.

VII. COMMENTS FROM THE MEMBER STATE

- (53) The Commission received observations from the Hungarian authorities on 2 March 2011, supplemented by comments from FHB by letter dated 11 July 2011.

7.1. VIABILITY

- (54) In response to the Commission's doubts on the accuracy of assumptions underlying the bank's restructuring plan, the Hungarian authorities state that financial forecasts are based on external experts' assumptions and are consistent with the information that is available at the time when they were made. In terms of soundness, they are no different from any other financial plans or forecasts made by FHB.
- (55) According to Hungarian authorities, the long-term viability of FHB is ensured as evidenced by the success of FHB in raising funds in both the money and capital markets: in 2009, FHB issued mortgage notes and bonds for over HUF 60 billion and private investors also lent the bank a total of [...].

- (56) Furthermore, the Hungarian authorities state that, regarding retail deposit accounts, data reveals that FHB's share in the retail deposit segment rose from [...] % to [...] % in 2009; the projection for the end of 2010 is for [...] %. Further, the number of retail accounts as well as the size of the portfolio of such accounts has been rising consistently and dynamically despite a market projection for a decline in the portfolio. Therefore, the bank and the Hungarian authorities do not consider the projections on retail deposits and retail accounts as over-optimistic.
- (57) As regards FHB's liquidity position, it can be regarded as consistently stable, which is due, inter alia, to the fact that it has to comply with the liquidity requirements prescribed by rating agencies. The bank's liquidity situation was stable even in the most difficult periods of the crisis, which is confirmed by the letter of 19 March 2009 of the Governor of the Hungarian Central Bank to the Minister of Finance.
- (58) Finally, the weakening of the bank's asset quality during the crisis was mainly due to Hungary's macroeconomic situation, dwindling household income, declining employment rates and rising unemployment rate rather than the upward trend of the Swiss franc against the Hungarian forint. Although FHB has launched several schemes aimed at addressing the problems of distressed debtors, the quality of the loan portfolio will be permanently improved primarily by an economic upturn and improved economic indicators. The economic projections of the Hungarian Central Bank and the Hungarian government for 2011 are for growth in Gross Domestic Product (hereinafter 'GDP'), gradual improvement in employment and a lower rate of unemployment, which is also likely to have a significant impact on FHB's loan portfolio.

7.2. BURDEN-SHARING

- (59) The Hungarian authorities remark that FHB concluded the agreements with Allianz Bank and Allianz Hungaria Insurance after FHB had repaid the State in full on 19 February 2010 for the entire issued value of the shares and redeemed the shares issued during the recapitalisation. The agreements of FHB with Allianz were entered into in June and July 2010 and the acquisition took place in September 2010. At that time, no State funds were held by FHB. Therefore, FHB cannot have financed the acquisition from the recapitalisation repaid in February 2010. The preparatory analyses and discussions between FHB and Allianz started only after the State loan had been repaid. Further, the purchase price that FHB paid for Allianz Bank (with the value of the treasury shares taken into consideration) amounted to approximately HUF 3,3 billion, while Allianz Bank's equity capital was close to HUF 14 billion as at 30 September 2010. Thus, in order to be able to acquire Allianz Bank, FHB did not need any capital, and the transaction did not reduce FHB's equity.
- (60) Furthermore, the fact that the aid was limited to the minimum necessary is reflected in the fact that FHB's CAR, which stood at 11,3 % in 2008, reached the 12 % CAR target, approved by the Commission within the guarantee and capital scheme, only after the recapitalisation.
- (61) The Hungarian authorities also note that FHB has not paid dividends for several years in succession, and it has only purchased back a minor portion of its shares relative to the total value of the shareholder's equity. Accordingly, as the amount of funds returned to owners and shareholders has been low over the past years, an appropriate burden-sharing has been ensured.

7.3. MEASURES TO LIMIT DISTORTIONS OF COMPETITION

- (62) In addition to the measures to limit distortions of competition mentioned by the Commission in its decision, the Hungarian authorities point to additional measures linked with the guarantee and recapitalisation scheme and the recapitalisation agreement between FHB and the Hungarian State:
- The State is entitled to a special veto right over dividend payments and acquisitions ⁽¹⁾; and
 - Some restrictions must be implemented by the bank in respect of the salary, remuneration and benefits of its senior officers until the cessation of the interest of the Hungarian State ⁽²⁾.

⁽¹⁾ See Article 13 of the Stabilisation Act, points 25 and 26 of Commission Decision 664/2008/EC and point 5 of the Recapitalisation Agreement.

⁽²⁾ See Article 8, Section (3), Sub-section e) of the Stabilisation Act, point 27(b) of Commission Decision 664/2008/EC 2008 and point 9 of the Recapitalisation Agreement.

- (63) The Hungarian authorities note that, according to their interpretation of State aid rules, those behavioural measures and other measures limiting the distortion of competition are or were binding on FHB for as long as the State was a shareholder of the bank.
- (64) In addition to the measures mentioned above, FHB made further commitments in point 3.8 of the recapitalisation agreement, which sets out that the recapitalisation should be used to reach the following objectives:
- That FHB performs a capital increase in FHB Commercial Bank;
 - That the recapitalisation contributes to the stabilisation of the Hungarian mortgage note and mortgage loan markets and finances the development of retail lending and lending to SMEs;
 - That the recapitalisation improves the stability of FHB and strengthens its active presence in the capital market, thereby contributing to the restoration of investor confidence;
 - That FHB participates in the consolidation of the above market segments;
 - That FHB optimises its financing structure (liability structure);
 - That FHB expands its toolkit needed to fend off the extreme impacts of macro (exchange rate) risks on the capital side.
- (65) Contrary to the doubts expressed by the Commission, the recapitalisation of FHB was not aimed at distorting competition by expanding the activities of FHB Commercial Bank. The capital increase in the latter was a commitment undertaken in the recapitalisation agreement. The core activity of FHB Commercial Bank, also supported by the HUF 25 billion capital increase financed from the State's recapitalisation, has remained. The corporate loan portfolio has been expanding consistently but not in excess of its earlier trend growth.
- (66) In their view, the foregoing reveals that there is no foundation to the Commission's summary judgement on the measures aimed at limiting the distortion of competition and its claim that 'these measures are very limited'. Therefore, the Hungarian authorities insist that the recapitalisation agreement met the criteria laid down in both the Stabilisation Act and the relevant Commission Communications.

VIII. ASSESSMENT OF THE AID

8.1. EXISTENCE OF AID

- (67) The Commission has already found in its opening decision of 24 January 2011 that both the recapitalisation and the liquidity support in the form of the loan provided to FHB constitute State aid within the meaning of Article 107(1) of the Treaty ⁽¹⁾. Neither the Hungarian State nor FHB have put forward any argument to cast doubt on that finding.

8.2. LEGALITY OF AID

- (68) The Commission has already stated in its opening decision of 24 January 2011 that the recapitalisation in favour of FHB did not comply with the conditions of the guarantee and recapitalisation scheme. In particular it did not respect the requirements to be applied when the capital increase exceeds 2 % of the beneficiary RWA. The measure should thus have been notified to the Commission separately in accordance with the conditions of the guarantee and recapitalisation scheme and with Article 108(3) of the Treaty.

⁽¹⁾ See recitals 89 and following of the opening decision of 24 January 2011.

- (69) As a consequence, Hungary unlawfully implemented aid in the form of a recapitalisation in favour of FHB, in breach of Article 108(3) of the Treaty.

8.3. QUANTIFICATION OF AID

- (70) In the context of the restructuring of FHB, all measures granted to it need to be taken into account. Therefore, both the recapitalisation of HUF 30 billion and the liquidity loan of HUF 120 billion need to be taken into account in the compatibility assessment.

8.4. COMPATIBILITY OF THE AID

8.4.1. Legal basis

- (71) As already stated in the Commission's decision of 24 January 2011, given the specific circumstances on the financial markets, the Commission considers that the measures can be examined under Article 107(3)(b) of the Treaty, which states that *'The following may be considered to be compatible with the internal market: [...] aid [...] to remedy a serious disturbance in the economy of a Member State'*. As the present decision aims at assessing the aid received by FHB and its restructuring plan, the Commission finds it appropriate to base its assessment on communications on the application of State aid rules to the financial sector during the crisis ⁽¹⁾. In particular, as regards the assessment of the bank's restructuring plan, it will be based on the Restructuring Communication ⁽²⁾.

8.4.2. Compatibility of the restructuring plan

8.4.2.1. Restoration of the long-term viability of the institution

- (72) In the opening decision ⁽³⁾, the Commission expressed doubts as to the reliability of the assumptions adopted by FHB in its financial projections. The Commission noted that the restructuring plan submitted by FHB in September 2010 did not explain why those assumptions were correct. Furthermore, since the financial projections did not seem to take into account the consequences of the purchase of Allianz Bank and of the agreement with Allianz Hungaria Insurance, the Commission could not consider that the presented projections remain valid. The Commission has also expressed doubts about the assumptions of the bank relying upon a strong growth in deposits.
- (73) Furthermore, the Commission was also concerned about the long-term viability of the bank in view of the business model of FHB, which was deemed vulnerable to liquidity crises due to its strong reliance on wholesale funding and small share of deposits. The Commission considered that the bank's restructuring plan of September 2010, whilst it focused on the capital perspective, did not provide sufficient details on the long-term sustainable funding of the bank.
- (74) On the basis of additional information provided on the bank's restructuring plan in October 2011, the Commission notes that the financial forecasts in the restructuring plan of September 2010 are based on sound and reliable assumptions. The updated information including the purchase of Allianz Bank shows an increase in the bank's retail and commercial deposits stemming from the accounts acquired from Allianz Bank. That acquisition supports the assumptions made on the growth of deposits.

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

⁽²⁾ 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).

⁽³⁾ See recital 108.

- (75) The Commission also notes favourably the fact that the growth in deposits contributes to diversifying the funding sources of the bank, to reducing the relative weight of mortgage bonds in the funding mix and reducing the bank's dependence on wholesale funding. Based on information provided, the share of wholesale funding (i.e. the sum of bonds issued, deposits from banks and the part of mortgage bonds that is not used to refinance loans) has decreased as a percentage of the total liabilities of the bank from [35 %-30 %] in 31 December 2009 to [30 %-25 %] in 31 December 2010. As a result of that rebalancing of the bank's funding mix towards deposits, its average funding cost (calculated as interest expenses on total liabilities) has improved from [7-6,5] basis points on 31 December 2009 to [6-5,5] basis points on 31 December 2010. The return on assets also improved from [0,90 %-1 %] in 2009 to [1,05 %-1,10 %] in 2010. That positive trend is confirmed in the bank's forecast with return on assets forecast to stabilise in 2014 at [1,05 %-1,2 %] in a base case scenario, and [0,9 %-1,05 %] in a stressed scenario. In 2014, return on equity would amount to [11 %-13 %] in a base case scenario and [10 %-12 %] in a stressed scenario.
- (76) In the opening decision, the Commission also expressed its concerns on the sufficiency of the measures provided by the Hungarian authorities at that time to address the exposure of FHB to the Hungarian real estate market and the adverse currency movements. On the basis of the information submitted by Hungary on 9 December 2011, however, the Commission notes positively that FHB has taken the necessary steps to significantly reduce its involvement in the mortgage bond market ⁽¹⁾. The bank has also considerably increased its share of retail loans from [3 %-5 %] in 2009 to [9 %-11 %] in 2011. The Commission further notes that the 'Allianz deal' ⁽²⁾ contributed significantly to those positive trends. As for the bank's exposure to adverse currency movements, the commitment of FHB to expand its toolkit needed to fend off the extreme impact of foreign exchange risks on the capital side can be accepted as adequate to dispel the Commission's doubts ⁽³⁾ because it provides the possibility for the bank to eliminate or hedge its foreign exchange risk resulting from transactions in foreign currencies.
- (77) The Commission therefore considers that the updated restructuring plan, taking into account the Allianz Bank deal, provides justification for concrete target levels for FHB's financial projections and contributes to restoring the bank's long-term viability.

8.4.2.2. *Own contribution by the bank (burden-sharing)*

- (78) The Commission notes positively that the amount of the recapitalisation has already been fully paid back to the State on 19 February 2010, i.e. within a period of less than a year and that the bank repaid the aid amount by using its own resources. FHB also used its own funds to repay four instalments of the mid-term State loan that were due on 11 February 2011, 11 May 2011, 11 August 2011 and 11 November 2011

8.4.2.3. *Limitation of restructuring costs, remuneration*

- (79) The Commission considers favourably the early repayment of the amount of the recapitalisation to the State. Further, the acquisition of Allianz Bank by FHB improves the liquidity profile of the bank increasing the amount of retail and commercial deposits. That acquisition is thus an important aspect of the bank's business plan and contributes to its long-term profitability. Thus, it cannot be considered that the aid granted to FHB was used to develop its activities in new business areas, as Allianz Bank and FHB both operate in the same retail and commercial markets. As a result, the Commission considers that the acquisition of Allianz Bank Ltd by FHB an appropriate measure to maintain the bank's long-term viability.
- (80) The Commission further notes that the information provided by the Hungarian authorities dispels the doubts expressed by the Commission in the opening decision of 24 January 2011 as to whether the acquisition of Allianz Bank had been carried to a large extent at the cost of the State. The acquisition of Allianz bank was

⁽¹⁾ As of 30 June 2011, the bank's liabilities from mortgage bonds decreased to [HUF 365 billion-HUF 350 billion] (from [HUF 435 billion-HUF 445 billion] at the end of 2009) for a total balance sheet of [HUF 835 billion-HUF 845 billion] as of June 2011 (compared to [HUF 800 billion-HUF 810 billion] at the end of 2009), while at the same period the amount of deposits increased (from [HUF 60 billion-HUF 65 billion] in 2009 to [HUF 124 billion-HUF 130 billion] in 2011).

⁽²⁾ The 'Allianz deal' refers to the acquisition of Allianz Bank and the merger between Allianz Bank and FHB, also to the agreement for a strategic cooperation with Allianz Hungary Insurance Co. Ltd.

⁽³⁾ See above recital 64, sixth indent.

completed on 30 September 2010, after the repayment of the recapitalisation to the State on 19 February 2010. As regards the outstanding amounts of the loan, the Commission notes positively that the bank has already repaid four instalments of the loan since February 2011 ⁽¹⁾. The evaluation of the Commission is not altered by taking into consideration the 'missing' remuneration of the recapitalisation, i.e., the amount that was originally not paid by FHB, since that payment amounted to around HUF 1,6 billion (recital 40) and the price paid for Allianz Bank was HUF 3,3 billion (recital 60).

- (81) As regards remuneration of the aid measures, the Commission notes favourably that FHB and the Hungarian Government entered into an agreement on 15 December 2011 by which FHB agreed to pay to the State an additional remuneration of HUF 1,6 billion. In addition to the payment of HUF 890 million made in October 2010, the total payment on the recapitalisation by the Hungarian State of FHB corresponds to the remuneration rate of 10,49 %, in line with the conditions set out in the guarantee and recapitalisation scheme.
- (82) The Commission notes positively that the bank repaid the recapitalisation granted by the State within a period of less than a year (i.e. the bank was recapitalised on 23 March 2009 and the State was repaid on 19 February 2010).
- (83) The mid-term loan received by the bank under the liquidity scheme bears a remuneration of the higher of (i) IMF Special Drawing Right (hereinafter 'SDR') + 345 bps and (ii) 12 month Interbank offered Rate (hereinafter 'IBOR') + 100 bps + 123,5 bps (corresponding to a monthly average of between 3,79 % and 4,08 %), in line with the conditions set out in the liquidity scheme.
- (84) The loan agreement for the mid-term State loan provides for its repayment [...] starting from 11 February 2011. According to the information submitted by the Hungarian authorities, FHB has paid four instalments of the loan that were due on 11 February 2011, 11 May 2011, 11 August 2011 and 11 November 2011. The Commission positively notes that FHB has been prompt in meeting, so far, its payment obligations regarding the mid-term loan. The Commission has no reason to doubt that there will be full and timely repayment of the loan by its maturity.
- (85) That assessment is confirmed by the good performance of FHB despite difficulties in the Hungarian banking sector and the bank's relatively high core tier 1 ratio (12 % at the end of 2008, which increased to 16,9 % after the recapitalisation in 2009 and remained high at 10,5 % after the repayment of the State capital). The capital requirement for Hungarian banks was 8 % at that time. In contrast to some of its peers, the bank was able to maintain its strong capital position (CAR of 10,5 % in March 2009, after the repayment to the State of the recapitalisation). In addition, it kept a rating of Baa3 by Moody's, which is still in the investment grade category.
- (86) In the light of those facts, the Commission believes that FHB encountered difficulties only temporarily and not in a fundamental fashion. It therefore considers that the remuneration paid by the bank is adequate, as corresponding to the remuneration required from a fundamentally sound bank.
- (87) Given that the bank's viability was not endangered by Hungary's ongoing difficulties, the Commission will not ask for further remuneration to be paid to the State.
- (88) Furthermore, the remuneration of the State by FHB for the mid-term loan (see recital 84) was in line with the conditions set out in the liquidity scheme. Therefore, the Commission considers that the remuneration of both aid measures is appropriate.
- (89) The Commission also notes favourably that the bank paid no dividend on its ordinary shares for the years 2009 and 2010. Some restrictions were also implemented by FHB in respect of the salary, remuneration and benefits of its senior officers until the cessation of the interest of the Hungarian State.

⁽¹⁾ In line with the liquidity scheme, the bank has to pay back the amount of the loan in eight equal instalments.

- (90) The Commission therefore considers that the restructuring plan ensures an appropriate own contribution of the bank, its shareholders and management to the restructuring costs.

8.4.2.4. *Measures to correct the distortions of competition*

- (91) The Commission notes that measures contained in the bank's restructuring plan to limit distortions of competition are limited. First, no structural measures are undertaken. Second, the behavioural measures in the restructuring plan apply only as long as the bank benefits from the capital injected by the State. Third, the Commission positively notes that FHB has been prompt in meeting, so far, its payment obligations arising from the mid-term loan. The Commission has no reason to doubt the bank's ability to make full and timely repayment of the loan by its maturity. Fourth, the market position of FHB has not significantly changed since the acquisition of Allianz Bank (with market shares of [3 %-3,3 %] and [3,4 %-3,6 %] before and after the acquisition respectively) which reassures the Commission that the effect of that acquisition on distortions of competition remains limited.
- (92) The behavioural measures are limited to the following:
- The bank shall not follow any aggressive business strategy;
 - The bank should not invest in new business areas, unless those investments were approved before the signing of the recapitalisation agreement
 - The bank should avoid marketing the existence of the State aid.
- (93) The Commission does not consider that other behavioural measures associated with the recapitalisation, mentioned by Hungarian authorities in their response to the opening decision of 27 January 2011, can be considered as measures to limit the distortions of competition caused by the aid.
- (94) However, considering the limited size of FHB on the retail and commercial markets in Hungary ([0,9 %-1,08 %] and [0,5 %-0,9 %] market share respectively in the retail and corporate deposit markets) and considering the fact that the bank repaid the capital injected by the State less than one year after it has been issued, the Commission is of the opinion that the distortions of competition remain limited. Additionally, given that FHB has already paid back four instalments of the mid-term State loan under the liquidity scheme, the Commission has no reason to doubt the bank will repay the loan in full and in a timely manner.
- (95) Further, the remuneration paid to the State is in line with the recapitalisation and guarantee scheme and is therefore appropriate as is required by point 34 of the Restructuring Communication.

CONCLUSION

- (96) The Commission finds that on the basis of the information communicated by the Hungarian authorities and the updated restructuring plan of FHB set out in section IV of this Decision, the implemented support measures in form of a liquidity support loan and a recapitalisation are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty and fulfil the requirements of the Restructuring Communication in terms of viability, burden-sharing and measures to mitigate the distortions of competition.
- (97) Hungary has exceptionally agreed that this Decision be adopted in English as its only authentic language,

HAS ADOPTED THIS DECISION:

Article 1

The measures consisting of a mid-term State loan of HUF 120 billion (approximately EUR 410 million) granted on 25 March 2009 with a maturity date of 11 November 2012 and a recapitalisation of HUF 30 billion (approximately EUR 100 million), in the form of Special Dividend Preference Shares plus one voting share granted on 31 March 2009 which Hungary implemented for FHB Jelzálogbank Nyrt are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 22 February 2012.

For the Commission

Joaquín ALMUNIA

Vice-President

COMMISSION DECISION**of 15 May 2013****on State aid SA.33728(12/C) which Denmark is planning to implement for the financing of a new multiarena in Copenhagen***(notified under document C(2013) 2740)***(Only the English text is authentic)****(Text with EEA relevance)**

(2014/297/EU)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 7 December 2011, the Danish authorities notified the European Commission a measure for the financing of a new multiarena in Copenhagen following a pre-notification phase. The Commission has received two complaints concerning the proposed measure and on 21 December 2011, the Commission asked the Danish authorities, in the form of a request for information, to clarify the issues brought forward in the complaints. The Danish authorities submitted their reply on 6 February 2012.
- (2) By letter dated 22 March 2012, the Commission informed Denmark that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments from six interested parties. It forwarded them to Denmark, which was given the opportunity to react; its comments were received by letters dated 26 July and 15 August 2012.
- (5) The Danish authorities submitted additional clarifications in December 2012 and January 2013. The selected operator also submitted additional clarifications in January 2013. In addition, the Danish authorities, upon request, clarified issues triggered by a Danish newspaper article regarding the multiarena.
- (6) The Danish authorities have withdrawn the grant from Region Hovedstaden (namely, the Capital Region of Denmark/Capital Region of Copenhagen) from the notification ⁽³⁾ by letter dated 6 March 2013.
- (7) The Danish authorities have provided a language waiver and agree that the decision will be adopted in English as the authentic language.

2. DESCRIPTION OF THE MEASURE

- (8) The City of Copenhagen plans to build a 'multiarena' of international standard which can provide facilities for music, culture and sport of a high, international level. The multiarena will have a maximum capacity of 15 000 seats.

⁽¹⁾ OJ C 152, 30.5.2012, p. 12.

⁽²⁾ Cf. footnote 1.

⁽³⁾ See paragraph 13 in the decision to initiate proceedings, OJ C 152, 30.5.2012, p. 12.

- (9) There are other existing arenas in Copenhagen, primarily intended for football, but the Danish authorities argue that these are not sufficiently flexible and scalable to attract international sports, music and entertainment events to Copenhagen. In particular 'Parken' should be mentioned, an arena in the centre of Copenhagen (home ground of FC Copenhagen and also used for large shows/concerts with up to 45 000 spectators). There are also other arenas nearby, for example, in Malmö, Sweden.
- (10) The main parties (hereafter 'the parties') involved in the multiarena project are the City of Copenhagen and Realdania (a private foundation) ⁽⁴⁾. Another actor, By & Havn (owned by the City of Copenhagen (55 %) and the Danish State (45 %)) shall provide for free the right to use land on which the multiarena is to be built.
- (11) According to the Danish authorities, it is clear from earlier failed attempts to have an arena built on private initiative alone that no multiarena will be built in Copenhagen unless the project receives public co-financing.

2.1. FUNDING OF THE CONSTRUCTION OF THE ARENA

- (12) The parties will set up a jointly owned 'Arena Company', the purpose of which will be to construct and own the multiarena and to manage the operator agreement (whereas the operation of the multiarena shall be handled by a separate operator as explained below). The actual construction work will be awarded through an open tender.
- (13) The total costs involved in the planning and construction of the multiarena are estimated at about DKK 1 100 million (EUR 148 million) ⁽⁵⁾. The multiarena project will be financed by equity from the parties combined with external debt financing. Each of the parties will contribute DKK 325 million (EUR 43,7 million) to the capital of the Arena Company (total of DKK 650 million) and own 50 % each. The external financing of DKK 345 million (EUR 46,4 million) will be covered by loans on market terms with a repayment period of 30 years. Elitefacilitetsudvalget ⁽⁶⁾ will also contribute DKK 15 million (EUR 2 million) for the financing of the construction of the multiarena.
- (14) By & Havn shall provide the right to use land on which the multiarena is to be built free of charge for the first 40 years. After 40 years the Arena Company shall pay market rent.

2.2. OPERATION AND USE OF THE ARENA:

- (15) The Arena Company will manage the operator agreement, however, the actual operation of the multiarena shall be handled by a separate operator which has been selected in an open and transparent tender procedure ⁽⁷⁾. The operator will be obliged to ensure that access to the multiarena is open to all users on non-discriminatory conditions at market prices.
- (16) Following the tender procedure, the Danish division of the Live Nation Entertainment group won the right to operate the arena for 30 years. Live Nation Entertainment group is the world's largest live music and entertainment company, and it operates through local companies in each territory.
- (17) The operator is obliged to pay an annual fixed rent of ^(*)[...] ⁽⁸⁾ for the right to operate the arena (fixed payment irrespective of the number of events hosted) to the Arena Company and a variable rent [...]. In addition, the operator must pay [...] due under the lease and thus the operator effectively pays all variable costs of the arena.

⁽⁴⁾ Although it seeks to ensure a return on its operations, Realdania is not a profit-maximising business but a philanthropic foundation which describes its mission thus 'to improve quality of life for the common good through the built environment', see www.realdania.dk

⁽⁵⁾ The total costs of DKK 1 100 million includes interest on loans and indexation of prices and wages foreseen until 2015.

⁽⁶⁾ Elitefacilitetsudvalget is a committee with the purpose of upgrading sports facilities to an international standard with the aim of hosting sports events at an international level. It is partly financed by the Danish State.

⁽⁷⁾ The Danish authorities confirmed that the tender procedure regarding the operator agreement is based on transparent, objective and non-discriminatory conditions and requirements with the relative weight of each of the sub-criteria established in advance, and that price is an important criterion in the overall assessment.

^(*) [...]: the information in brackets is covered by the obligation of professional secrecy

⁽⁸⁾ The annual rent in the first year of the contractual term is the [...] or such other sum as determined by applying a specific formula as set out in the lease agreement (see clause 1.1, annual rent in the first year of the Contractual Term will be the [...] per annum and subsequently the annual rent is revised annually according to the index, see clause 8 of the lease.

- (18) In addition, the Arena Company will have revenues from a car parking and the Danish authorities have ensured that all agreements regarding the car parking have been negotiated and concluded on a commercial basis. It is envisaged that there will be such a connection between the external financing and the rent paid by the operator that the income received can pay the external financing.
- (19) For the first 10 years of operation, the national sports federation DIF ⁽⁹⁾ will also provide an operational grant of DKK 5 million (EUR 672 000) each year. In return DIF will have the right to use the multiarena for international sports championships and other sport events. According to the Danish authorities, DIF shall pay market rent to the operator whenever it uses the arena.

2.3. GROUNDS FOR INITIATING THE PROCEDURE

- (20) In the decision to open formal investigations, the Commission found that a selective economic advantage could not be excluded at any level (construction, operation and use) and consequently the project would involve State aid. In addition, the public co-financing of the multiarena would most likely distort, or at least, threaten to distort competition and have an effect on competition and trade between Member States. At that stage, the Commission also had doubts whether the proposed project could be deemed compatible under Article 107(3)(c) of the Treaty, as regards all three levels of possible aid (construction, operation and use).

3. COMMENTS FROM INTERESTED PARTIES

- (21) As mentioned, the Commission has received two complaints concerning the proposed measure, which both claim that the multiarena project will distort or threaten to distort competition within the event industry, in particular in the market for the hosting of commercial mid-sized and large live entertainment events, and affect trade between Member States as the operator will be competing with arena operators in other Member States.
- (22) Comments in favour of the multiarena were received from stakeholders in the region of Copenhagen: (i) Sport Event Denmark (non-profit organisation); (ii) Team Danmark (a public self-governing institution responsible for the overall development of Danish Elite Sports); and (iii) Horesta and Wonderful Copenhagen (tourism organisations).
- (23) One of the complainants goes further into the assessment of the project by stating that it would constitute State aid incompatible with the internal market due to its distortive effect on competition between venues for hosting of commercial mid-sized and large live entertainment events (including in neighbouring parts of Sweden and even Germany), which would be aggravated by a vertical foreclosure threat [...]. The complainant also questions the Danish authorities' statement that there will only be a limited overlap with existing facilities and that the multiarena mainly will draw events to Copenhagen that cannot be held in presently existing facilities.
- (24) The other complainant also points out the adverse effects on competition in the event market in the Öresund region, particularly regarding concerts by international artists, and questions also the tender procedure for the operation of the arena.
- (25) Following an article in a Danish newspaper regarding the multiarena, some additional comments were also received.

4. COMMENTS FROM DENMARK

- (26) The Danish authorities maintain that the proposed measure does not involve State aid referring to previous Commission practice where, under certain conditions, support for infrastructure might not be interpreted as constituting State aid under Article 107(1) of the Treaty, and that the question of State aid should be assessed separately for each of the several different levels concerned (owner, operator and users).
- (27) The Danish authorities focus their arguments on, in their view, the lack of economic advantage and they claim that none of the parties involved in the project gain a financial advantage, be it directly or indirectly, as a consequence of the public co-financing.

⁽⁹⁾ DIF is an umbrella organisation for 61 sports federations with totally more than 1,6 million members in approximately 10 700 sports associations. Besides being responsible for both the elite sports and the popular sports DIF constitutes the Danish National Olympic Committee and is thereby responsible for the Danish participation at the Olympic Games.

- (28) If the multiarena project was found to involve State aid, the Danish authorities argue that it should be considered compatible with the internal market under Article 107(3)(c) of the Treaty. They argue that in particular the following should be taken into consideration:
- there is a market failure (the project would not be realised in the absence of public co-funding),
 - the public co-funding is limited to the strictly necessary in order to realise the project,
 - the funding is used exclusively for the establishment (construction) of the facility as the subsequent operation will take place on market terms,
 - the construction of such venues constitutes the embodiment of a typical State responsibility towards the general public, and
 - the multiarena will only to a very limited extent compete for events that would presumably otherwise be held in other venues in Copenhagen because the multiarena will provide different facilities.
- (29) The Danish authorities have also submitted a report, by the independent economic consultant, Copenhagen Economics, of the positive and negative impacts on competition and trade from the multiarena, which in short concludes that the public co-financing carries with it considerable gains in economic welfare and only modestly, or even negligible, anti-competitive effects.
- (30) In addition, the Danish authorities, upon request, clarified issues triggered by a Danish newspaper article regarding the multiarena.

5. ASSESSMENT OF THE AID

5.1. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TREATY

- (31) According to Article 107(1) of the Treaty, '*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*'.
- (32) In order to be classified as a State aid, the notified project must thus fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Community trade.
- (33) With regard to the requirement that the measure must be granted through State resources and attributable to the State, this criterion is clearly fulfilled in this case as the City of Copenhagen, as well as other public authorities (see more below) will contribute with a direct grant and provide the land where the arena is to be built. Such public authorities and part of the State and their resources are thereby deemed attributable to the State.
- (34) The State funding of the construction of the multiarena may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the *Leipzig/Halle* airport judgment of the Court of Justice ⁽¹⁰⁾, if all the requirements of Article 107(1) are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. In this case, the arena will be used to provide services on a market, hence for an economic activity. Consequently, it needs to be assessed whether there is State aid to the different actors involved in the project.

Construction of the arena

- (35) The Danish authorities acknowledge that the multiarena project would not be carried out by way of market forces alone and that the public co-financing is necessary for it to be realised as shown by the failed attempt in 2009 to build a multiarena due to lack of necessary funding ⁽¹¹⁾.

⁽¹⁰⁾ Judgment of 19 December 2012 in Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

⁽¹¹⁾ In 2009, the City of Copenhagen offered in a tender process a favourable loan to private parties who would build a multiarena. The winning company did not succeed in securing the necessary additional funding and therefore in March 2010, the tender was cancelled.

- (36) With regards to the requirement that the measure must be granted through State resources and attributable to the State, this criterion is clearly fulfilled regarding the financing by the City of Copenhagen and the granting of land from By & Havn (owned by the City of Copenhagen and the Danish State). The City of Copenhagen and the Danish State clearly constitute public authorities using resources belonging and/or controlled by the State.
- (37) Also the grant (for the construction of the multiarena) from Elitefacilitetsudvalget (a committee with the purpose of upgrading sports facilities to an international standard with the aim of hosting sports events at an international level), which is admittedly at least partly financed by the Danish State, constitute State resources. The statutes of Elitefacilitetsudvalget are determined by the Ministry of Culture, which also has performance contract with Elitefacilitetsudvalget during the funding period. Thus, with regard to the financing it receives from the Danish State, which in turn it would use/grant in fulfilment of its tasks, its interventions are deemed attributable to the State.
- (38) The State contribution for the construction of the arena, including the granting of land and the grant from Elitefacilitetsudvalget, gives an economic advantage to the Arena Company (the owner of the multiarena), as it is necessary for the construction of the arena that would not have been built on market terms. As the funds involved are obviously State resources and the decision to make the grant is imputable to the State, all other criteria of State aid are met (see hereafter the examination of distortion of competition and effect on intra-community trade between Member States). Consequently, the State contribution thus constitutes State aid to the Arena Company.
- (39) However, with regard to the grants from DIF, the Danish authorities argue that these payments are not State resources. DIF receives a large part of its income from annual grants from the Danish State (from the proceeds from the Danish Gambling market) but also from other (non-public) sources. In accordance with DIF's rules, the governing bodies are elected without any influence from public authorities and without influencing the individual decision adopted by DIF's governing bodies. Thus, neither the Danish State nor any other public body has any influence on the decision adopted by DIF. Moreover, the annual amount to be paid by DIF is a payment for the right to reserve the arena for specific uses that are in DIF's own interest in accordance with DIF's own decision to enter into an agreement to pay for the right to reserve the arena. Consequently, in accordance with the view of the Danish authorities, the payments by DIF cannot be imputed to the State and thus not considered as aid in the sense of Article 107(1) of the Treaty.

Operation of the arena

- (40) The operation of the arena has been tendered out, according to the Danish authorities, taking full account of the principles of EU Public Procurement rules and the operator has been selected in an open, transparent and non-discriminatory tender procedure in which the price (financial and commercial terms) was given a relative weight of approximately 75 %. All interested parties had an equal opportunity to bid for the operator contract and the contract has been awarded to the bidder handing the best offer.
- (41) The tender was launched in April 2011 and was widely advertised ⁽¹²⁾. The project also hosted a Project Open Day in Copenhagen for all interested parties.
- (42) An Information Memorandum and pre-qualification questionnaire ('PQQ') were issued to all interested parties ⁽¹³⁾. All parties submitting PQQ responses satisfied the Project Partners' requirements and were thus invited to advance to Stage 1 of the procurement competition in June 2011. Three Stage 1 tenders were submitted and two bidders were short listed for Stage 2 and later submitted bids. The evaluation of these two bids led to the contract with Danish Venue Enterprise (part of Live Nation Entertainment) ⁽¹⁴⁾. The evaluation included the strength of the financial offer, legal terms, facilities requirements, services and deliverability and risk. Both bids were strong, but the selected operator scored higher in most of the categories, and in particular, it offered a fixed lease that was significantly higher than the other bidder's.
- (43) The selected operator will pay rent consisting of an annual fixed rent of [...] and a variable rent [...]. The operator must also pay [...] due under the lease and thus the operator effectively pays all variable costs as part of

⁽¹²⁾ The procedure began with announcements in leading international and Danish media: The New York Times, The Times, Børsen, Licitation, Byggeriets Dagblad, Berlingske Tidende and Politiken.

⁽¹³⁾ Prospective local operators such as Tivoli, Bella Center, Malmö Arena and Parken were all invited to participate, however they all declined to participate in the competition.

⁽¹⁴⁾ Live Nation Entertainment group is the world's largest live music and entertainment company. Its activities consist primarily of show promotion, venue management and operation and provision of ticketing services. Live Nation Entertainment operates its business through local operating companies in each territory. In Denmark, the business is run through Live Nation Denmark ApS.

the lease, including maintenance costs. The lease is concluded for a term of [...] years (all bids had to be for at least 25 years and the operator has explained that long term contracts from 20-30 years are not unusual in this business).

- (44) While these arrangements minimise the advantage to the selected operator to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator of this new arena cannot be excluded. However, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.

Use of the arena

- (45) According to the lease agreement, the operator has to make the multiarena available to a variety of user groups and for a variety of activities (with emphasis on live entertainment, culture and sport) and cannot award preferential treatment to any certain type of activities to ensure the multifunctional use of the arena. To ensure that users shall be charged on market terms, the lease agreement states that 'the rates charged for use shall always be at the market rates reasonably obtainable in the open market for that particular use' ⁽¹⁵⁾. The arena time may also not be preponderantly assigned to certain 'dedicated' users. Thus, the arena is multifunctional and open to all with no captive user.
- (46) The lease agreement furthermore states that the rates charged for use shall be at the market rates reasonably obtainable in the open market for that particular use. Moreover, the operator is a private company with a need to cover his costs and indeed to make profits, and it is free to set the prices on a commercial basis and cannot discriminate between users.
- (47) The renting of the arena may constitute aid for the users, if the users can be considered undertakings within the meaning of Article 107 of the Treaty and if the rent they pay is below the rent for the use of comparable infrastructure under normal market conditions. Non-professional users do not qualify as undertakings within the meaning of Article 107 of the Treaty. In this case though, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.

Effect on competition and trade between Member States

- (48) The arena is planned as a multi-purpose arena for many types of events (music, culture and sport) of a high, international level. As the market for organising this type of international events is open to competition between venue providers and event organisers, the effect on competition and trade between Member States can be assumed, taking into account the location of the planned multiarena (very close to southern Sweden by car or train) and that other arenas exist both in Copenhagen and in nearby cities (including other Member States).
- (49) Moreover, the General Court has, in its Order concerning the Ahoy complex in the Netherlands, held that there was no reason to limit the market to the territory of that Member State ⁽¹⁶⁾. As in the opening decision, the Commission therefore considers that aid to the arena distorts competition and effects trade between Member States.

5.2. COMPATIBILITY

- (50) The Danish authorities argued that if the measure was found to constitute State aid, this should be declared compatible under Article 107(3)(c) of the Treaty. In order for a proposed measure to be found compatible with the internal market under this derogation, the Commission examines whether it pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition.
- (51) With regard to the achievement of a policy objective of common interest, it is noted that the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered as a State responsibility, particularly in light of the Amsterdam Declaration on Sport

⁽¹⁵⁾ In this respect, although possible benefits for any party that is a frequent or repeated user or hirer of the arena or for any party that is a sponsor or commercial partner of the arena may be offered, such benefits are offered for example, [...] and must be provided to all comparable users of the arena on transparent, equal and non-discriminatory terms and thus do not mean that any specific users can receive a favourable treatment.

⁽¹⁶⁾ Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v Commission*, Order of the General Court of 26 January 2012, paragraph 45.

and Article 165 of the Treaty, 'The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function'.

- (52) In addition to sport events, the arena will also be used for cultural events (concerts, shows), and as such contribute to the promotion of cultural diversity in the light of Article 167(4) of the Treaty. In addition, it will contribute to overall welfare through an increased supply of cultural offerings and some positive impact on economic growth and employment.
- (53) As the arena will ensure the general public's increased access and practice to sport and culture, particularly considering the arena's multifunctional character and lack of capacity and/or adequate other facilities for sports and cultural events in Copenhagen, the City of Copenhagen will be fulfilling its responsibility to the general public by making the arena project possible and thereby attracting additional cultural, musical and sports events to Copenhagen. The realisation of the arena must therefore be regarded as satisfying policy objectives of common interest.
- (54) During the procedure, the Danish authorities have withdrawn the grant from Region Hovedstaden from the notification. Concerning the necessity and proportionality of the proposed measure, the Danish authorities have also during the procedure demonstrated the need of the multiarena's additional capacity and that there is both a lack of capacity in existing arenas and that existing arenas would be inappropriate for certain types of events (for example the other existing arenas in Copenhagen are either not sufficiently flexible or scalable to attract international sports, music and entertainment events to Copenhagen). Hence, the new multiarena would only to a very limited extent compete for events that would presumably otherwise be held in other venues in Copenhagen because the multiarena will provide different facilities and stage a range of new events which currently cannot take place in Copenhagen, thus increasing the number of events as explained in more detail below.
- (55) Although other arenas exist both in Copenhagen and in nearby cities (including other Member States), the Commission considers that Denmark has shown the lack of capacity, at least for certain types of events, and confirmed that the new arena will become a complement rather than substitute for the existing arenas. The Danish authorities have also explained that the new arena is likely to lead to an overall increase in the supply of cultural, musical and sports events rather than to a mere substitution of venues.
- (56) The multiarena will be used for large scale indoor cultural, musical and sports events. Its flexible facilities will be suitable for sport events, championships, concerts, shows, cultural events, congresses, exhibitions etc. with a capacity of 12 500 for sport events, and 15 000 for music events. Football matches cannot be held there.
- (57) Other existing venues in Copenhagen are primarily Parken, the national football stadium in the centre of Copenhagen (home ground of FC Copenhagen and also used for large shows/concerts with a capacity of around 45 000-50 000 spectators) and Forum Copenhagen (an indoor venue) located in Copenhagen mainly used for conventions and exhibitions.
- (58) Parken is primarily a football stadium and as such not in competition with the new indoor multiarena which does not have the capacity to host football matches. To a lesser extent Parken also hosts concerts, however considering its capacity it mainly attracts large stadium tours performing for audiences often between 40 000-50 000 spectators. It can also be transformed into a heated indoor arena, nevertheless it is mostly used for football matches. Based on past programme, Parken hosted 19 concerts from 2007 to 2011 with best estimates of around 34 000 for those 19 concerts. Thus, it is reasonable to conclude that concerts held at Parken on average have more than twice as many spectators as the maximum capacity planned for the multiarena. Moreover, according to Live Nation Denmark, [...] touring concerts are planned to visit Parken in 2013, out of which [...] are dedicated stadium tours which perform for very large audiences, often 40 000-50 000 spectators which far exceed the capacity of the multiarena. Stadium tours are unlikely to include arenas in their tour schedules because of the lower potential for ticket sales and performing multiple times in an arena as a substitute for a single stadium performance is also not attractive.
- (59) The other existing venue in the centre of Copenhagen is Forum, an older concert and exhibition (indoor) venue. For concerts Forum can host 8 500 seated, or 10 000 standing spectators, and many events which are well-suited for Forum would be less attractive for the new multiarena because the capacity of the arena would be too

poorly utilised. The physical characteristics also differ as Forum was constructed in the 1920s, with in essence a vast floor space, which is well-suited for conventions and exhibitions where audience needs to move around and less suited for concerts and especially sport events.

- (60) Hence, the new multiarena, Forum and Parken differ significantly with respect to capacity and flexibility and consequently the three venues are substitutes only to a limited degree. Due to such different characteristics, the competitive effect of the new multiarena on existing venues in Copenhagen, and the attractiveness of hosting events in those, is likely to be limited.
- (61) The existing venues with characteristics similar to the new multiarena are rather Malmö Arena in Sweden and Jyske Bank Boxen in Herning, Jutland, Denmark (a couple of hundred kilometres from Copenhagen). According to the Danish authorities, the managing director at the latter sees rather new opportunities to attract major events to Denmark through cooperation with the new multiarena.
- (62) Regarding the competitive effect of the new multiarena on the Malmö Arena, the following was taken into account. Although Malmö is geographically close, it is situated in a different country separated by water and to be crossed by way of a toll bridge. Malmö Arena is a multipurpose arena (although it was designed to be primarily a sports arena) with a capacity of 13 000 spectators for sport events and around 15 500 for concerts, which is similar to the Copenhagen new multiarena.
- (63) However, with respect to the events at Malmö Arena, based on 2012 and 2013 programming, a significant share of the events held, or to be held, there has a Swedish or local focus. Firstly, Malmö Arena is the home arena for the local ice-hockey team with approximately 25 games every year. Secondly, past programming (autumn 2012), shows that most concerts and shows hosted at Malmö Arena are targeted at a Swedish audience, which is also shown by the fact that on the Danish version of its website, only a very limited list of events is advertised (that is to say four out of the 14 events for the 2012 autumn programme with similar figures). In turn, three out of those four events advertised on the Danish site were part of a concert tour including also Danish venues. This shows also that promoters do not necessarily perceive a venue in Copenhagen as a substitute for Malmö Arena, on the contrary, it might well be desirable to play in both cities.
- (64) The 2013 programming also shows similar characteristics with 48 events scheduled, and out of these 6 shows/concerts are advertised on the Danish version of the Malmö Arena website (out of these one show is also scheduled to perform in Copenhagen, two of the concerts have already performed in Copenhagen at the initial part of their respective tours, and another one of these shows is the Eurovision Song Contest which will in all circumstances be held in Sweden because Sweden won the contest in 2012). In addition, ticket sales for Live Nation Entertainment events at Malmö arena show that the share of Danes attending international touring concerts in Malmö is low.
- (65) Therefore, considering that Malmö arena is located in another country with certain inherent obstacles including a toll bridge, different language, currency and cultural differences together with the captive user of Malmö Arena and the fact that many events have a distinct local or Swedish focus, most activities hosted by Malmö Arena are very unlikely to take place in a non-Swedish venue and thus only very small share of the events would potentially be exposed to competition from the new Copenhagen multiarena. Hence, the risk of Malmö Arena losing, or competing for, events to the new Copenhagen multiarena must be considered rather small and thus the competitive effect of the new multiarena is likely to be limited on the Malmö Arena as well.
- (66) On the contrary, according to the Danish authorities, the new multiarena is expected to lead to new events which would not otherwise be attracted to Copenhagen or the region, which may also benefit for example, Parken, Jyske Bank Boxen and Malmö arena. Large scale sports events such as world championship competitions in swimming, ice-hockey and handball typically require multiple venues and with the new multiarena, Denmark and the region is likely to be a much stronger candidate for such sports events through co-hosting or for other events which may only be commercially viable, or for other reasons (for example, different catchment areas) to play in two Danish venues.
- (67) The selected operator, Live Nation Denmark, has further confirmed that it will continue to use other venues in the area for its events taking into account both the client's needs for a specific type of venue and its own needs to make the shows financially viable and can thus not favour its own venues. An example is that Live Nation is one of the primary providers of content to London's O₂ Arena, although the venue is operated by another

operator. In its capacity as a venue operator, the selected operator, also relies on its venue being used for the maximum number of days possible to generate revenue and as such it has every incentive to make its venues available to other event promoters. According to the operating contract, the operator may also not refuse other promoters' access to the multiarena and is obligated to make it available to a variety of users at market rate without favouring any specific undertaking.

- (68) Consequently, the Commission considers that Denmark has shown the need of additional capacity in Copenhagen and that the new multiarena will both complement existing arenas with additional capacity and increase the types of events which can take place in Copenhagen, and thereby considerably benefit the general public's access to such events in the area. The overlap between the existing venues in the region and the new multiarena must also be regarded as limited and thus the risk that the new entry would lead to the exit of an existing venue in the region is unlikely as the new multiarena is rather a complement than a substitute for the existing arenas. The risk of vertical foreclosure, as well as incentives to distort competition by setting anti-competitively low prices, also appears highly unlikely. Concerning any possible vertical foreclosure, as also mentioned above, the operator of the multiarena is contractually obligated to ensure equal access and does not have the opportunity to refuse other promoters' access to the arena and such behaviour would also sacrifice its own financial viability.
- (69) In the absence of public co-financing the project would not be realised, as without the State contribution there will not be enough funds to finance the multiarena project as admitted by the Danish authorities and supported by the previous attempts made by the City of Copenhagen to have the arena built. Plans have existed for a decade, and the City of Copenhagen would have welcomed any private investor who would have undertaken to construct the multiarena on market terms alone, but no such investor has come forward, as shown for example by the 2009 attempt as described above.
- (70) The State contribution is limited to the funding gap, that is to say, the funding that cannot be found on the market, and such contribution of DKK 325 million (EUR 43,7 million) corresponds to around 30 % of total costs involved in the planning and construction of the multiarena. In return, the State will own 50 % of the Arena Company, the company set up to construct and own the multiarena and to manage the operator agreement, however, as explained above, the operation of the multiarena shall be handled by a separate operator.
- (71) Regarding possible alternatives to the multiarena, such as a smaller arena or a less costly arena with the same capacity, those would not meet the desired objectives of the project. A smaller arena would not meet the lack of a venue with the planned capacity and flexibility as the multiarena. The new multiarena thus fills a gap which would remain open if a smaller arena with less capacity was built instead. It is also likely that the effects on competition would be greater with a smaller arena since the differentiation from existing venues would be more moderate.
- (72) With regards to a cheaper and less accomplished arena, it should be noted that the financing from Realdania depends on high architectural aspirations for the arena. The City of Copenhagen also holds high architectural and aesthetic aspirations for the new developments in the area where the arena is to be built. Moreover, the site for the arena is placed in what is planned to become a residential area which imposes specific costly requirements on design and soundproofing.
- (73) It has thus been demonstrated, that the State's commitment to the project is essential for its realisation. The public co-financing of the multiarena is also necessary, as without the State's contribution there will not be enough funds to finance the multiarena project. Based on the above, the State contribution has also been ensured to be limited to the strictly necessary.
- (74) In any case, both the selection procedure of the operator and the lease agreement, together with the other above reasons, ensure that the necessity and proportionality requirements would be fulfilled.
- (75) Regarding the use of the multiarena, it has also been shown to be on a non-discriminatory basis without favouring any specific undertaking(s). Thus, the arena is multifunctional and open to all with no captive user.
- (76) Hence, the new arena will both complement existing arenas with additional capacity and increase the types of events which can take place in Copenhagen. Thus, the aid must be considered well-targeted and justified

- (77) From the above reasons, it has been demonstrated that the State's involvement in the multiarena project is both necessary, proportionate and does not cause undue distortion of competition and that possible spillover of that aid to the operator and users would also be compatible with the internal market.

6. CONCLUSION

- (78) The State's contribution for the construction of the Copenhagen multiarena constitutes State aid to the Arena Company, and possibly to the operator and the users of the multiarena. The public co-financing of the multiarena has been demonstrated to be both necessary and proportionate to realise the project, as well as sufficiently open to all on non-discriminatory terms without favouring any specific undertaking(s). The outcome of the balancing test is thus positive.
- (79) The Commission therefore finds that the financing of the multiarena is compatible with the internal market under Article 107(3)(c) of the Treaty.
- (80) The Commission notes that Denmark has agreed that the decision shall be adopted in English as the authentic language,

HAS ADOPTED THIS DECISION:

Article 1

The measures which Denmark is planning to implement for the Copenhagen multiarena, consisting of the DKK 325 million participation from the City of Copenhagen, the DKK 15 million grant from Elitefacilitetsudvalget, and the right to use the land on which the multiarena is to be built free of charge for 40 years, are compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union. Implementation of those measures is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 15 May 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN