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KONKURENTSIPOLIITIKA RAKENDAMISEGA SEOTUD MENETLUSED

EUROOPA KOMISJON

RIIGIABI – TAANI

Riigiabi nr SA.34445 (2012/C) (ex 2012/N) – Varade üleandmine FIHilt FSCle – Taani

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 359/01)

Käesoleva kokkuvõtte järel autentses keeles esitatud 29.06.2012 kirjas teatas komisjon Taanile oma otsusest algatada seoses eespool nimetatud abimeetmega Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ettenähtud menetlus.

Huvitatud isikud võivad saata oma märkused abimeetme kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

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Märkused edastatakse Taanile. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, täpsustades taotluse põhjused.

Euroopa Komisjon on heaks kiitnud varade toetusmeetmed summas 17,1 miljardit Taani krooni (2,315 miljardit eurot) FIH Erhvervsbank A/S kasuks, mis on pangalaenude mahu poolest suuruselt viies Taani pank, teenindades umbes 4 000 klienti. Taani riiki (edaspidi „riik") esindab finantsstabiilsuse ühing (edaspidi „FSC"), kes vastutab finantsinstitutsioonides finantskriisi ajal riigi vahendite kasutamist sisaldavate eri meetmete eest. Langenud väärtusega varasid käsitleva toetusmeetmega seonduv Taani riigi hüvitis sõltub tulevase tulu jagamise kokkuleppest, mille kohaselt i) riik tasub esialgu 2 miljardit Taani krooni (269 miljonit eurot); ii) riigile tagatakse, et ta saab oma esialgse investeeringu tagasi; iii) ja riik saab hüvitist, kui langenud väärtusega varade vahend on tootnud selle lõpetamisel tulu.

Varasid toetatakse mitme seonduva meetme kaudu, mille hulgas on piiramatu kahjutagatis FSC-le. Sellega tagatakse, et NewCo (ettevõtja FIH Holding uus tütarettevõtja, mille FSC ostab hiljem ära) sulgemisel saab FSC tagasi kõik oma maksed ja kapitalimahutused, mille ta on ettevõtjasse NewCo teinud. Vastutasuks kahjutagatise eest tehakse ettevõtjale FIH Holding väljamakse, mis moodustab aastas 100 baaspunkti vahenditest, mille FSC on eraldanud ettevõtjale NewCo. Samuti pikendab FSC NewCo rahastamist niipea, kui FIHi poolt riigigarantii raames antud laenude lõpptähtaeg saabub 2013. aasta keskel. Vastutasuks saab FSC ettevõtjalt NewCo intressi, mille suuruseks on tema enda finantseerimiskulud pluss 100 baaspunkti. Samuti on FSC kohustatud vajaduse korral ettevõtjat NewCo likvideerimismenetluses rahastama ja rekapitaliseerima. Sellega seoses annab

FCS ettevõtjale NewCo 13 miljardi Taani krooni (1,8 miljard eurot) suuruse sooduslaenu. Seejärel ostab FIH tagasi riigi hübriidinstrumendid 2 miljardi Taani krooni eest, mille esialgu tasus FSC langenud väärtusega varasid käsitleva meetme raames.

Kogu meedet on vaja likviidsusprobleemide tõttu, mis võivad tekkida järgmise 12–18 kuu jooksul, sest FIH on emiteerinud ligikaudu 42 miljardi Taani krooni (5,7 miljardi euro) väärtuses riigi tagatisega võlakirju, mille tähtaeg saabub 2012. ja 2013. aastal. Need tagatised anti Taani tagatisskeemi raames, mille Euroopa Komisjon kiitis esimest korda heaks 2008. aastal.

Meede kiideti ajutiselt heaks kuueks kuuks Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkti b alusel. Kui selle aja jooksul esitatakse põhjalik restruktureerimiskava, pikendatakse meedet seni, kuni komisjon on vastu võtnud lõpliku otsuse restruktureerimiskava kohta. Lisaks on komisjon otsustanud algatada Euroopa Liidu toimimise lepingu artikli 108 lõikes 2 sätestatud ametliku uurimismenetluse, et uurida meetme asjakohasust, panga enda panuse määra, eriti varade toetusmeetmetelt saadavat tulu, ning konkurentsimoonutuste vältimiseks võetavaid meetmeid.

Kuigi meede tõepoolest parandab panga likviidsust, täites muu hulgas ähvardava vahendite tühimiku rahastamisvahendiga, mille FSC eraldas ettevõtjale NewCo 13 miljardi Taani krooni suuruses summas, tundub siiski, et FIHi tulevaste likviidsusprobleemide lahendamine võib osutuda liigselt keerukaks. Eelkõige ei ole selge, millisel määral on mitmesugused kõrvalkokkulepped ning hüvitistingimuste omavaheline seotus vajalikud ja asjakohased. Samuti ei ole kõigi kõrvalkokkulepete ja eriti laenu nr 1 raames antud tagatise tõttu selge, kuidas pank suudab omakapitalinõudeid täita ja raamatupidamisarvestust dekonsolideerida, kui varad on üle antud.

Lisaks ei ole selge, kas abi on piiratud miinimumiga ning kas panga ja tema aktsionäride enda panus on piisav. FIH Holding on lubanud ettevõtjale NewCo anda kahjumi katteks 1,65 miljardi Taani krooni suuruse laenu. Samuti annab FIH Holding ettevõtjale FSC lisatagatise, et FSC saaks tagasi vähemalt oma esialgse 2 miljardi Taani krooni suuruse investeeringu, kui NewCo täielikult likvideeritakse. Kui FIH ja FIH Holding toetavad meedet tagatiste andmise kaudu, saavad nad selle teenuse osutamise eest tagatistasu, mida maksab FSC. Kahjutagatise eest tehakse ettevõtjale FIH Holding väljamakse, mis moodustab aastas 100 baaspunkti vahenditest, mille FSC on ettevõtjale NewCo eraldanud. Kuna NewCo võlakohustused FSC ees ei ole otse seotud NewCo portfelli krediidikvaliteediga ega NewCo eeldatava jääkväärtusega, on väga küsitav, kas ettevõtjate FIH ja FIH Holding poolt antud tagatisi on võimalik käsitleda enda panusena. Lisaks sellele, et nende tagatiste eest makstakse hüvitist, ei pruugi see olla vastavuses võetud riskiga. FIH saab kasu ka siis, kui varade hind peaks tõusma hinna reguleerimismehhanismi raames. Turuhinnast võib osutuda väiksemaks ka 100 baaspunktine marginaal, mille FSC saab endale ettevõtjale NewCo eraldatud vahenditest. Isegi kui võtta arvesse leevendavaid asjaolusid nagu kahjumit kattev laen, kavandatav tasu, mida makstakse ettevõtjale FSC üleantud varade ja kohustuste eest, on siiski vähetõenäoline, et see on kooskõlas langenud väärtustega varade teatise [1] punktis 21 osutatud hüvitismääraga, mille kohaselt peavad pangad langenud väärtusega varadega seonduvaid kahjusid maksimaalses ulatuses ise kandma. Punktis 21 nähakse riigile ette mis tahes vormis toetusmeetme eest makstav asjakohane hüvitis, millega tagatakse aktsionäride võrdväärne vastutus ja kulude jagamine sõltumata sellest, milline mudel valiti. FIHi puhul ei saa siiski välistada, et FSC ei saa langenud väärtusega varasid käsitleva meetme eest üldse mingit hüvitist. Lisaks tuleb märkida, et restruktureerimisega ei nähta ette aktsionäride enda panust, kuigi on loodud 10 miljardi Taani krooni suurune aktsionäride likviidsusvahend. See siiski vaid asendas juba olemasolevat endist vahendit, mille üle peeti lisaläbirääkimisi ja mida uuendati 2011. aastal. Seepärast ei saa seda lugeda enda panuseks restruktureerimiskava raames. Taani ametiasutused on esitanud esialgsed andmed selle kohta, et FIH kavatseb loobuda teatavatest tegevusvaldkondadest (kinnisvarakrediit, erakapitali ja eravara haldamine). Siiski näib, et sellised loobumised on ajendatud elujõulisuse eesmärkidest, sest need on otse seotud vajaliku kulude kokkuhoiu või rahastamispuudujäägi vähendamisega. Seega ei ole kindel, kas Taani pakutud meetmed on piisavad, et vältida konkurentsimoonutusi, mis kaasnevad FIHile riigiabi andmisega.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:072:0001:0022:ET:PDF

KIRJA TEKST

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

The Commission has also found the measures, which are described in section III of this decision, to be temporarily compatible with the internal market for reasons of financial stability. The measures are accordingly approved for six months or, if Denmark submits an in-depth restructuring plan within six months from the date of this Decision, until the Commission has adopted a final decision on that restructuring plan.

I. **PROCEDURE**

(1) Denmark notified the measures on 6 March 2012.

(2) Denmark exceptionally accepts that the decision is taken in the English language.

II. **DESCRIPTION OF THE BENEFICIARY**

(3) FIH was founded in 1958 and has its headquarters in Copenhagen, Denmark.

(4) The FIH Group consists of FIH Holding A/S ("FIH Holding"), the parent holding company, and its 100% owned subsidiary FIH Erhvervsbank A/S ("FIH"), together with wholly-owned subsidiaries of FIH. The principal subsidiaries are FIH Partners A/S (covering the business segment Corporate Finance), FIH Kapital Bank A/S ("FIH Kapital Bank") and Realkredit A/S, a mortgage credit institution. FIH's activities consist of three segments: banking ([2]), markets ([3]) and corporate finance ([4]).

(5) FIH Holding is owned by a consortium of ATP (a Danish pension fund), PF I A/S (a Danish pension fund), Folksam (a Swedish insurance company), and C.P. Dyvig & Co. (a Danish independent private investor) (the "consortium") which acquired FIH pursuant to an agreement signed in September 2010 and closed in January 2011.

(6) At the end of 2011 FIH Group had a balance sheet of DKK 83.5 billion (EUR 11.2 billion) ([5]) and its solvency was 17.8 %.

(7) FIH is specialised in lending to Danish corporates with a focus on SMEs. FIH constitutes Denmark's fifth-largest bank by volume of bank lending with approximately 4 000 customers. The current market share of FIH in the wholesale sector is estimated at between 5 % and 15 % (depending on the respective segments) while its market share of the total retail market is significantly lower than 8.1 %. It is a Danish limited liability company regulated by Danish banking legislation and supervised by the Danish Financial Supervisory Authority (FSA).

(8) FIH has performed poorly in recent years. In 2009 it reported a pre-tax loss of DKK 147 million (EUR 19.9 million). Though FIH had a pre-tax profit of DKK 316 million (EUR 42.5 million) in 2010, that result was mainly driven by non-recurring positive market value adjustments, including unrealised gains on an indirect holding. In 2011 FIH reported a pre-tax loss of DKK 1 266 million (EUR 170 million) due to impairment charges on loans and negative market value adjustments. In 2009-2010 Moody's downgraded the rating of FIH from A2 to Baa3. In 2010 the then owners (the Icelandic Financial Supervisory Authority and the Central Bank of Iceland) ([6]) agreed to sell their shares in FIH to the consortium. The new ownership was expected to bring about significant improvement to the credit rating of FIH, as the prior ownership by Kaupthing Bank hf was one of Moody's main concerns regarding FIH. However, mainly due to FIH's specific circumstances such as the refinancing of government-guaranteed bond issues, credit quality and exposure to the property sector, Moody's downgraded FIH further to B1 in 2011 with negative outlook.

(9) The rating downgrade is commensurate with current market prices for FIH bonds that do not benefit from a government guarantee: its 2-4 year debt is now priced at spreads of 600-700 basis points ("bps") over EURIBOR.

III. **DESCRIPTION OF THE MEASURES**

3.1. **Reasons for the measures**

(10) FIH has issued State-guaranteed bonds in the amount of approximately DKK 42 billion (EUR 5.7 billion), amounting to 50 % of the bank's balance sheet, which will expire in 2012 and 2013. The guarantees were provided within the framework of the Danish Guarantee Scheme ([7]). FIH has also received a hybrid core capital injection of DKK 1.9 billion (EUR 256 million) under that scheme in June 2009.

(11) With the State-guaranteed bonds maturing in 2012-2013, FIH is about to face a funding problem. The FSA estimates that there is a […] (*) risk of FIH of becoming unable to comply with liquidity requirements in the next 12-18 months as a result of its expected inability to obtain funding from the open markets.

([2]) Banking consists of: 1) corporate banking, which is responsible for FIH's lending activities, in particular to small and medium-sized enterprises; 2) acquisition finance, providing structured financing for mergers and acquisitions in the Scandinavian market, and 3) property finance, providing capital and advisory services to property investors.

([3]) Provides financial advisory services for large and medium-sized companies relating e.g. to risk management, liability management and capital structure. Markets is also responsible for handling trading and customer oriented activities in the interest rate, foreign exchange and securities markets.

([4]) Financial advisory services on mergers and acquisitions, privatisations and capital injections etc.

([5]) With the exchange rates of 1 June 2012: EUR 1 = DKK 7.4307.

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

([7]) Commission Decision NN51/2008 of 10 October 2008 ("Guarantee scheme for banks in Denmark") (OJ C 273, 28.10.2008, p. 2); Commission Decision in case N31a/2009, *Danish bank recapitalisation scheme and guarantee scheme on new debt*, OJ C 50, 3.3.2009, p. 3 as prolonged and amended by the Commission Decision in case N415/2009 and NN 46/2009, *Prolongation and amendment of the recapitalisation scheme and prolongation of the guarantee scheme*, OJ C 277, 22.9.2009, p. 2.

(*) Covered by the obligation of professional secrecy.

(12) In order to tackle those prospective liquidity problems FIH is to carry out a substantial reduction of its balance sheet.

(13) FIH has initially presented a business strategy that is based on a reduction of loans, an increase in deposits and the release of further liquidity through reduction of other assets (amongst others, shareholdings and corporate bonds) as well as a general reduction of the balance sheet which will reduce the regulatory liquidity requirement. The purpose of that strategy was to ensure that FIH will retain a strong foundation after the State-guaranteed bonds expire in 2013. Nevertheless, Denmark has informed the Commission that that initial stand-alone business strategy of FIH is no longer considered feasible because the loan reduction strategy had not been implemented early enough. In consequence, Denmark submits that the proposed impaired asset measure is necessary to respond to the funding challenge faced by FIH.

(14) At present, FIH has no problems in meeting its regulatory solvency requirements.

3.2. **Structure of the measures**

(15) To tackle the prospective liquidity problems of FIH, Denmark is proposing an impaired asset measure by which most problematic assets will be transferred to a separate bad bank. Denmark will provide funding and recapitalisation to the bad bank whenever needed.

(16) Under the measure proposed by Denmark, certain assets of FIH Group in the amount of approximately DKK 17.1 billion (EUR 2.3 billion) are to be transferred to a new subsidiary of FIH Holding ("NewCo"), which subsequently will be purchased by the Financial Stability Company ([8]) ("FSC"). Liabilities consisting of two loans and equity will be transferred as well. After the transfer of ownership to the FSC, the new subsidiary will be wound up in an orderly manner in accordance with the principles of the approved Danish winding-up scheme ([9]). The winding up process is expected to last until December 2017 or, at the very latest, December 2019.

(17) The measure proposed has an elaborate structure. It consists of **two phases** and several **side agreements**. The **remuneration of the FSC** for providing an impaired asset relief to FIH is also highly complex and depends on the capacity of NewCo to generate proceeds.

(18) **Phase 1**. In the first phase there will be a demerger of some of the assets and liabilities of FIH and FIH Kapital Bank into a new company "NewCo" which is owned by the FIH Holding;

i. The **assets** from FIH and FIH Kapital Bank to be transferred to NewCo will be real estate loans and securities amounting to approximately DKK 15.5 billion (EUR 2.1 billion) and derivatives of approximately DKK 1.6 billion (EUR 215 million).

ii. The **liabilities** of NewCo will consist of two loans and equity:

a. Loan 1. This is a loss-absorbing loan from FIH to NewCo of DKK 1.65 billion (EUR 222 million); the loan principal would only be repaid by NewCo to FIH if the winding up process of the transferred assets to NewCo generates proceeds in excess of the FSC's purchase price of DKK 2 billion (see below). As remuneration for Loan 1, NewCo is to pay the 5Y Danish Gov Bond rate + 1.15 %;

b. Loan 2. This is a loan from FIH to NewCo of approximately DKK 13.45 billion (EUR 1.8 billion). As remuneration for Loan 2, NewCo is to pay DKK CIBOR 3m + 1.12 %. The maturity of Loan 2 will match the maturity of loans issued by FIH under the State guarantee and will thus mature fully in mid-2013. After the latter loans are repaid by NewCo to FIH, the FSC will provide the roll-over funding to NewCo.

c. Equity worth DKK 2 billion, which is the starting book value difference between the assets and liabilities transferred to NewCo.

(19) **Phase 2**. After the incorporation of NewCo, the FSC will buy all the shares in NewCo from FIH Holding.

i. The price of NewCo will be the equity capital (net worth) of NewCo as of 1 January 2012 amounting to DKK 2 billion (EUR 269 million).

ii. FIH Holding will use the proceeds from selling NewCo as new share capital in FIH, and FIH will use that capital to repay its State guaranteed bonds.

(20) **Side agreements**. As part of the proposed measure, there are several side-agreements between FIH Holding and the FSC.

i. FIH Holding will give an unlimited loss guarantee to the FSC guaranteeing that when NewCo is resolved, the FSC will fully recover all its payments and capital contributions to NewCo. As payment for the loss guarantee FIH Holding will receive a payment equivalent to 100 bps annually of FSC's outstanding loans to NewCo ([10]).

ii. The FSC will provide funding to NewCo once Loan 2 has matured (mid-2013) and will receive interest from NewCo equivalent to its own financing costs plus 100 bps.

([8]) The Danish State-owned vehicle to take care of the different measures entailing the use of State resources for financial institutions in the context of the financial crisis.

([9]) See Decision N 407/2010 of 30.09.2010 (OJ C 312, 17.11.2010, p. 7); Decision SA.31938 (N 537/2010) of 7 December 2010 (OJ C 117, 15.2.2011, p. 2); Decision SA.33001 (2011/N) – Part A of 28.06.2011 (OJ C 237, 13.8.2011, p. 2); Decision SA.33001 (2011/N) – Part B of 01.08.2011 (OJ C 271, 14.9.2011, p. 4); Decision SA.33757 (2011/N) of 9.12.2011 (OJ C 22, 27.1.2012, p. 5); and Decision SA.34227(2012/N) of 17.2.2012 (OJ C 128, 3.5.2012, p.3); as well as Decision "SA.33639 (2011/N) – Rescue Aid for Max Bank" of 7 October 2011 (OJ C 343, 23.11.2011, p. 13).

([10]) The Guarantee Fee is hence a function of the liabilities of NewCo towards FSC

iii. The FSC will be obliged to fund and recapitalise NewCo if it is necessary for the winding up process. The FSC will provide NewCo with a DKK 13 billion loan facility and it will not receive any facility fee for it.

(21) **Remuneration of the FSC**. The FSC will be remunerated for the asset relief to FIH by means of a purchase price adjustment along the following lines. When NewCo is **totally** resolved, the FSC is guaranteed to recoup at minimum its initial DKK 2 billion investment plus costs. To the extent that the winding up process will generate proceeds that are less than the purchase price of DKK 2 billion, the difference will be covered by FIH by means of the loss-absorbing loan (Loan 1) and by FIH Holding by means of the unlimited loss guarantee. If the proceeds of the winding up process exceed DKK 1.5 billion, an additional 25 % of any excess amount will be paid to the FSC on top of the initial DKK 2 billion investment adjusted for costs of both FIH and the FSC. All other proceeds in excess of DKK 1.5 billion will be paid to FIH Holding. For instance, if the final proceeds were below DKK 1.5 billion, the FSC would receive DKK 2 billion, while if the final proceeds were DKK 1.9 billion, FSC would get DKK $2 + 0.25 \times [1.9 - 1.5] = 2.1$ billion.

(22) In summary, all risks in NewCo will be borne in theory by FIH (through the loss-absorbing loan) and FIH Holding (which "guarantees" to the FSC that it will recoup at minimum its initial investment). On the other hand, the remuneration of the FSC for providing asset relief to FIH results from an elaborate formula and there is no guarantee that the FSC will obtain a remuneration commensurate with its initial investment.

(23) **Commitments given to mitigate Competition Distortions.** The Danish authorities have committed to a number of temporary measures in respect of FIH to address distortion of competition in the six-month period from the date of this Decision or, after Denmark has submitted a revised in-depth restructuring plan within six months from the date of this Decision, until the Commission has adopted a final decision on that restructuring plan:

i. **Dividend ban**

FIH Holding will not pay dividends to its shareholders.

ii. **Discretionary Coupon ban**

FIH Group will only pay to third parties which are external to the group, by the end of the financial year for the previous financial year, coupons and profit distributions on the core capital instruments, silent participations, participation rights and participation certificates with a share in the loss and any other profit-related own capital financial instruments (e. g. hybrid capital instruments, participation certificates) (excluding shares) existing in FIH Group on the date of the Commission decision if and in so far as FIH Group is legally obliged to do so and can do so without releasing reserves.

iii. **Acquisition ban**

FIH Group will not acquire any stake in any undertaking. This commitment covers both undertakings which have the legal form of a company and packages of assets which form a business.

Notwithstanding that prohibition:

— FIH Group may, after obtaining the Commission's approval, acquire businesses if, in exceptional circumstances, such an acquisition is necessary to restore financial stability or to ensure effective competition, as contemplated in point 41 of the Restructuring Communication.

— FIH Group may acquire stakes in undertakings provided that the purchase price paid for any acquisition is less than 0.01 % of the balance sheet size of FIH Group at the date of the Commission decision and that the cumulative purchase prices paid by FIH Group for all such acquisitions over a period of six months or, after submission of a restructuring plan, until the Commission makes a final decision, is less than 0.025 % of the balance sheet size of FIH group at the date of the Commission decision.

The following activities fall outside the scope of that acquisition ban:

— Acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms (as part of normal debt management)

— Acquisitions that take place in the ordinary course of business provided that the transaction fits with the business plan and the annual budget of that unit. However, FIH will seek prior permission from the Commission before engaging in a transaction under this clause.

iv. **Buy-Back of Hybrids and Senior Debt**

FIH will seek prior approval from the Commission before any entity of FIH (FIH Group) exercises call options on hybrid instruments or other equity-like instruments, or buys back a Hybrid or other equity-like instrument or Senior Debt instrument.

IV. DENMARK'S POSITION

(24) Denmark argues that the set-up of the measures, as described in section III has two separate transactions: the demerger of FIH and FIH Kapitalbank and the sale of shares in NewCo. Denmark submits that the transfer involves State aid only to the transferred entity (NewCo). However, Denmark argues that any such aid is compatible with the internal market pursuant to Article 107(3)(b) TFEU. In that respect, the Danish Government notes that the transferred entity will be wound-up in line with the approved Danish winding-up scheme.

(25) Denmark is of the view that the demerger takes place within the FIH Group and does not involve the FSC. FIH Holding creates a new company – NewCo – which contains all the relevant assets and liabilities from FIH and FIH Kapitalbank which allows it to sell those assets and liabilities as a whole to the FSC by a simple share purchase agreement. In that respect, the sale of the shares in NewCo from FIH Holding to the FSC should not be seen as a complicated measure and in any case no more complicated than a transfer of assets and liabilities.

(26) The loss-absorbing loan of DKK 1.65 billion (Loan 1) and the guarantee from FIH Holding are intended to limit the FSC's risk involved in the measures. Denmark submits that the transaction could have been simpler if the FSC were not to get that guarantee but then the FSC's goal of reducing its risk would not have been met. According to Denmark, the same reasoning applies also for the cash contribution of DKK 2.0 billion from FIH Holding to FIH, which is aimed at securing that as much capital as possible can be transferred to FIH in order for it to be able to repay the State-guaranteed commitments when they mature and to reduce the FSC's risk. Denmark admits that the transaction could have been simpler if there were no purchase price adjustment (earn-out) when the winding up process comes to an end. However, it contends that the adjustment mechanism is a negotiated and agreed mechanism which both FIH and the FSC see as a reasonable way of dealing with the risks involved in the transfer. NewCo's profit at termination is distributed between the FSC (25 %) and the FIH Group (75 %), with FIH Holding guaranteeing that the FSC does not lose on the transaction. Profit is divided through a distributional system reflecting the parties' respective risks and exposures.

(27) Both the FSC and FIH Group claim to have negotiated the transaction terms based on commonly accepted commercial considerations regarding the sharing of risk and profit etc. and thus maintain that the transaction is made on market terms. Furthermore, the parties have discussed the financial consequences of the transaction when entering the agreement.

(28) Denmark submits that the purpose of the transaction that is described under section III is:

i. to reduce the overall financial risks of the Danish State, including in particular the risk of taking a loss on the Government Guarantee and the capital injection,

ii. to ensure an orderly winding-up of impaired assets and avoid substantial damage to the already vulnerable Danish real estate market and a credit squeeze for the otherwise affected small and medium-sized companies, and

iii. to facilitate a restructuring of FIH in order to improve the bank's funding possibilities and allow it to continue to focus on its core business activity, which is to finance small and medium-sized companies in Denmark.

(29) Hence, implementing the measure described under section III should result in (i) FIH continuing to lend to SMEs; and (ii) an improvement of FIH's risk profile, leading to an improvement of its credit rating and thereby an increased ability to address its funding challenge.

(30) The Danish Government's view is further backed up by a letter from the FSA. The FSA notes that the FIH Group is currently under tightened supervision by the FSA in light of the Group's major funding challenge. There is a […] risk that FIH will not be able to meet the statutory requirements regarding liquidity when the bank's Government-Guaranteed Bonds expire, and that the bank will be unable to comply with those requirements within a period determined by the FSA. A violation of those requirements would mean that the FSA would have to withdraw FIH's banking license.

(31) FIH's funding is primarily ensured by way of Government-Guaranteed Bonds amounting to DKK 38 billion (EUR 5.3 billion), which will expire towards mid-June 2013. Accordingly, the bank has a major need for refinancing, which must be solved before mid-June 2013.

(32) For a long period of time, the bank has actively worked to find a solution to its funding problems, including a substantial reduction of its balance sheet, an increase in deposits and alternative means of funding. However, the bank only has 12 months left to solve its funding challenge. Due to the time constraints, it will be very difficult for the bank to carry out supplementary initiatives if the measure described in section 3 is not implemented.

(33) The envisaged transfer of loans etc. entails that FIH will reduce its balance sheet faster than initially expected. That reduction in turn will significantly increase the likelihood that FIH will be able to meet the challenge of refinancing its Government-Guaranteed Bonds in 2013. However, the FSA emphasizes […]. Nevertheless, in the FSA's view, the transfer agreement makes a significant contribution towards reducing the likelihood of FIH becoming distressed. In light of that challenge, FIH remains under tightened supervision by the FSA.

(34) Finally, the State's interventions are endorsed also by the Danish Central Bank, which is of the opinion that the demerger of FIH and the sale of the bank's property-related loans to the FSC are appropriate measures that will ensure that FIH will obtain funding and thus can continue financing SMEs in Denmark.

V. **ASSESSMENT**

A. ***Existence of aid and potential beneficiaries***

(35) The present decision assesses whether the the measure described in section III contains State aid.

(36) According to Article 107(1) TFEU, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States.

1. *State resources*

(37) Several elements in the package contain State resources as they are directly financed by the FSC, which is a State-owned company (through the Danish Ministry of Business Affairs) responsible for providing different kind of measures to Danish banks in the context of the financial crisis. ([11]) First, the FSC is providing DKK 2 Billion in cash for the NewCo share purchase agreement. Second, the FSC commits to fund NewCo's assets as FIH is repaying its State Guaranteed loans. That commitment can exceed DKK 13 Billion. Third, the FSC is foregoing an amount of interest in order to pay for a guarantee from FIH Holding.

(38) Furthermore, the elements described in section III should be considered together and as part of a single transaction as they are all interdependent and have been designed altogether to address the funding problem of FIH.

(39) It is thus concluded that the measure described in section III seen as whole involves the use of State resources, imputable to the State.

2. *Existence of an advantage*

(40) The measure described in section III in favour of FIH provides FIH and FIH Group with an advantage as it will result in an asset relief for FIH, eventually enabling the bank to better address its funding problems.

3. *Selectivity*

(41) The use of the measure only concerns FIH Group and NewCo. The measure is therefore selective.

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

(42) The advantage procured by the measure will strengthen the position of FIH after the hive-off of assets and liabilities as regards capital and liquidity compared to those of its competitors who will not benefit from similar measures. The measure will therefore enable FIH to improve its market position. The measure therefore can lead to a distortion of competition.

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

5. *Applicability of the market investor principle*

(44) The Danish authorities initially argued that the measure is in line with the market economic investor principle ("MEIP") but communicated on 23 April 2012 that Denmark "will not for the moment supply the Commission with further arguments regarding the use of the Market Economy Investor Principle". The Commission does not consider that the MEIP is fulfilled, even if it were to be applicable to the measure (which it doubts). The information received shows that it is highly unlikely that the FSC will receive any remuneration, and that is clearly not in line with the behaviour of a market economy operator.

(45) Given that there is no other market participant, including even the consortium (see point 8 above), who would be prepared to grant equivalent measures to FIH, the measure in any case is not in line with the MEIP. Only Denmark, through the FSC, acting in the public interest, is ready and in a position to grant to FIH the measure described under section III. The requirements of the market economy investor are therefore not met.

Conclusion

(46) As a result, the Commission concludes that the measure as a package constitutes State aid within the meaning of Article 107(1) TFEU.

B. ***Compatibility of the aid***

1. *Legal basis for the compatibility assessment*

(47) Article 107(3)(b) TFEU provides that State aid may be considered to be compatible with the internal market where it is intended to "remedy a serious disturbance in the economy of a Member State".

(48) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under that provision.

(49) The Commission accepts that the financial crisis has created exceptional circumstances in which the bankruptcy of one bank may undermine trust in the financial system at large, both at national and international level. That may be the case even for a bank of small size which is not in immediate difficulty but under tightened supervision by the Financial Regulator, such as FIH. The 2-4 year debt of that bank is currently priced at spreads of 600-700 bps over EURIBOR. That pricing level is a clear indication of imminent distress, even if the agency rating is still one notch away. In such cases, early intervention to avoid the institution concerned becoming unstable can be necessary to avoid threats to financial stability. It is particularly so in the case of a small economy such as Denmark where counterparts may tend not to distinguish between individual banks, thus extending the lack of confidence generated by the failure of one bank to the whole sector.

([11]) The FSC's activities are governed by the Act on Financial Stability and the Financial Business Act and executive orders issued in pursuance thereof. In addition, the FSC is subject to special provisions regarding State-owned companies. Other measures previously provided by the FSC were found imputable to the Danish State in the Commission Decision NN51/2008 of 10 October 2008 ('Guarantee scheme for banks in Denmark') (OJ C 273, 28.10.2008, p. 2).

(50) Given the great uncertainty due to the financial crisis and the necessity of external funding for the Danish banking sector, a lack of confidence in the Danish financial system could severely affect the whole Danish economy. ([12])

(51) The general principles applicable for State aid granted to financial institutions are set out in point 15 of the Banking Communication ([13]). Those principles have been further elaborated in the Recapitalisation Communication ([14]). Both Communications were subsequently amended by the 2011 Prolongation Communication ([15]) and the 2012 Prolongation Communication ([16]).

(52) Furthermore, the Impaired Assets Communication ([17]) lays down certain principles as regards the valuation and transfer of the impaired assets. Whilst valuation considerations play an essential role when determining the aid element regarding transferred assets, this decision does not prejudge the full assessment of those issues which will be undertaken in a future restructuring decision.

(53) Finally, certain principles of the Restructuring Communication ([18]) have to be respected in the present case. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis, in particular, has to lead to a restoration of the viability of the bank or a demonstration of how it can be wound-up in an orderly fashion. Whilst viability considerations play a role in the assessment of the measures, due to the specificities of the case, this decision does not prejudge the full assessment which will be undertaken in a future restructuring decision.

2. *Compatibility assessment*

(54) In order to determine the compatibility of the measure with the internal market, it will be analysed under the different guidelines provided by the Commission in the context of the financial crisis. Accordingly, it will be analysed on the basis of the Banking Communication and the Communications that have further elaborated on or amended the Banking Communication and the Impaired Assets Communication.

(55) According to the Banking Communication, the aid has to be:

i. well-targeted in order to be able to achieve effectively the objective of remedying a serious disturbance in the economy;

ii. proportionate to the challenge faced, not going beyond what is required to attain that effect, and

iii. designed in such a way as to minimize negative spill-over effects on competitors, other sectors and other Member States.

(56) In addition, the Impaired Assets Communication lays down that banks ought to bear the losses associated with impaired assets to the maximum extent, thereby contributing to burden-sharing.

2.1 The aid is well-targeted

(57) FIH is currently under tightened supervision by the FSA in light of the Group's major funding challenge. The FSA is of the view that there is a […] risk that FIH will not be able to meet the statutory requirements regarding liquidity when the bank's Government-Guaranteed Bonds expire, and that the bank will be unable to comply with those requirements within a period determined by the FSA. The objective of the measure described in section III is thus in particular to improve the access of FIH to the wholesale funding market.

(58) Up to now, the bank has actively worked to find a solution to its funding problems, including through a substantial reduction of its balance sheet, an increase in deposits and alternative means of funding. However, the bank only has 12 months left to solve its funding challenge. The impaired asset relief under the measure involving the FSC allows for a rapid deleveraging of FIH, and provides a funding solution for the real estate assets of the bank

(59) However, all downside risks associated with the portfolio transferred to NewCo and eventually to the FSC remain with FIH and FIH Holding. If the resolution of NewCo results in losses below the initial investment of the FSC, FIH and FIH Holding will have to absorb those losses. The Danish authorities have provided a preliminary assessment that FIH Group has a sufficient capital buffer to absorb losses in NewCo on the basis of a stress scenario. Those assumptions will need to be further assessed, in particular by conducting an evaluation of the value of the assets transferred.

(60) Nevertheless, even under the hypothesis that FIH Group can absorb all the losses of NewCo under a stress scenario, it is unclear how investors will factor in the fact that the risks associated with the transferred portfolio remain with FIH Group. Thus, it is unclear whether investors will consider FIH as fully relieved from its worst assets, and whether they will be ready to provide funding under bearable conditions.

([12]) Denmark has introduced several schemes introducing measures for tackling that risk. Those schemes have ranged from resolution frameworks of failing banks to a merger scheme aiming at keeping banks on the market by means of a market-based solution. See footnote 11.

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

([14]) Commission Communication on the Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

([15]) Commission Communication on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

([16]) Commission Communication 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.

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

([18]) 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, 19.08.2009, p. 9.

(61) In conclusion, the Commission has doubts that the measures at stake are well-targeted for the purposes of the Banking Communication.

2.2 Appropriateness of the measure and own contribution

(62) As set out in the Banking Communication, the aid should be proportionate and restricted to the minimum necessary. It implies that the amount of aid is appropriate to address the difficulties of the bank and that it is adequately remunerated.

(63) The envisaged transfer of loans entails that FIH will reduce its balance sheet faster than expected, which will significantly increase the likelihood that FIH can meet the challenge of refinancing its Government-Guaranteed Bonds in 2013.

(64) The measure would thus indeed improve the liquidity profile of the bank. The threatening funding gap is closed through the hive-off of assets, with the help of the DKK 13 billion funding facility provided by the FSC to NewCo. In addition, the FSC undertakes to recapitalise NewCo over the lifetime of the measure, whenever necessary. As a result, any recapitalisation issues for FIH are pre-empted.

(65) Nevertheless, the measure appears to be unnecessarily complicated to fix the future liquidity challenges of FIH. In particular it is unclear to which extent the various side-agreements and the interconnectedness in the remuneration formulae are both necessary and appropriate. It is also unclear how the bank obtains regulatory capital relief as well as an accounting deconsolidation from the transfer of the assets, due to all the side-agreements and in particular the guarantee that is provided under Loan 1.

(66) Furthermore, it is doubtful whether the aid has been limited to the minimum and if there is sufficient own contribution of the bank and its shareholders.

(67) FIH Holding has agreed to provide a DKK 1.65 billion loss-absorbing loan to NewCo. In addition, FIH Holding will grant an additional guarantee to the FSC to guarantee that the FSC will at minimum be repaid its initial investment of DKK 2 billion when the NewCo is fully wound up.

(68) However, whilst FIH and FIH Holding contribute to the measure by providing guarantees, they are remunerated for that service in the form of a guarantee fee paid by the FSC. For the loss guarantee, FIH Holding will receive a payment of 100 bps annually on the amount of funding provided by FSC to NewCo. Because the outstanding liabilities of NewCo towards FSC are not directly related to the credit quality of the portfolio of NewCo or the expected terminal value of NewCo, it is highly questionable whether the provision of guarantees by FIH and FIH Holding should qualify as an own contribution. In addition to the fact that those guarantees are remunerated, the remuneration might be not in line with the risk assumed. FIH also stands to benefit should the assets recover through the price-adjustment mechanism.

(69) The Danish authorities have provided a preliminary assessment of the terminal valuation of NewCo in a standard base case scenario, under which the FSC will recover its initial investment only (applying the initial price adjustment) and will thus not receive any remuneration for the provision of the asset relief. [19] In addition, the initial price-adjustment mechanism is by default constructed in such a way to limit the upside returns to the FSC if the winding down of NewCo generates higher proceeds than currently expected.

(70) The FSC will also receive remuneration for the provision of funding to NewCo. However, it is not obvious that its remuneration should also be counted as remuneration for the provision of asset relief, as it only compensates for the provision of funding. In addition, the margin that the FSC can extract for the provision of funding to NewCo is capped at 100 bps, which may be below market prices.

(71) Even taking into account mitigating factors such as the loss-absorbing loan, the suggested remuneration to be paid to the FSC for the transferred assets and liabilities is thus very unlikely to be in line with the remuneration level referred to in point 21 of the Impaired Asset Communication according to which banks ought to bear the losses associated with impaired assets to the maximum extent. Point 21 requires a correct remuneration of the State for the asset relief measure, whatever its form, so as to ensure equivalent shareholder responsibility and burden-sharing irrespective of the exact model chosen. In the case of FIH, however, it cannot be excluded that the FSC will get no remuneration at all for the impaired asset measure.

(72) Finally, it should be mentioned that the restructuring does not provide for a contribution of the shareholders although there is a shareholder liquidity facility of DKK 10 billion. That facility, however, has only replaced an already existing former facility which was renegotiated and renewed in 2011, and can thus not be considered as a contribution in the context of the restructuring plan.

(73) In conclusion, the Commission has doubts that the measure is proportionate and limited to the minimum, and that the measure provides sufficient own contribution by FIH.

2.3 Measures limiting distortion of competition

(74) The Danish authorities have provided preliminary indications that FIH intends to withdraw from certain business lines (property finance, private equity and private wealth management). However, those withdrawals seem to be largely driven by viability purposes as they are directly linked with necessary cost-savings or the reduction of the funding gap.

(75) Although Denmark has committed to a number of temporary measures to address distortion of competition

[19] In particular, a preliminary independent assessment of the assets to be transferred indicates that additional provisions need to be taken in the amount of DKK 1.5-1.6 billion, thus decreasing the prospects for profits for NewCo.

(acquisition ban, coupon ban, consultation of the Commission for buy-back of and calls on hybrid instruments), FIH intends to aggressively enter the internet retail deposit market by pursuing a "price leadership" role. That entry into the internet retail deposit market is a core component of the strategy of FIH to address its funding problems, and may generate a substantially higher level of competition in that market. In the absence of the measure, it is unclear whether FIH would have been a going concern as a bank, and thus whether FIH could have been in a position to aggressively enter that market. Thus, it is doubtful whether the measures proposed by Denmark sufficiently address the distortion of competition resulting from the State aid to FIH.

(76) In conclusion, the Commission has doubts that the temporary measures proposed by Denmark sufficiently limit distortions of competition.

VI. **CONCLUSION**

(77) Denmark claims that the bank is in danger of becoming distressed on a stand-alone basis in the next 12-18 months, as a result of not being able to obtain funding from the open markets. Denmark also claims that FIH and the FSC need to close the deal in the coming months in order to give a clear strategic line to FIH. Without that closing, uncertainty as to the solution to address the bank's funding problem will severely affect the bank's reputation and viability prospects and force it to speedily run-down its loan portfolio to the detriment of the Danish economy.

(78) The measure constitutes State aid, and is to be assessed under Article 107(3)(b) TFEU to remedy a serious disturbance in the economy of Denmark

(79) The Commission however has doubts whether the proposed measure is compatible with the internal market. The impaired asset measure is complex and needs further assessment. Given the need to carry out an asset valuation and to assess the level of remuneration, the limited own contribution and lack of sufficient compensatory measures, the Commission will approve the measures temporarily and at the same time open the formal investigation proceedings, pursuant to Article 108(2) of the Treaty on the Functioning of the European Union.

(80) At this stage the Commission has in particular doubts as regards

i. the appropriateness of the measure;

ii. the limitation of the aid to the minimum necessary and the own contribution of the bank to the measure, in particular in view of the potential low remuneration of the FSC; and

iii. the inappropriateness of measures to address distortion of competition.

(81) Nevertheless, the Commission can authorise measures temporarily if they are needed for reasons of financial stability, when it cannot take a final decision due to doubts on compatibility of those measures. In light of the ongoing fragile situation of the financial markets the Commission bases its assessment on Article 107(3)(b) TFEU and authorises the notified measure temporarily.

VII. **DECISION**

On the basis of the foregoing assessment, the measure described in section III of this decision are found to be temporarily compatible with the internal market for reasons of financial stability. The measure is accordingly approved for six months or, if Denmark submits an in-depth restructuring plan within six months from the date of this Decision, until the Commission has adopted a final decision on that restructuring plan.

In the light of the foregoing considerations, the Commission has decided at the same time to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, and requests Denmark to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

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

RIIGIABI – HISPAANIA

Riigiabi C SA.31273 ex N 313/2010 – Ultracongelados Antártida S.A.

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 359/02)

Käesoleva kokkuvõtte järel autentses keeles esitatud 27.8.2012 kirjas teavitas komisjon Hispaaniat oma otsusest algatada Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ettenähtud menetlus seoses eespool nimetatud üksikabi meetmega.

Huvitatud isikud võivad ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest saata oma märkused aadressil:

European Commission
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Märkused edastatakse Hispaaniale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, esitades taotluse põhjused.

KOKKUVÕTE

1. KOMISJONI MENETLUSE ALGATAMISE PÕHJUSEKS OLEVA ABIMEETME MENETLUS JA KIRJELDUS

1. 14. juuli 2010. aasta kirjaga teavitasid Hispaania ametiasutused komisjoni abimeetmest *Ultracongelados Antártida*. Teatatud üksikabi eesmärk on toetada ettevõtja Ultracongelados Antártida S.A. kahte investeerimisprojekti. Projektid on suunatud vesiviljelustoodete töötlemiseks kasutatavate ettevõtte tööstusrajatiste arendamisele ja ajakohastamisele Burgose linnas. Meetme riiklik õiguslik alus on *Resolución del Director General de Industrialización y Modernización Agraria de 31 de diciembre de 2009 relativa al expediente BU/070026/S14 y BU/080025/S14*.

2. Teatatud meetme hinnanguline üldeelarve on 415 161 eurot ning abi antakse abisaajale otsetoetusena. Abi osatähtsus on 12,73 %.

2. HINNANG

2.1. Riigiabi olemasolu

3. Teatatud meede on kasulik ettevõtjale Ultracongelados Antártida S.A. Meetmega antakse konkreetsele Hispaania tootjale majanduslik eelis, mida teistel ettevõtjatel ei ole. Kõnealuse ettevõtja tooteid müüakse siseturul. Arvestades, et kalandus- ja vesiviljelustoodete piiriülene kaubandus on ulatuslik, võib järeldada, et sel viisil antud abi ähvardab moonutada konkurentsi, sest sellega tugevdatakse ettevõtja finantsseisundit tema konkurentidega võrreldes ning see võib mõjutada liikmesriikidevahelist kaubandust.

4. Kuna tegemist on põllumajandus- ja karjakasvatusministeeriumi otsusega, millega võimaldatakse vahendite eraldamist otse riigieelarvest, on teatatud meede seostatav riigiga. Majandusliku eelise andmine on ette nähtud ühele konkreetsele ettevõtjale – Ultracongelados Antártida. Seega on tegemist riigiabiga ELi toimimise lepingu artikli 107 lõike 1 tähenduses.

2.2. Kokkusobivus siseturuga

5. Abi võib pidada siseturuga kokkusobivaks ainult juhul, kui see kuulub ELi toimimise lepingus sätestatud erandite alla. Kuna abi on kasulik vesiviljelustooteid töötlevale ettevõtjale, tuleb seda hinnata kalandus- ja vesiviljelussektoris antava riigiabi kontrollimise suunistest (edaspidi „suunised") ([1]) lähtudes.

6. Meetmest teavitati suuniste punkti 4.9 alusel. Menetluse käesolevas etapis on komisjon siiski seisukohal, et kõnealune meede kuulub suuniste punkti 4.1 reguleerimisalasse. Suuniste punkti 4.1 esimese taande kohaselt hinnatakse punktis 2.2 osutatud mis tahes määrustes nimetatud abi meetmetega sama liiki meetmeid, mis toovad kasu väikestele ja keskmise suurusega ettevõtjatele (edaspidi „VKEd") või muudele ettevõtjatele, kõnealuste suuniste ja kõnealustes määrustes kõigi meetmeliikide suhtes sätestatud kriteeriumide alusel.

7. Investeerimisabi on põhimõtteliselt mõeldud VKEdele ja ettevõtjatele, kellel on vähem kui 750 töötajat või kelle käive on väiksem kui 200 miljonit eurot (kõnealuse määruse artikli 35 lõige 3). Sellele vaatamata, nagu Hispaania on märkinud oma teatises, ei ole toetust saav ettevõtja Ultracongelados Antártida ei mikro-, väike ega

([1]) ELT C 84, 3.4.2008, lk 10.

keskmise suurusega ettevõtja. Hispaania teatas komisjonile 10. oktoobril 2011. aastal saadetud kirjas, et kuna ettevõtjal Ultracongelados Antártidalla on eriti lähedane suhe kontserniga Pescanova, ületab selle aastakäive 200 miljonit eurot ja töötajaid on üle 750 ([1]). Ultracongelados Antártida veebisaidi kohaselt kuulub Pescanovale alates 2002. aastast 100 % ettevõtja kapitalist. Sellisel juhul on Euroopa Kohtu praktika kohaselt tegemist lihtsa eeldusega, et viimati nimetatud ettevõtja avaldab otsustavat mõju esmanimetatud ettevõtja tegevusele ([2]) ning nad moodustavad ühe ettevõtja artikli 87 tähenduses ([3]). Teatatud abi ei vasta määruse (EÜ) nr 1198/2006 artikli 35 lõikes 3 sätestatud nõudele, mille kohaselt piirduvad investeeringud VKEdega. Seetõttu kahtleb komisjon, kas abi võib pidada siseturuga kokkusobivaks, viidates otseselt määruses (EÜ) nr 736/2008 sätestatud kriteeriumidele.

8. Lisaks kahtleb komisjon abi ergutavas mõjus. Ettevõtja on juba aastatel 2007 ja 2008 teinud investeeringuid, milleks ta taotleb kõnealust abi, ehk kaua aega enne komisjoni teavitamist riigiabist. Tundub ka, et ettevõtja oleks investeeringuid teinud ka abi saamata.

9. Komisjon leiab seega menetluse praeguses järgus, et abi, mida antakse ettevõtjale, kes on piirkonna suurim vesiviljelustoodete töötleja ning Pescanova kontserni liige, võib tõenäoliselt moonutada konkurentsi turul ja mõjutada kaubandust. Meede ei näi olevat kooskõlas konkurentsi- ja ühise kalanduspoliitikaga ega EKFi määrusega ning sellel ei ole ergutavat mõju.

10. Komisjonil on raske näha, kuidas oleks kõnealune abi kooskõlas kalanduse suunistega ja kokkusobiv siseturuga.

3. **KOKKUVÕTE**

11. Komisjon on otsustanud algatada vastavalt nõukogu 22. märtsi 1999. aasta määruse (EÜ) nr 659/1999 (millega kehtestatakse üksikasjalikud eeskirjad EÜ asutamislepingu artikli 93 kohaldamiseks) artiklile 6 ELi toimimise lepingu artikli 108 lõikega 2 ettenähtud menetlus.

([1]) F osa teine lõik.

([2]) 25. oktoobri 1983. aasta otsus kohtuasjas 107/82: AEG Telefunken *vs.* komisjon (EKL 1983, lk 3151, punkt 50).

([3]) Esimese Astme Kohtu 15. juuni 2005. aasta otsus liidetud kohtuasjades T-71/03, T-74/03, T-87/03 ja T-91/03: Tokai Carbon jt *vs.* komisjon (EKL 2005, lk II-10).

KIRJA TEKST

„La Comisión desea informar a España de que, tras haber examinado la información facilitada por las autoridades de su país sobre la ayuda antes citada, ha decidido incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea(en lo sucesivo, denominadas «TFUE»).

1. **PROCEDIMIENTO**

(1) Mediante carta de 14 de julio de 2010, las autoridades españolas notificaron a la Comisión la ayuda denominada Ultracongelados Antártida S.A. (en lo sucesivo, denominadas «Ultracongelados Antártida»). Tras sucesivas solicitudes de información complementaria de la Comisión, las autoridades españolas se la remitieron mediante cartas de 12 de noviembre de 2010, 9 de marzo de 2011, 10 de junio de 2011, 17 de octubre de 2011, 21 de marzo de 2012 y 26 de junio de 2012.

2. **DESCRIPCIÓN**

2.1 **Objetivo**

(2) La ayuda individual notificada tenía como finalidad apoyar dos proyectos de inversión de la empresa Ultracongelados Antártida destinados a mejorar y modernizas las instalaciones industriales de transformación de productos de la acuicultura que la empresa posee en Burgos.

(3) El primer proyecto de inversión (BU/070026/S14) consiste en la instalación de una línea de envasado en atmósfera modificada. Incorporar nuevas tecnologías de envasado garantiza un mayor tiempo de caducidad de los productos. El segundo proyecto de inversión (BU/080025/S14) corresponde a una línea de cocción automática Cabinplant y a una línea de envasado automática.

2.2 **Fundamento jurídico**

(4) La medida se fundamenta en la Resolución del Director General de Industrialización y Modernización Agraria de 31 de diciembre de 2009 relativa al expediente BU/070026/S14 y BU/080025/S14.

2.3 **Información sobre la situación del beneficiario**

(5) La empresa beneficiaria, Ultracongelados Antártida, es una gran empresa. Desde 2002, el 100 % de su capital pertenece a Pescanova, una empresa líder del sector. Pescanova, empresa matriz engloba en sus cuentas las de Ultracongelados. España sostiene que en razón de su relación con Pescanova, Ultracongelados Antártida tiene un volumen de negocios anual de más de 200 millones de euros en 2009 o 575 401 000 de euros en 2010 (año de la notificación de esta medida de ayuda). España ha especificado que Ultracongelados Antártida no tiene dificultades financieras y que la presente ayuda es una ayuda a la inversión, no una ayuda de salvamento y restructuración [1].

[1] Carta de 12 de noviembre de 2010 y cuentas anuales de la empresa presentadas el 9 de marzo de 2011.

2.4 **Presupuesto e intensidad de la ayuda**

(6) El presupuesto total estimado de la medida notificada asciende a 415 161 euros y la ayuda se concederá al beneficiario mediante una subvención directa.

(7) Para el primer proyecto (BU/070026/S14), que requiere una inversión total de 864 506,54 euros, la ayuda prevista asciende a 103 740,78 euros. Para el segundo (BU/080025/S14), que precisa una inversión de 2 395 541,83 euros, la ayuda prevista es de 311 420,43 euros.

(8) La ayuda representa el 12,73 % de la inversión, y puede acumularse con otros incentivos nacionales, siempre y cuando la intensidad bruta total no supere el 20 %.

2.5 **Argumentos de las autoridades españolas**

(9) La ayuda individual que España proyecta conceder a Ultracongelados Antártida se basa en motivos sociales, de salud, higiénico-sanitarios y medioambientales.

(10) Con la incorporación de nuevas máquinas disminuirá el trabajo físico necesario, con la consiguiente mejora de las condiciones laborales.

(11) Otro de los efectos positivos de la presente ayuda estatal que se aducen es la mejora de las condiciones sanitarias. Con la incorporación de maquinaria moderna de cocción de langostinos, mejorarán las condiciones sanitarias de transformación de los langostinos y el beneficiario estará en condiciones de obtener los estándares internacionales BRC, IFS e ISO 22000.

(12) España señala también que la inversión prevista tendrá efectos medioambientales positivos como la disminución del consumo de agua y electricidad.

2.6 **Calendario de los proyectos de inversión**

(13) De la información presentada se desprende que las solicitudes de ayuda se presentaron el 12 de julio de 2007, para el proyecto BU/070026/S14, y el 30 de julio de 2008, para el proyecto BU/080025/S14. Sin embargo, las primeras inversiones en los proyectos tuvieron lugar el 1 de septiembre de 2007, en el proyecto BU/070026/S14, y el 1 de septiembre de 2008, en el proyecto BU/080025/S14. Según la Resolución del Director General de Industrialización y Modernización Agraria de 31 de diciembre de 2009, relativa al expediente BU/070026/S14 y BU/080025/S14, la concesión de la ayuda estaba supeditada a su aprobación por la Comisión con arreglo al del TFUE. La notificación de la ayuda se produjo el 14 de julio de 2010. Así pues, parece que los proyectos se llevaron a cabo antes de que se aprobase la concesión de la ayuda.

3. **EVALUACIÓN DE LA MEDIDA**

(14) Es preciso determinar si la medida puede considerarse una ayuda estatal y, en caso de que así sea, si es compatible con el mercado interior.

3.1 **Existencia de ayuda estatal**

(15) Según el artículo 107, apartado 1, del Tratado de Funcionamiento de la Unión Europea (TFUE), «serán incompatibles con el mercado interior, en la medida en que afecten a los intercambios comerciales entre Estados miembros, las ayudas otorgadas por los Estados o mediante fondos estatales, bajo cualquier forma, que falseen o amenacen falsear la competencia, favoreciendo a determinadas empresas o producciones».

(16) La beneficiaria de la medida notificada es la empresa Ultracongelados Antártida, que es una gran empresa que forma parte de Pescanova, el principal grupo de transformación y comercialización de productos de la pesca y la acuicultura del mercado europeo. La empresa Ultracongelados Antártida transforma (congela y cuece) marisco. Los langostinos suponen el 99 % de la producción de la empresa. Los langostinos y demás materia prima que utiliza son productos de acuicultura cultivados en las propias plantas del grupo Pescanova en Sudamérica.

(17) La medida otorga una ventaja económica a un productor español concreto de la que carecen otras empresas. Los productos de la empresa se venden en el mercado interior. Dado que existe un mercado transfronterizo considerable de productos de la pesca y la acuicultura, cabe afirmar que la ayuda concedida de este modo amenaza falsear la competencia dado que refuerza la posición financiera de este empresa frente a sus competidores y podría afectar al comercio entre Estados miembros.

(18) Según la jurisprudencia reiterada del Tribunal de Justicia, una ayuda a una empresa puede perjudicar los intercambios entre los Estados miembros y alterar la competencia aunque la propia empresa no exporte sus productos ([1]). El hecho de que la ayuda refuerce la posición competitiva de esta empresa respecto de otras empresas competidoras, dándole un beneficio económico que de otra forma no habría recibido en el curso normal de su actividad, indica un posible falseamiento de la competencia.

(19) Como la ayuda se concede directamente a partir de recursos presupuestarios estatales por decisión de la Consejería de Agricultura y Ganadería, la medida notificada es atribuible al Estado. La ventaja financiera se concede a una empresa concreta, Ultracongelados Antártida. Así pues, se trata de una ayuda estatal en la acepción del artículo 107, apartado 1, del TFUE.

3.2 **Legalidad de la medida**

(20) Las autoridades españolas han cumplido su obligación de conformidad con el artículo 108, apartado 3, del TFUE notificando la medida de ayuda antes de pagarla. Además, han confirmado que, si la Comisión no autoriza la ayuda individual, la base legal nacional que permite la concesión de la ayuda quedaría sin quedaría sin efecto ([2]).

([1]) Sentencia del Tribunal de Justicia de 13.7.1988 en el asunto 102/87 (Francia/Comisión), Rec. [1988] 4067.

([2]) Carta de 10 de junio de 2011, parte 2, p. 2, y Resolución del Director General de Industrialización y Modernización Agraria, de 31 de diciembre de 2009, relativa al expediente BU/070026/S14 y BU/080025/S14.

3.3 **Compatibilidad con el mercado interior**

(21) La ayuda sólo puede ser considerada compatible con el mercado interior si entra dentro de las excepciones establecidas en el Tratado de Funcionamiento de la Unión Europea. Habida cuenta de que el beneficiario de ella es una empresa de transformación de productos acuícolas, debe evaluarse conforme a las Directrices para el examen de las ayudas estatales en el sector de la pesca y la acuicultura (en lo sucesivo, denominadas «las Directrices») ([3]).

(22) La medida ha sido notificada al amparo del punto 4.9 de las Directrices. Según dicho punto, las ayudas para medidas a las que no puedan aplicarse los puntos 4.1 a 4.8 no son compatibles, en principio, con el mercado común, a menos que el Estado miembro demuestre que, con ella, se cumplen los principios establecidos en el punto 3 de las Directrices y en particular que sirve claramente a la consecución de los objetivos de la Política Pesquera Común, que es coherente con las reglas de la política de competencia y del Fondo Europeo de Pesca (en lo sucesivo, «el FEP») ([4]) y que tiene efecto incentivador. Dado que el punto 4.9 es de naturaleza subsidiaria, únicamente puede aplicarse si no existe una disposición específica en los puntos 4.1 a 4.8 de las Directrices.

(23) En el presente caso, y en esta fase del procedimiento, la Comisión estima que la medida de ayuda entra en el ámbito de aplicación del punto 4.1 de las Directrices. Según el párrafo primero de ese punto, las ayudas para medidas que sean del mismo tipo que las mencionadas en cualquiera de los reglamentos a los que se refiere el punto 2.2 de las Directrices y que se destinen a PYME o a otras clases de empresas deben evaluarse con arreglo a dichas Directrices y a los criterios establecidos para cada tipo de medida en esos reglamentos.

(24) Uno de los Reglamentos que se mencionan en el punto 2.2 de las Directrices es el Reglamento «relativo a la exención del requisito de notificación de ciertas categorías de ayudas estatales concedidas a la pequeñas y medianas empresas del sector de la producción, transformación y comercialización de productos de la pesca». La ayuda notificada se destina a inversiones para la transformación de productos acuícolas. Así pues, es del mismo tipo que las mencionadas en el artículo 16 del Reglamento (CE) nº 736/2008 ([5]) de la Comisión, el cual establece que las ayudas a la transformación de productos de la pesca son compatibles con el mercado común y estarán exentas de la obligación de notificación a condición de que cumplan las condiciones establecidas en los artículos 34 y 35 del Reglamento (CE) nº 1198/2006, relativo al Fondo Europeo de Pesca y el importe de las ayudas en equivalente de subvención no supere el nivel total de la contribución

([3]) Directrices para el examen de las ayudas estatales en el sector de la pesca y la acuicultura, DO C 84 de 3.4.2008, p. 10.

([4]) Reglamento (CE) nº1198/2006 del Consejo, relativo al Fondo Europeo de Pesca, DO L 223 de 15.8.2006, p. 1.

([5]) Reglamento (CE) nº736/2008 de la Comisión, de 22 de julio de 2008, relativo a la aplicación de los artículos 87 y 88 del Tratado a las ayudas estatales concedidas a las pequeñas y medianas empresas dedicadas a la producción, transformación y comercialización de productos de la pesca, DO L 201 de 30.7.2008, p. 16.

pública fijado en el anexo II de ese Reglamento. Las ayudas notificadas que cumplan los criterios establecidos en el Reglamento del FEP pueden ser consideradas compatibles con el mercado interior por la Comisión.

(25) La Comisión considera que la evaluación de la compatibilidad de la presente medida, principalmente en base al punto 4.1 y subsidiariamente al punto 4.9 de las Directrices incluye el examen de la compatibilidad de la ayuda con la política pesquera común, las disposiciones del Reglamento del FEP y la política de competencia. Por último, para ser considerada compatibles con el mercado interior, la ayuda deberá tener un elemento incentivador o exigir alguna contrapartida por parte del beneficiario.

3.3.1. *Compatibilidad con el Reglamento del FEP*

(26) Para ser compatible con el mercado interior, las ayudas a inversiones dirigidas a la transformación de productos de la pesca deben cumplir las condiciones establecidas en el artículo 35 del Reglamento (CE) nº 1198/2006 relativo al Fondo Europeo de Pesca.

(27) En principio, las ayudas a inversiones sólo pueden otorgarse a PYMEs y a empresas con menos de 750 empleados o con un volumen de negocios inferior a 200 millones de euros (artículo 35, apartado 3, del Reglamento (CE) nº 1198/2006). En su notificación, España señala que la empresa beneficiaria, Ultracongelados Antártida, no es una microempresa ni una pequeña o mediana empresa. En su carta de 10 de octubre de 2011, España informó a la Comisión de que, debido a su relación especialmente cercana con el grupo Pescanova, Ultracongelados Antártida tiene un volumen de negocios anual superior al límite de 200 millones de euros y más de 750 empleados ([1]). Según la página web de Ultracongelados Antártida, Pescanova posee desde 2002 el 100 % del capital de ese empres. En tales casos, la jurisprudencia del Tribunal considera que existe una presunción simple de que la sociedad matriz ejerce una influencia decisiva sobre el comportamiento de su filial ([2]) y de que, por lo tanto, constituyen una sola empresa con arreglo al artículo 87 ([3]). La ayuda notificada no cumple el criterio del artículo 35, apartado 3, del Reglamento (CE) nº 1198/2006 según el cual las ayudas a inversiones se circunscriben a PYMEs. Así pues, la Comisión tiene dudas acerca de la compatibilidad de la ayuda por referencia directa a los criterios establecidos en el Reglamento (CE) nº 736/2008.

(28) Desde el punto de vista del objetivo de la medida, para poder otorgar ayudas para la transformación de productos pesqueros, debe estar encaminada, entre otros objetivos, a mejorar las condiciones de trabajo de conformidad con el artículo 35, apartado 1, letra a) del Reglamento (CE) nº 1198/2006.

(29) Según España, con la inversión en nueva maquinaria disminuirá el trabajo físico, con lo que mejorarán las condiciones laborales y se ganará en igualdad de oportunidades. Se indica, además que, la empresa no despedirá empleados.

(30) Si bien, en este caso, la inversión en nueva maquinaria reducirá el trabajo físico necesario y mejorará por tanto las condiciones laborales en el sentido del artículo 35, apartado 1, letra a) del Reglamento (CE) nº 1198/2006, la Comisión alberga serias dudas sobre el cumplimiento de la condición establecida en el artículo 35, apartado 2 del mismo Reglamento. De acuerdo con esta disposición, las inversiones deben estar destinadas principalmente a fomentar el empleo sostenible en el sector de la pesca.

(31) Según España, si se otorga la ayuda a la inversión, la empresa no despedirá empleados a largo plazo. En ese sentido, la Comisión recuerda a España que las ayudas destinadas al mantenimiento de puestos de trabajo y, más concretamente, a convencer a una empresa de no despedir a trabajadores equivalen a ayudas de funcionamiento, lo que en principio está prohibido por el punto 3.4 de las Directrices. Además, el artículo 35, apartado 3, del Reglamento (CE) nº 1198/2006 circunscribe la concesión de ayudas a la inversión a PYMEs y a empresas con menos de 750 empleados o con un volumen de negocios inferior a 200 millones de euros, categoría a la que no pertenece Ultracongelados Antártida según el análisis en el párrafo 27 de esta decisión.

(32) El artículo 35, apartado 1, letra b) del Reglamento (CE) nº 1198/2006 dispone que otro de los objetivos de la ayuda a la inversión puede ser la mejora de las condiciones higiénicas o la calidad de los productos. Según España, el paso de la manipulación manual a la manipulación automática con la nueva maquinaria mejorará las condiciones sanitarias de transformación de los langostinos. Se aduce además que la inversión hará que el beneficiario pueda obtener certificados de los estándares internacionales BRC, IFS e ISO 22000 que es imposible conseguir con la maquinaria actual.

(33) La Comisión coincide con España en que la inversión en maquinaria que sustituya la manipulación manual de productos por una manipulación automática mejora las condiciones sanitarias de la transformación de langostinos. Empero, no ha obtenido una respuesta a su pregunta de en qué medida esos estándares internacionales proporcionan nivel de protección más elevado que el de la legislación de la UE sobre control sanitario y, en particular, que el de las normas de la UE que regulan la producción y la transformación de productos de origen animal destinados al consumo humano. Además, en la página web de la empresa se indica que el beneficiario ya obtuvo el certificado IFS en octubre de 2009, es decir, un año antes de que solicitase la ayuda estatal. La Comisión tiene dudas además de que, aunque la medida pueda contribuir a mejorar las condiciones higiénicas y la calidad del producto transformado, se cumplan las condiciones fijadas en el artículo 35, apartados 2 (fomentar el empleo sostenible) y 3 (tamaño de la empresa), como se señala en los puntos 27 y 30.

([1]) Parte F, segundo párrafo.

([2]) Sentencia del Tribunal de 25.10.1983 en el asunto 107/82, AEG Telefunken/Commission, Rec. 3151, apartado 50.

([3]) Sentencia del Tribunal de Primera Instancia de 15.6.2005 en los asuntos acumulados Tokai Carbon Ltd T-71/03, Intech EDM BV T-74/03, Intech EDM AG T-87/03 y SGL Carbon AG T-91/03/Comisión de las Comunidades Europeas, Rec.[2005] ECR II-10.

(34) De conformidad con el artículo 35, apartado 1, letra d), del Reglamento (CE) nº 1198/2006, las inversiones para transformación pueden causar derecho a ayuda si se destinan a reducir efectos negativos en el medio ambiente. España aduce que las medidas proyectadas tendrán repercusiones medioambientales positivas como son la disminución del consumo de agua y del consumo de electricidad. En sus cartas de 12 de noviembre de 2010 y 26 de junio de 2012, España presentó cuadros con el consumo de agua de la empresa 2006 y 2011. Según esos cuadros, el consumo anual de agua disminuyó significativamente entre 2006 y 2007 y aún más en 2009 y 2011. España explicó que uno de los factores que han contribuido a esa reducción del consumo entre 2006 y 2011 es la realización de las inversiones planteadas ([1]).

(35) En cuanto a la reducción del consumo de electricidad, la Comisión considera que, hasta la fecha, y en esta fase del procedimiento, España no ha presentado pruebas de ello. Atendiendo a las consideraciones anteriores, la Comisión estima que, si bien la medida racionaliza el proceso industrial y permite ahorros de agua, España no ha aportado datos que demuestren que el beneficio ambiental anticipado sea notablemente superior a la mejora resultante de la evolución general del nivel tecnológico en actividades comparables ([2]), y, aun cuando hubiera sido el caso, la Comisión tiene dudas sobre el cumplimiento de las demás condiciones del artículo 35.

(36) De todo lo anterior se desprende que, en esta fase del procedimiento, aunque la medida es del mismo tipo que las ayudas contempladas en el artículo 16 del Reglamento (CE) nº 736/2008 de la Comisión, la empresa no tendría derecho a ayuda del Fondo Europeo de Pesca por no cumplir las condiciones que el mismo establece.

3.3.2. *Justificación de la medida de ayuda*

(37) El párrafo segundo el punto 4.1 de las Directrices indica que, en caso de que un régimen de ayudas o una ayuda concreta incumplan los criterios de los reglamentos a los que se refiere el punto 2.2 de dichas Directrices, el Estado miembro debe demostrar que la ayuda es indispensable y está justificada. Así pues, debe evaluarse si las razones alegadas por España demuestran que la ayuda está justificada y es indispensable.

(38) Según España, la ayuda a la empresa Ultracongelados Antártida generará una actividad económica que beneficiará a toda la Comunidad Autónoma de Castilla y León. Las autoridades nacionales han decidido conceder una ayuda individual a esta empresa porque, a diferencia de otras empresas del sector instaladas en Castilla y León, Ultracongelados Antártida no puede optar a ayudas cofinanciadas por el FEP. España aduce que, de no aprobarse esta ayuda, las expectativas de desarrollo futuro de la empresa en Burgos se verían truncadas. A este respecto, la Comisión observa que no hay pruebas de que empresas competidoras del sector de la transformación de productos de la pesca o de la acuicultura de la misma Comunidad Autónoma que reúnan las condiciones para recibir ayudas del mismo tipo que la de Ultracongelados Antártida hayan recibido dicha ayuda. Al mismo tiempo, la Comisión no alcanza a ver cómo podrían truncarse las expectativas de desarrollo de la empresa ya que es la mayor de la región ([3]).

(39) Por último, como, según España, la ayuda se otorga para la transformación productos de la acuicultura y no de productos de la pesca, es coherente con la Política Pesquera Común pues no contribuye a agotar los recursos pesqueros. La Comisión tiene dudas de que el mero hecho de que la ayuda se destine a la transformación de productos acuícolas baste para juzgar la coherencia de la medida con la Política Pesquera Común.

(40) La Comisión considera, pues que Espana no ha aportado pruebas suficientes que demuestren la compatibilidad de la medida con el mercado interior.

3.3.3. *Efecto incentivador*

(41) La necesidad de la ayuda es una condición general de la compatibilidad de la ayuda con el mercado común ([4]). Para que una ayuda pueda ser compatible con el mercado común, debe demostrarse que dicha ayuda da lugar a una actividad adicional por parte del beneficiario, que no se produciría si la ayuda no se concediera ([5]). De otra forma, la ayuda se limitaría a provocar una distorsión de la competencia sin tener, como contrapartida, ningún efecto positivo.

(42) Según el punto 3.3, párrafo primero, de las Directrices, «para poder considerarse compatible con el Mercado Común, toda medida de ayuda debe contener un elemento incentivador o requerir alguna contrapartida del beneficiario» y en el párrafo segundo se detallan los dos tipos de situaciones que se considera que no contienen ese elemento incentivador:

a. «las ayudas que se conceden para operaciones que el beneficiario ha emprendido ya» y

b. «las ayudas para actividades que el beneficiario habría podido acometer solo en condiciones de mercado».

(43) En lo que se refiere a la tipología de la letra a), la Comisión duda de que se cumpla en el presente caso la condición fijada en el punto 3.3 pues la primera inversión se realizó el 1 de septiembre de 2007 (proyecto BU/070026/S14) y la segunda, el 1 de septiembre de 2008 (BU/080025/S14), cuando según la notificación y el fundamento legal de la ayuda (Resolución del Director General de Industrialización y Modernización Agraria de 31 de diciembre de 2009 relativa al expediente BU/070026/S14 y BU/080025/S14) la ayuda solo se otorgaría una vez aprobada

([1]) Carta fechada el 4 de marzo de 2011, recibida y registrada por los servicios de la Comisión el 9 de marzo de 2011.

([2]) Directrices comunitarias sobre ayudas estatales en favor del medio ambiente (DO C 82 de 1.4.2008, p. 1).

([3]) Carta de 17 de octubre de 2011, letra F.

([4]) Decisión nº 98/99 de la Comisión sobre Scania, de 13.5.2009 (DO C 147 de 27.6.2009).

([5]) Decisión de la Comisión de 10.5.2007 relativa a la ayuda estatal C 4/2006 — Portugal — Ayuda a Djebel (DO L 219 de 24.8.2007).

por la Comisión. Es claro pues que Ultracongelados Antártida comenzó a realizar los proyectos antes de que la ayuda fuera aprobada, por lo que la Comisión tiene dudas sobre el elemento de incentivación ([1]).

(44) En cuanto al segundo tipo de casos previstos en el punto 3.3, se considera que la ayuda carece del elemento de incentivación cuando es una ayuda «para actividades que el beneficiario habría podido acometer solo en condiciones de mercado». España argumenta que la modernización de la maquinaria se deriva de la amortización del equipamiento y es una necesidad sin la cual ninguna empresa puede permanecer en el mercado. En esta fase del procedimiento, la Comisión cree que, esto indica que la empresa habría realizado las inversiones incluso en ausencia de perspectiva de obtener ayuda y que la ayuda es una ayuda de funcionamiento que cubre costes que la empresa debería haber soportado. Esta opinión de la Comisión se ve confirmada por la aseveración que figura en la carta de 9 de marzo de 2011 según la cual el beneficiario está decidido a invertir y la ayuda no es un factor determinante para hacerlo o no.

(45) En esta fase del procedimiento, la Comisión estima pues que la ayuda estatal que aquí se trata entra en la categoría de ayudas que no contienen un elemento incentivador según el punto 3.3, párrafo segundo, de las Directrices.

3.3.4. *Coherencia con la política de competencia*

(46) El punto 3.1 de las Directrices dispone que las ayudas estatales concedidas en el sector pesquero sólo pueden justificarse si son conformes a los objetivos de la política de competencia.

(47) Las autoridades españolas sostienen que una medida de ayuda cuya intensidad no es más que del 12 % debe ser considerada compatible con el mercado interior. El Tribunal ha declarado que la cuantía relativamente reducida de una ayuda o el tamaño relativamente modesto de la empresa beneficiaria no excluyen *a priori* la posibilidad de que se vean afectados los intercambios intracomunitarios ([2]).

(48) España afirma que, dado el escaso peso de la producción de esta empresa comparado con el volumen de consumo total de este producto en la Unión Europea, la ayuda no supone perturbación alguna de la competencia dentro del mercado interior. Según EUROSTAT, en 2009 el mercado español de los langostinos suponía el 23 % del total de la UE (lo que lo convierte en el mayor mercado de la EU) y, en valor, España es el primer proveedor de langostinos (28 829 toneladas en 2009 y 30 068 toneladas en 2010). La Comisión estima, en esta fase del procedimiento, que otorgar una ayuda a un empresa que es la mayor empresa de transformación de productos acuícolas de la Comunidad Autónoma de Castilla y León, que supone el 7 % (7 000 toneladas) de todo el mercado de langostinos de España y que pertenece al grupo Pescanova (25 000 toneladas) puede falsear la competencia en el mercado y afectar a los intercambios comerciales.

(49) La Comisión señala que no es la intensidad de la ayuda lo que determina su compatibilidad sino el resultado de la comparación entre los efectos negativos y positivos que produce. En el presente caso la Comisión tiene dudas de que los efectos positivos, que España no ha demostrado, pudieran ser superiores a los efectos negativos que ocasiona de falseamiento de la competencia.

(50) Por último, la Comisión tiene dudas que, aunque la presente medida de ayuda se examinase en función de las disposiciones del punto 4.9 de las Directrices, España haya demostrado que cumpla los principios enunciados en el apartado 3 de las Directrices. La medida no parece coherente con la política de competencia, con la Política Pesquera Común ni con las disposiciones del Reglamento del FEP, además de no tener un efecto incentivador, según lo indicado en los puntos 36, 39, 43, 44,48 y 49.

4. **DECISIÓN**

(51) En vista del análisis expuesto, la Comisión ve difícil determinar cómo esta ayuda podría ser coherente con las Directrices y con los principios de la Política Pesquera Común y de la política de competencia. Por lo tanto, la Comisión tiene dudas sobre la compatibilidad de la medida de ayuda prevista con el mercado interior.

(52) Habida cuenta de las consideraciones anteriores, la Comisión, actuando conforme al procedimiento establecido en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea, insta a España a presentar sus observaciones y a facilitar toda la información que pueda ayudar a evaluar la ayuda en el plazo de dos meses a partir de la fecha de recepción de la presente carta. La Comisión insta también a las autoridades españolas a que transmitan inmediatamente una copia de la presente carta al beneficiario potencial de la ayuda.

(53) La Comisión desea recordar a España el efecto suspensivo del artículo 108, apartado 3, del Tratado de Funcionamiento de la Unión Europea y lama su atención sobre el artículo 14 del Reglamento (CE) nº 659/1999 del Consejo, que prevé que toda ayuda concedida ilegalmente podrá recuperarse de su beneficiario.

(54) Por la presente, la Comisión comunica a España que informará a los interesados mediante la publicación de la presente carta y de un resumen significativo en el Diario Oficial de la Unión Europea. Asimismo, informará a los interesados en los Estados miembros de la AELC signatarios del Acuerdo EEE mediante la publicación de una comunicación en el suplemento EEE del citado Diario Oficial de las Comunidades Europeas, y al Órgano de Vigilancia de la AELC mediante copia de la presente. Se invitará a los todos los interesados mencionados a presentar sus observaciones en un plazo de dos meses a partir de la fecha de publicación de la presente."

([1]) Decisión de la Comisión sobre un proyecto de ayudas de Austria en favor de Lift GmbH-Doppelmayr, C 77/9 de 14.10.1998 (DO L 142 de 5.6.1999).

([2]) Sentencia del Tribunal de 21.3.1990 en el asunto 142/87, Re Tubemeuse: Belgium/Comisión, [1990] Rec. I-959.

RIIGIABI – KREEKA

Riigiabi nr SA.34824 (2012/C) (ex 2012/NN) – Kreeka rahvuspanga rekapitaliseerimine Kreeka Finantsstabiilsuse Fondi poolt

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 359/03)

Käesoleva kokkuvõtte järel autentses keeles 27. juulil 2012 esitatud kirjas teavitas Euroopa Komisjon Kreekat oma otsusest algatada Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ette nähtud menetlus seoses eespool nimetatud abi/meetmega.

Komisjon otsustas kiita finantsstabiilsuse tagamise huvides kohustuste võtmise kinnituse ja ajutise rekapitaliseerimise vormis meetme esialgu (kuueks kuuks alates käesoleva otsuse kuupäevast) päästmisabina heaks.

Huvitatud isikud võivad saata oma märkused abi/meetme kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

European Commission
Directorate-General for Competition
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1049 Bruxelles/Brussel
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Märkused edastatakse Kreekale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, täpsustades taotluse põhjused.

KOKKUVÕTE

MENETLUS

20. aprillil 2012 edastas Kreeka Finantsstabiilsuse Fond Kreeka rahvuspangale (edaspidi „rahvuspank" või „pank") kohustuste võtmise kinnituse vormis lubaduse osaleda panga aktsiakapitali suurendamises. 28. mail 2012 tehti rahvuspangale ajutise rekapitaliseerimise raames finantssüst. Samasugused kohustuste võtmise kinnitused on saadetud ka Pireuse pangale (SA. 34826 (2012/NN)), EFG Europangale (SA. 34825 (2012/NN)) ja Alpha pangale (SA. 34823 (2012/NN)), kellele on samuti võimaldatud ajutine rekapitaliseerimine. Kreeka ametiasutused teatasid nendest kohustuste võtmise kinnitustest 10. mail 2012. Kuna meede oli juba rakendatud, registreerisid komisjoni talitused selle teatamata abina numbri SA. 34824 (2012/NN) all.

KOMISJONI MENETLUSE ALGATAMISE PÕHJUSEKS OLEVA ABI/MEETME KIRJELDUS

Rahvuspank andis erasektori osaluse [1] raames panuse, mis kirjendati raamatupidamisarvestuses tagasiulatuvalt 2011. aasta neljandas kvartalis, ning seetõttu muutus panga kapital negatiivseks. Kreeka Finantsstabiilsuse Fond saatis 20. aprillil 2012 pangale kinnituse, et osaleb panga kavandatavas aktsiakapitali suurendamises kuni 6,9 miljardi euro suuruse summaga. […] (*). 2011. aasta lõpus oli panga kapitali adekvaatsuse määr, mis hõlmas etteulatuvalt juba Kreeka Finantsstabiilsuse Fondi lubatud kapitalitoetust, (arvestuslikult) 8,31 %. Kohustuste võtmise kinnituse alusel tegi finantsstabiilsuse fond rahvuspangale 28. mail 2012 kooskõlas Kreeka Finantsstabiilsuse Fondi asutamise muudetud seaduses sisalduvate ajutist rekapitaliseerimist käsitlevate sätetega 7,43 miljardi euro suuruse ettemakse (summa määrati kindlaks 2012. aasta esimese kvartali finantsnäitajate põhjal). Kinnituse ja ajutise rekapitaliseerimise raames eraldatud vahendite suuruse arvestas Kreeka rahvuspank nii, et ta oleks suuteline täitma sel ajal kehtivaid kapitali adekvaatsuse nõudeid. Seetõttu oli kontserni bilansis 31. märtsil 2012 kapitali adekvaatsuse määraks 8,1 % ja esimese taseme põhikapitali osakaaluks 6,4 % (panga bilansis olid need näitajad vastavalt 11,7 % ja 10,7 %). Ajutise rekapitaliseerimise raames tehtud finantssüsti suurus oli ligikaudu 11,6% rahvuspanga riskiga kaalutud varade suurusest 31. märtsi 2012. aasta seisuga. Koos 2009. aasta mais ja 2011. aasta detsembris antud eelisaktsiatega on rahvuspank saanud muud kui tagatise või likviidsusabi vormis antud abi kokku ligikaudu 13,6 % tema riskiga kaalutud varadest.

[1] Erasektori osalus: Kreeka ametiasutuste ja erasektori võlausaldajate kokkulepe, mille eesmärk on saavutada Kreeka valitsemissektori võla osaline kustutamine sellega vabatahtlikult nõustuvate erasektori võlausaldajate poolt. Erasektori osalus on erakorraline meede, mis mõjutab tugevalt Kreeka panku: mitu panka on kandnud selle tõttu kahju.

(*) Konfidentsiaalne teave, mis on ka edaspidi tähistatud nurksulgudega […].

MEETME/ABI HINDAMINE

Kreeka Finantsstabiilsuse Fondi 20. aprillil 2012 saadetud kohustuste võtmise kinnitus kohustab fondi osalema panga rekapitaliseerimises. Fond saab oma vahendid riigilt ning tingimused, mille alusel ta saab finantseerimisasutusi toetada, on Kreeka õigusaktidega üksikasjalikult kindlaks määratud ja piiratud. Riigi vahendite kasutamist võib seega käsitada riigi meetmena.

Kohustuste võtmise kinnitusega anti pangale juba eelis […]. Ajutise rekapitaliseerimise võimaldamisega 28. mail 2012 rakendati kohustuste võtmise kinnitusega võetud kohustust ja seega kujutab rekapitaliseerimine endast kõnealuse abi jätkamist. Euroopa Finantsstabiilsuse Fondi (EFSF) võlakirjade vormis tehtud ajutise rekapitaliseerimisega suurendati rahvuspanga omavahendite suhtarvu tasemeni, mis võimaldab tal turul toime tulla ja osaleda eurosüsteemi tehingutes. Seega andis ajutine rekapitaliseerimine pangale riiklike vahendite kasutamisest tuleneva eelise.

Tulemuseks oli abisaaja seisundi tugevnemine ja konkurentsi moonutamine, sest abisaaja käsutusse anti rahalisi vahendeid, et ta oleks suuteline täitma kapitalinõudeid. Kuna pank tegutseb ka muudel Euroopa finantsturgudel ja kuna teiste liikmesriikide finantseerimisasutused tegutsevad omakorda Kreekas, mõjutab meede tõenäoliselt ka liikmesriikidevahelist kaubandust.

Meetme hindamise õiguslik alus on Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkt b, millega nähakse ette võimalus käsitada siseturuga kokkusobivana abi „mõne liikmesriigi majanduses tõsise häire kõrvaldamiseks". Komisjon on seisukohal, et tingimused riigiabi heakskiitmiseks Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkti b alusel on täidetud, sest finantsturgudel on taas täheldatud pingeid ja ebakindlust, ning toetas oma seisukohta pikendusteatise vastuvõtmisega 2011. aasta detsembris 2011. Komisjon on kiitnud järjepidevalt heaks Kreeka toetuskavad krediidiasutuste jaoks ning tunnistanud seega, et Kreeka majandust ohustab tõsine häire ning et riigi toetus pankadele on sellest ülesaamiseks sobiv vahend. Rahvuspanga puhul on oht veelgi suurem, sest tegemist on Kreeka ühe suurima pangaga.

Sellegipoolest kahtleb komisjon menetluse praeguses etapis, kas abimeede vastab kokkusobivuse üldkriteeriumidele ehk kas abi on asjakohane, vajalik ja proportsionaalne.

Abi asjakohasuse kohta märgib komisjon, et peamiselt erasektori osaluse kokkuleppes osalemise tõttu vajalikuks osutunud abi eesmärk on tagada panga suutlikkus täita õigusaktidega ettenähtud kapitalinõudeid ja õigus kasutada keskpanga likviidseid vahendeid. Võttes arvesse asjaolu, et rahvuspank on Kreekas süsteemselt oluline pank ja et meetmega püütakse anda panus Kreeka finantsstabiilsuse taastamisse, näib meede esmapilgul asjakohane. Komisjoni kahtlused siiski püsivad ja tal ei ole praeguses etapis võimalik hinnata, kas kõik meetmed võeti viivitamata, et vältida panga edasist vajadust abi järele. Samuti ei ole praegu selge, kes kontrollib panka, kui ajutine rekapitaliseerimine asendatakse püsiva rekapitaliseerimisega. Ühe võimalusena võib panka kontrollida riik, teise võimalusena võivad seda teha erasektori vähemusaktsionärid, keda toetatakse väljastpoolt tugevalt rahaliste vahenditega. Mõlemal juhul soovib komisjon, et tagatud oleks panga juhtimise ja eelkõige tema laenuandmisprotsessi kvaliteet. Kui panka hakkab näiteks kontrollima riik, ei tohiks pank sattuda halva juhtimise alla, edendada halba hinnapoliitikat või anda laene majanduslikult ebatõhusatel tingimustel. Komisjonil on kahtlus, kas panga praegune üldjuhtimise raamistik suudab piirata riiklikku sekkumist ja riiklikke koordineerimismeetmeid. Seevastu kui rahvuspanga häälteenamus kuuluks tulevikus investorile, kes investeerib panka ainult piiratud hulgal raha ja omandab riigile kuuluvate aktsiate ostuoptsioonid, võiks kõnealune investor tunda kiusatust võtta liigseid riske. Seega võib panga juhtimine halveneda ning tema elujõulisuse taastamise ja finantsstabiilsuse säilitamise püüded võivad sattuda ohtu. Kuna panga tulevase omaniku ja kontrollimehhanismi suhtes puudub selgus, kahtleb komisjon menetluse praeguses etapis abimeetme asjakohasuses ning kutsub Kreeka ametiasutusi, panka ja huvitatud kolmandaid isikuid üles esitama märkusi ja täiendavat teavet.

Ehkki abisumma arvutati välja nii, et pank oleks suuteline täitma kehtivaid kapitali adekvaatsuse nõudeid, oli panka juba eelnevalt pikema aja jooksul mitu korda rekapitaliseeritud. Komisjon kahtleb, kas on võetud kõik võimalikud meetmed vältimaks panga täiendava rekapitaliseerimise vajadust tulevikus ja täitmaks Kreeka teise kohandamiskava majandus- ja rahanduspoliitika memorandumis sisalduvaid kohustusi (mille kohaselt peab pankade esimese taseme omavahendite määr olema 2012. aasta septembris 9 % ja 2013. aasta juunis 10 %). Abimeetmete eest makstava tasu kohta tuleb märkida, et Kreeka Finantsstabiilsuse Fond saab abimeetme eest tasu, mis on väiksem rekapitaliseerimise teatises sätestatud 7–9 %-st. Kui ajutise rekapitaliseerimise kestus on piisavalt lühike, on komisjonil võimalus võtta arvesse sellise rekapitaliseerimise eripära ja selle võimaldamise konteksti ning kiita väiksem tasu selle alusel heaks. Kuna ajutise rekapitaliseerimise kestus ei ole aga praegu keerulise majanduskeskkonna tõttu teada, peab komisjon abi eest makstavat tasu ebapiisavaks. Lisaks sellele ei nõrgenda ajutine rekapitaliseerimine panga praeguste aktsionäride õigusi. Panga majanduslikud ja juriidilised omandisuhted jäävad kuni ajutiselt rekapitaliseerimiselt lõplikule rekapitaliseerimisele üleminekuni praegusel kujul püsima. Seega kui ajutine rekapitaliseerimine toimub pikema ajavahemiku jooksul, ei vasta kõnealune meede riigiabi eeskirjades sätestatud abi eest makstava tasu ja koormuse jagamise tingimustele. Komisjon kutsub üles esitama nende punktide kohta märkusi.

Meetme proportsionaalsuse kohta märgib komisjon, et pank saab suures mahus abi ning see võib viia tõsiste konkurentsimoonutuste tekkeni, võttes arvesse veel ülejäänud kolme suure Kreeka panga rekapitaliseerimist Kreeka Finantsstabiilsuse Fondi poolt. Lähtudes saadud abi suurest mahust ja päästmisperioodi pikkusest, kahtleb komisjon menetluse praeguses etapis, kas seni heakskiidetud kavades sisalduvad kaitsemeetmed, näiteks dividendide maksmise keeld või keeld kasutada ostuoptsioone ilma komisjoniga eelnevalt konsulteerimata, on kõnealuse ajutise rekapitaliseerimise puhul piisavad. Komisjon kutsub Kreeka ametiasutusi, abisaajat ja kolmandaid isikuid üles esitama selle

punkti kohta märkusi. Lisaks sellele märgib komisjon, et Kreeka Finantsstabiilsuse Fond on nimetanud kõigis neljas ajutiselt rekapitaliseeritavas pangas oma esindaja, aga seni puuduvad eeskirjad, mis takistaksid fondil kõnealuste pankade vahel teavet vahetada ja nende tegevust koordineerida. Selleks et pangas toimuvat tähelepanelikult jälgida, peaks komisjonil olema võimalik toetuda seirehaldurile, kes viibiks pangas ja tuvastaks mis tahes ebasoodsad muutused panga äritavades, näiteks halva hinnakujunduse, laenude andmise majanduslikult ebatõhusatel tingimustel või ebareaalsete hoiuseintresside pakkumise. Komisjon kutsub abisaajat ja kolmandaid isikuid üles esitama märkusi ka selle punkti kohta.

Vastavalt nõukogu määruse (EÜ) nr 659/1999 artiklile 14 võib ebaseaduslikult antud abi selle saajalt tagasi nõuda.

KIRJA TEKST

„The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to temporarily approve the measure in the form of a commitment letter and bridge recapitalisation as rescue aid and to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU") in regard to that measure.

1. **PROCEDURE**

(1) In May 2009, National Bank of Greece ('NBG' or 'the bank') was recapitalised under the recapitalisation scheme, which is part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 ([2]).

(2) Recital 14 of the decision of 19 November 2008 provided that a restructuring plan needed to be notified to the Commission for the beneficiaries of that recapitalisation scheme. The extent of the restructuring plan for each bank depended on that bank's individual situation.

(3) A plan was submitted to the Commission by the Greek authorities on 2 August 2010 describing the bank's programme for ensuring long-term viability under the macro-economic assumptions which were relevant at that point in time. That plan, its subsequent updates as well as additional information submitted by the Greek authorities, were administratively registered by the Commission services under case SA. 30342 (PN 26/2010) and then SA. 32788 (2011/PN).

(4) On 22 December 2011, the Commission approved a second recapitalisation for NBG under the recapitalisation scheme ([3]).

(5) NBG has also benefited from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 and subsequently prolonged and amended ([4]).

(6) On 20 April 2012, the Hellenic Financial Stability Fund provided NBG with a commitment letter to participate in the share capital increase of the bank. On 28 May 2012, a bridge recapitalisation of NBG was implemented.

(7) Similar commitment letters have been sent and bridge recapitalisations granted to Alpha Bank (SA. 34823 (2012/NN)), Piraeus Bank (SA. 34826 (2012/NN)) and EFG Eurobank (SA. 34825 (2012/NN)). On 10 May 2012, the Greek authorities formally notified to the Commission the commitment letters

([2]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6. It was attributed the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended (see below under footnote 4).

([3]) See Commission Decision of 22 December 2011 in State aid SA.34064 (2011/N) "*Second rescue recapitalisation of NBG under the Greek recapitalisation scheme*", OJ C 99, 03.04.2012, p. 4.

([4]) On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (See Commission decision of 18 September 2009 in State Aid N 504/2009 "*Prolongation and amendment of the Support Measures for the Credit Institutions in Greece*", OJ C 264, 06.11.2009, p. 5). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (See Commission decision of 25 January 2010 in State Aid N 690/2009 "*Prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 57, 09.03.2010, p. 6). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (See Commission decision of 30 June 2010 in State Aid N 260/2010 "*Extension of the Support Measures for the Credit Institutions in Greece*", OJ C 238, 03.09.2010, p. 3.). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2010 (See Commission decision of 21 December 2010 in State aid SA 31998 (2010/N) "*Fourth extension of the Support measures for the credit Institutions in Greece*", OJ C 53, 19.02.2011, p. 2). On 4 April 2011 the Commission approved an amendment (See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "*Amendment to the Support Measures for the Credit Institutions in Greece*", OJ C 164, 02.06.2011, p. 8). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (See Commission decision of 27 June 2011 in State aid SA.33153 (2011/N) "*Fifth prolongation of the Support measures for the credit Institutions in Greece*", OJ C 274, 17.09.2011, p. 6). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (See Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (See Commission decision of 6 July 2012 in State Aid case SA.35002 (2012/N) - Greece "*Seventh prolongation of the Support Scheme for Credit Institutions in Greece*", not yet published.

provided to NBG (and the other banks), in line with recital 43 of the Commission decision of 6 February 2012 ([5]). As the measure had already been taken, the Commission services registered as a non-notified aid under case SA 34824 (2012/NN).

(8) The Commission notes that Greece accepts that the decision be adopted in the English language.

2. DESCRIPTION

2.1. General context of the Greek banking sector

(9) As regards the performance of their assets and resulting capital needs, the Greek banks face the double challenge of high losses on their holding of Greek government bonds (GGBs) and a deep and protracted recession which has given rise to a rapidly raising default rate on the loans to Greek household and companies ([6]).

(10) Greek banks have participated in the private sector bond exchange, known as Private Sector Involvement – PSI. The first decision on the PSI envisaging a 21 % write down on GGBs, was taken in the European Council of 21 July 2011. PSI-II was put forward by the Euro area Member States on 26 October 2011 and envisaged a bond exchange with a nominal discount of around 50 % on notional Greek debt by private investors. In February 2012, Greece put in place PSI-II and announced the results on 9 May 2012. The debt exchange resulted in significant additional losses and capital needs for the Greek banks. At that time, Euro area Member States decided that additional financing to Greece would include the recapitalisation of Greek banks ([7]).

(11) As regards the liquidity position of the Greek banks, it has continued to tighten. Domestic deposits decreased markedly in 2011 (- 18 %) due to recession and political uncertainty. As Greek banks are shut out from wholesale funding markets, they are entirely dependent on Central bank financing, a growing portion of which is in the form of emergency liquidity assistance.

(12) Since the Greek banks were expected to face substantial capital shortfalls as a result of the PSI-II and the continuing recession, the Memorandum of Economic and Financial Policies of the Second Adjustment Programme for Greece between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 11 March 2012 has made available funds for the banks' recapitalisation. Total bank recapitalisation needs and resolution costs to be financed under that programme are estimated at EUR 50 billion ([8]). An amount of EUR 25 billion was made available upfront to deal with recapitalisation needs arising from PSI and the estimated funding gap due to resolutions ([9]). The funds are available through the Hellenic Financial Stability Fund.

(13) According to the Memorandum of Economic and Financial Policies, "banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimizes the burden for taxpayers" ([10]). The recapitalisation of the Greek banking sector has to be carried out by the end of September 2012, in order for banks to comply with a 9 % Core Tier 1 ratio by September 2012 and 10 % by June 2013.

2.2. Description of the Schemes put in place by greece during the financial crisis

2.2.1. *Description of the Support Measures for the Credit Institutions in Greece introduced in 2008*

(14) On 19 November 2008, the Commission approved the "Support Measures for the Credit Institutions in Greece" ([11]) designed to ensure the stability of the Greek financial system. The Greek package of State aid measures for credit institutions included (i) a recapitalisation scheme, (ii) a guarantee scheme, and (iii) a government bond loan scheme. The Commission subsequently approved amendments to those measures and prolonged them several times ([12]).

2.2.2. *Description of the recapitalisation scheme for credit institutions in Greece under the Hellenic Financial Stability Fund*

(15) The Memorandum of Understanding on Specific Economic Policy Conditionality between the Greek Government, the

([5]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "*Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 101, 04.04.2012, p. 2. Recital 43 of the decision provides that the Greek authorities will 'notify individually any recapitalisation of a bank which has already received a recapitalisation from the State in the current crisis. The Commission notes that commitment will allow it to assess individually recapitalisation of banks which receive successive aid. It is important, as, in such cases, it has to be assessed more in detail whether an additional recapitalisation of the bank is the best option to preserve financial stability and limit distortions of competition. In such cases of successive aid, it has also to be verified whether the recapitalisation instrument and remuneration to be used by the HFSF are still appropriate'.

([6]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 17, available online at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf.

([7]) See the Euro Summit Statement of 26 October 2011, point 12, available online at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf.

([8]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 106.

([9]) International Monetary Fund, *Greece: Request for Extended Arrangement Under the Extended Fund Facility - Staff Report*, IMF Country Report No. 12/57, 16 March 2012, p. 28, available online at http://www.imf.org/external/pubs/ft/scr/2012/cr1257.pdf.

([10]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 104.

([11]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6.

([12]) See footnote 4.

European Union, the International Monetary Fund and the European Central Bank dated 3 May 2010 provided for the establishment of the Hellenic Financial Stability Fund (HFSF). The objective of the HFSF is to safeguard the stability of the Greek banking system by providing equity capital to credit institutions ([13]). On 3 September 2010, the Commission approved the HFSF as a recapitalisation scheme in line with the rules on support schemes for the financial sector during the crisis ([14]) and prolonged it several times ([15]). The Commission approved the most recent prolongation of the HFSF recapitalisation scheme on 6 February 2012 until 30 June 2012 ([16]). The HFSF Law has subsequently been amended as regards the recapitalisation scheme. The provisions referred to below were in place when the commitment letter was sent and the bridge recapitalisation took place. Since the later amendments were adopted after the date of the Commission's most recent decision on the HFSF recapitalisation scheme, they were not part of the Commission's approval at the time.

Provisions of the HFSF Law

(16) A credit institution whose viability has been confirmed by the Bank of Greece may submit a request to the HFSF for capital support, following an instruction from the Bank of Greece.

(17) A credit institution's request for the provision of capital support must necessarily be accompanied by the following documents:

a) a business plan, that shows how the credit institution will ensure viability for the next three to five years under conservative/prudent assumptions and that has been assessed as sustainable and credible by the Bank of Greece, establishing the amount of the required capital support and detailing the measures that the credit institution intends to take so as to safeguard and strengthen its solvency as soon as possible, in particular by increasing its capital (including through capital support from the HFSF), sale of parts of the credit institution, and/or restoring its profitability through cost-cutting, reducing risks or securing support from other companies within its group; and

b) a detailed timetable for the implementation of the measures described in the business plan.

(18) Following the finalisation of the terms and conditions of the share capital increase, the HFSF will provide capital support in compliance with the EU State aid legislation.

(19) The credit institution must prepare a detailed restructuring plan or amend the plan already submitted to the European Commission, in accordance with the applicable EU State aid rules. The restructuring plan will be approved by the HFSF. Within three months from the provision of capital support, the Ministry of Finance must submit the restructuring plan to the European Commission for approval.

(20) The implementation period of the restructuring plan may not exceed three years. An extension of up to two years may be granted by decision of the HFSF, following consultation with the Bank of Greece and subject to approval by the European Commission.

(21) Until the share capital increase is finalised, the relevant HFSF legal framework specifies that the HFSF may provide two temporary solutions as capital support:

I. A commitment letter;

II. A bridge recapitalisation.

I. ***Commitment letters provided by the HFSF***

(22) The HFSF, upon a decision of the Bank of Greece, may provide a credit institution with a letter stating that it will participate in that bank's share capital increase (hereinafter "commitment letter"). That credit institution (i) has to be assessed as viable by the Bank of Greece and (ii) has to submit a request for capital support to the HFSF.

(23) The HFSF provides the commitment letter on condition that:

a) the business plan of the credit institution has been assessed as viable and credible by the Bank of Greece,

b) the request for capital support has been approved by the Bank of Greece,

c) the Bank of Greece has considered that the provision of that letter is necessary for the credit institution:

i. to continue operating on a going concern basis;

ii. to meet the current capital adequacy requirements set up by the Bank of Greece ([17]); and

iii. to maintain the financial stability of the Greek banking system.

([13]) HFSF operates in parallel with the Recapitalisation Scheme. The other new role of the HFSF is to provide capital support to transitional credit institutions established under the resolution framework in Greece (Article 63 of Law 3601/2007). The HFSF's role in the resolution process was not subject to the Commission's approval.

([14]) See Commission Decision of 3 September 2010 in State aid Case N 328/2010, *"Recapitalisation of Credit Institutions in Greece under the Financial Stability Fund (FSF)"*, OJ C 316, 20.11.2010, p. 7.

([15]) See Commission Decision of 14 December 2010 under State aid case SA.31999 (2010/N), *"Prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)"*, OJ C 62, 26.02.2011, p. 16. See Commission decision of 27 June 2011 in State Aid case SA.33154 (2010/N), "*Second prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 244, 23.08.2011, p. 2.

([16]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "*Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 101, 04.04.2012, p. 2.

([17]) The current capital adequacy requirements of the Bank of Greece are set at 8 %.

(24) For a credit institution for which the HFSF has issued a commitment letter and until the completion of the share capital increase, the HFSF:

a) appoints up to two representatives in the Board of Directors of the credit institution;

b) may request from the credit institution any data and information which it considers necessary, e.g. due diligence.

(25) The HFSF's representative in the Board of Directors of the credit institution has the following rights:

a) to call the General Assembly of Shareholders;

b) to veto any decision of the credit institution's Board of Directors:

i. regarding the distribution of dividends and the bonus policy concerning the Chairman, the Managing Director and the other members of the Board of Directors, as well as the general managers and their deputies; or

ii. where the decision in question could seriously compromise the interests of depositors, or impair the credit institution's liquidity or solvency or its overall sound and smooth operation (e.g. business strategy, asset/liability management, etc.);

c) to request an adjournment of any meeting of the credit institution's Board of Directors for three business days, until instructions are given by the HFSF's Executive Board, following consultation with the Bank of Greece;

d) the right to request that the Board of Directors of the credit institution be convened;

e) the right to approve the Economic Director.

(26) In exercising its rights, the HFSF's representative in the Board of Directors must respect the credit institution's business autonomy.

II. ***Bridge recapitalisations provided by the HFSF***

(27) In view of its participation in the future capital increase of a credit institution that has been deemed viable by the Bank of Greece, the HFSF may advance its contribution (hereinafter the "bridge recapitalisation") to such an increase or part thereof, up to the amount specified by the Bank of Greece.

(28) The bridge recapitalisation is paid by the HFSF to the bank in the form of European Financial Stability Fund (EFSF) floating notes with maturities of six and ten years with an issue date of 19 April 2012.

(29) The EFSF notes are deposited into an account of the credit institution with the Bank of Greece exclusively for the purpose of the HFSF participation in the capital increase. The EFSF notes can be used only for the purpose of ensuring liquidity through repurchase transactions with market participants or/and through Euro-system operations.

(30) The terms of the bridge recapitalisation are enshrined into a pre-subscription agreement agreed between the credit institution, the HFSF and the EFSF.

(31) For the period between the date of the bridge recapitalisation and the date of the conversion of the bridge recapitalisation into ordinary shares and other convertible financial instruments (hereinafter "conversion into the final recapitalisation instruments"), the pre-subscription agreement provides that:

a) the bank must pay to the HFSF a 1 % annual fee on the nominal value of the EFSF notes;

b) any coupon payments and accrued interest to the EFSF notes for that period will count as additional capital contribution by the HFSF ([18]).

(32) The HFSF grants the bridge recapitalisation following a decision of the Bank of Greece, provided that:

a) The credit institution has submitted to the HFSF an application for capital support, accompanied by a business plan and a detailed timetable;

b) The application for capital support has been approved by the Bank of Greece, while the business plan has been assessed by the Bank of Greece as being viable and credible;

c) The Bank of Greece considers that the bridge recapitalisation is necessary in order for:

i. the credit institution to meet the capital adequacy requirements set up by the Bank of Greece;

ii. the credit institution to maintain access to the monetary policy operations of the Eurosystem; and

iii. to ensure the stability of the Greek banking system;

([18]) The pre-subscription agreement provided that: "*The Effective Risk payable to the Bank shall include the EFSF bonds and any coupon payments and accrued interest to the EFSF bonds for the period from the issuance of the bonds until the conversion of the Advance into share capital and other convertible financial instruments as prescribed herein*".

d) The credit institution has agreed with the HFSF and the EFSF a presubscription agreement for the capital increase.

(33) The Minister of Finance, following an opinion of the HFSF, may decide to provide additional corporate governance safeguards until the conversion into the final recapitalisation instruments.

2.3. **Beneficiary**

(34) NBG was founded in 1841 as a commercial bank and has been listed in the Athens Stock Exchange since 1880. Since October 1999, the bank has been listed on the New York Stock Exchange. The bank's branch and ATM network, the largest in Greece (528 domestic banking units and 1 383 ATMs), effectively covers the entire country. NBG and its subsidiaries ('the Group') provide a wide range of financial services including retail and commercial banking, asset management, brokerage, investment banking, insurance and real estate at a global level. Outside Greece, the Group is active in several countries i.e. Turkey, UK, South East Europe (SEE), Cyprus, Malta, Egypt and South Africa via 1 131 banking units.

(35) NBG participated in the PSI programme with all eligible bonds and other eligible securities, whose nominal value amounted to around EUR 14.8 billion. In that framework, the total PSI impairment charge amounted to EUR 11.8 billion for the Group (EUR 10.6 billion for the bank) entirely booked in its 2011 accounts.

(36) The main financial figures for NBG Group for the first quarter of 2012, December 2011 and December 2010 (consolidated data) are:

Selective Volume figures (EUR million)	31 March 2012	31 December 2011	31 December 2010
Loans and advances to customers (gross)	70,710	72,432	75,105
Deposits	57,419	59,544	68,039
Shareholders' Equity	(965,4)	(253)	10,905
Assets	104,095	106,870	120,745
Operating Income	791	4,372	4,639
Operating Expenses	559	2,541	2,511
Impairment Losses on PSI	—	(11,783)	—
Net attributable profit/loss (before PSI)	(263)	(289)	476
Profit/(Loss) for the period - after tax	(540)	(12,325)	440

Source: *NBG – Financial Results, as at 31 December 2011 and for the period ended 31 March 2012, available online at*:http://www.eurobank.gr/online/home/generic.aspx?id=30&mid=360&lang=en.

2.4. **State recapitalisations already received by the bank**

(37) In May 2009, NBG received a capital injection of EUR 350 million, equivalent to around 0.70 % of its risk weighted assets ('RWA') - at the time - from the Greek State under the recapitalisation scheme.

(38) On 22 December 2011, the Commission approved a second recapitalisation of EUR 1 billion in favour of NBG, equivalent to around 1.52 % of the bank's RWA ([19]) at the time. The total recapitalisation of EUR 1.35 billion was equivalent to around 2.07 % of its RWA at the time. The second recapitalisation was carried out from the Greek State under the recapitalisation scheme and was notified to the Commission in compliance with the obligation to notify any second capital injection.

(39) The recapitalisations took the form of preference shares subscribed by the State which have a fixed remuneration of 10 %.

2.5. **State liquidity support already received by the bank**

(40) NBG has benefited and still benefits from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece". As of 22 May 2012 ([20]), the guarantees granted to NBG amounted to around EUR 17.8 billion and the bond loans to about EUR 0.8 billion. The bank has benefited and still benefits also from the emergency liquidity assistance granted by the Bank of Greece.

([19]) See Commission Decision of 22 December 2011 in State aid SA.34064 (2011/N) "*Second rescue recapitalisation of NBG under the Greek recapitalisation scheme*", OJ C 99, 03.04.2012, p. 4.

([20]) According to the mid-term report on the operation of the guarantee and the bond loan schemes submitted by the Ministry of Finance on 27 June 2012. See recital 38 of the Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2.

3. DESCRIPTION OF THE AID MEASURE

(41) Following its participation in the PSI, which was booked retrospectively in the account of the fourth quarter of 2011, NBG's capital turned negative.

(42) On 20 April 2012, the HFSF provided a letter committing to participate for an amount of up to EUR 6.9 billion in the planned share capital increase of NBG and cover any amount of unsubscribed share capital and/or convertible bonds. […]. (*) The capital adequacy ratio at end-2011 already included the retroactive effect of the capital support included in the HFSF commitment letter, thus reaching 8.31 % for NBG Group (pro-forma) and 12.7 % for the bank ([21]).

(43) On the basis of the obligation already undertaken in the commitment letter, the HFSF advanced EUR 7.43 billion to NBG on 28 May 2012 ([22]), in line with the provisions for bridge recapitalisations laid down in the HFSF Law. Both the amounts provided in the commitment letter and in the bridge recapitalisation were calculated by the Bank of Greece in order to ensure the bank's compliance with the current capital adequacy requirements. Therefore, in the balance sheet of 31 March 2012, NBG Group registered a capital 8.1 % (11.7 % for the bank) and a Core Tier 1 of 6.4 % (10.7 % for the bank).

(44) The difference of EUR 530 million between the amounts included in the commitment letter and the bridge recapitalisation arises from the fact that the amount in the commitment letter was estimated based on the financial figures of the fourth quarter of 2011, while the amount of bridge recapitalisation was determined based on the financial figures of the first quarter of 2012.

(45) The amount of bridge recapitalisation represents around 11.6 % of NBG Group's RWA as of 31 March 2012 ([23]). With the preference shares injected in May 2009 and December 2011, the amount of aid received by NBG in forms other than guarantees and liquidity assistance stands at around 13.6 % of NBG Group's RWA.

4. THE POSITION OF GREECE

(46) The Greek authorities acknowledged that the commitment to provide capital to NBG contained in the letter provided to the bank constitutes State aid.

(47) The Greek authorities consider that the measures are compatible with the internal market under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU").

5. ASSESSMENT OF THE AID IN THE FORM OF THE COMMITMENT LETTER AND THE BRIDGE RECAPITALISATION

5.1. Existence of aid

(48) As stated in Article 107(3)(b) TFEU any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(49) The Commission notes that the commitment letter provided by the HFSF on 20 April 2012 firmly commits the HFSF to recapitalise the bank. HFSF receives its resources from the State. The HFSF has a limited duration up to 2017, and so any profit or loss it incurs will eventually be borne by the State. The Commission therefore concludes that the letter commits State resources and that the bridge recapitalisation involves State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by the Law. Accordingly, the use of those State resources is imputable to the State.

(50) As regards the existence of an advantage, the commitment letter already granted an advantage to the bank. […]. The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid. The bridge recapitalisation in the form of EFSF notes has increased the bank's capital ratio to a level that allows the functioning of the bank on the market and access to Euro-system operations. Therefore, the bridge recapitalisation also granted an advantage to the bank from State resources.

(51) As a result, the position of the beneficiary was strengthened since the bank was provided with the financial resources to continue to comply with the capital requirements, thus leading to competition distortions. As NBG is active in other European financial markets and as financial institutions from other Member States operate in Greece, the bridge recapitalisation by the HFSF is also likely to affect trade between Member States.

(52) The bridge recapitalisation in essence implements the commitment contained in the HFSF letter to NBG. The Commission considers that the commitment letter and the bridge recapitalisation refer to one and the same measure. The Commission will hereafter refer to 'the measure' and only make reference to the bridge recapitalisation when necessary.

(*) Confidential information, also indicated below by […].

([21]) See *National Bank of Greece, Group and Bank Annual Financial Report -31 December 2011*, p. 88, available online at http://www.nbg.gr/wps/wcm/connect/e434c1004afc4402a7e7affe3aaa9284/Financial+Report+NBG+GROUP-BANK+31+12+2011_EN+FINAL.pdf?MOD=AJPERES&CACHEID=e434c1004afc4402a7e7affe3aaa9284.

([22]) See *National Bank of Greece, Group and Bank Condensed Interim Financial Statements for the period ended 31 March 2012*, p.20, available online at http://www.nbg.gr/wps/wcm/connect/6947b9804b6fb139a92aaf277c464667/Financial+Report+NBG+GROUP-BANK+31+03+2012_EN+Final.pdf?MOD=AJPERES&CACHEID=6947b9804b6fb139a92aaf277c464667

([23]) The amount of RWA as of 31 March 2012 stood at around EUR 63.9 billion for the NBG Group. See National Bank of Greece, *Group and Bank Condensed Interim Financial Statements for the period ended 31 March 2012*, p. 20.

5.2. **Compatibility of the aid**

5.2.1. *Application of Article 107(3)(b) TFEU*

(53) Article 107(3)(b) TFEU provides for the possibility that State aid can be regarded as compatible with the internal market where it is granted "*to remedy a serious disturbance in the economy of a Member State*".

(54) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. The Commission explained its approach in the Banking Communication ([24]), the Recapitalisation Communication ([25]) and the Restructuring Communication ([26]). The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication in December 2011 ([27]).

(55) In respect to the Greek economy, the Commission has acknowledged in its successive approval of the Greek support schemes for credit institutions that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Such a threat is even greater here as NBG is one of the largest banks in Greece. Therefore, the legal basis for the assessment of the aid measure should be Article 107(3)(b) TFEU.

5.2.2. *Compatibility of the aid measure with Article 107(3)(b) TFEU*

(56) In line with point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility ([28]):

a) *Appropriateness:* The aid has to be well targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b) *Necessity:* The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance.

c) *Proportionality:* The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(57) The Recapitalisation Communication elaborates further on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability.

(58) The Commission has, at this stage, doubts on the application of all three criteria i.e. the criteria of "'appropriateness'', "*necessity*" and "*proportionality*" in the case at hand.

5.2.3. *Compatibility with the Banking and Recapitalisation Communications*

a. Appropriateness of the measure

(59) The measure aims to help the bank to comply with the current regulatory capital requirements of the Bank of Greece, i.e. a total capital adequacy ratio of 8 %. In addition, in order to be eligible for Central bank financing a bank has to comply with the regulatory capital requirements. In the present case, the measure helps NBG to remain eligible to obtain Central bank liquidity until the final recapitalisation of the bank takes place.

(60) In that respect, the Commission notes that the bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, NBG is a systemically important bank for Greece. Consequently, a default of the bank would create a serious disturbance in the Greek economy. Under the current circumstances where all financial institutions in Greece have difficulties in accessing funding, which limits to a certain extent the provisions of loans to the Greek economy, the disturbance to the economy would be aggravated by such a default. Moreover, the Commission notes that the measure came about mainly as a result of PSI, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the bank. The measure thereby aims to mainly deal with the results of PSI and contribute to maintain financial stability in Greece. For those reasons, the measure would at first seem appropriate.

(61) However, the Commission notes that the aid comes after prior recapitalisations and liquidity aid. The Commission can therefore not treat the aid as a genuine rescue aid received for the first time by a company. That context of repeated rescue aid measures requires additional safeguards. The context of a protracted rescue period blurs the distinction between rescue aid - which is normally

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

([25]) Commission Communication "Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition", OJ C 10, 15.1.2009, p. 2.

([26]) Commission Communication "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.

([27]) 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.

([28]) See recital 41 of Commission decision in Case NN 51/2008 Guarantee scheme for banks in Denmark, OJ C 273, 28.10.2008, p. 2.

temporarily approved without the Commission seeking many commitments from the Member State restraining the beneficiary's actions during the rescue period - and restructuring aid which is approved only after a thorough assessment. In particular, the Commission doubts at this stage that all the measures possible have been taken immediately to avoid that the bank again needs aid in the future.

(62) There is no clarity, at this stage, about who will control the bank in the future once the bridge recapitalisation is replaced by a permanent recapitalisation. The bank may come under the control of the State or the minority private owners may enjoy control and high leverage. The Commission would wish to ensure that the quality of the bank's management, and notably its lending process, should not deteriorate in either case.

(63) If the bank comes under State control, the bank should not suffer from poor management or mispricing or carry out lending that was not business-oriented. The bank's assessment of credit applications has to include, inter alia, the quality of collateral, the pricing and the solvency of the borrower. If such decisions were no longer taken on the basis of commercial criteria due to, for instance, State interference, it would increase the bank's need for aid (or reduce the remuneration for the shareholder i.e. the State) and endanger the restoration of viability. In light of the poor track record of some State-controlled banks in Greece, additional safeguards might have to be put in place in order to limit the public interference in the day-to-day management of banks, including regarding pricing and lending decisions. In that respect, lending to public companies should be scrutinised and normal commercial practices should be applied in the assessment of their borrowing capacity. The Commission has doubts, at this stage, whether the current corporate governance framework can limit public interference and avoid coordination (coordination due to the high amounts of State aid provided by the HFSF which thus becomes a shareholder in several banks which may, inter alia, lead to an infringement of the EU rules in mergers and antitrust).

(64) If, conversely, the majority of the voting rights of the bank were held in the future by an investor which had invested only a limited amount of money and enjoyed call options on the shares held by the State, that investor might be tempted to take excessive risks. In such a scenario, in case of success it would earn a large and disproportionate return thanks to the leverage offered by the call options. The Commission notes that the current situation of the bank already presents such a risk as, while the State has provided all the capital to the bank through the bridge recapitalisation, all the shares of the bank are held by its historical shareholders.

(65) In conclusion, there is a risk that the way the bank is managed will deteriorate and it could endanger the restoration of viability and preservation of financial stability. In the absence of clarity about who will own and control the bank in the future, the Commission has doubts at this stage that the aid measure is appropriate. The Commission therefore finds it necessary to open the procedure under Article 108(2) TFEU on that new aid in order to collect all the facts from the Greek authorities and allow interested parties to comment.

b. Necessity – limitation of the aid to the minimum

(66) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective. Thus the capital injection must be of the minimum amount necessary to reach the objective.

(67) As regards the amount of aid, the Commission notes that it was calculated in order to ensure the bank's compliance with the current capital adequacy requirements of the Bank of Greece. It therefore does not seem to provide the bank with excess capital. However, as indicated above, that aid comes after several other aid measures in the context of a protracted rescue period. In particular, as indicated above, the Commission doubts at this stage that all the measures possible have been taken to avoid that the bank again needs aid in the future.

(68) As regards the remuneration of the aid, the Commission notes that, for the period until the conversion of the bridge recapitalisation into a permanent recapitalisation, the HFSF will receive a fee of 1 % plus the accrued interest on the EFSF notes. It will not receive any shares in the bank. That remuneration is below the range of 7 % to 9 % laid down in the Recapitalisation Communication. At this stage, the duration of the bridge recapitalisation period is uncertain. If it is sufficiently short, the Commission might be able to take into account the specific characteristics of the bridge recapitalisation and the context in which it was granted, and so to accept the lower remuneration. It is indeed recalled that the bridge recapitalisation aims at immediately covering the large capital gap which was the result of the PSI, while leaving some time to the bank to try to raise capital on the market (and thereby reduce the amount of recapitalisation aid which would have to be permanently injected in the bank). Accordingly, the bridge recapitalisation seems acceptable if it is truly a short-term solution to give time to find private investors. However, it would become problematic if it remains in its current form for a long period without being converted. In conclusion, given that at this stage the duration of the bridge recapitalisation is uncertain, the Commission has doubts that its remuneration can be considered sufficient.

(69) The bridge recapitalisation will be converted into a permanent recapitalisation at a later stage. However, as regards the remuneration of the aid once the bridge recapitalisation is converted into a permanent one, the terms of the conversion are still unknown. The Commission can therefore not assess them. The present decision cannot therefore endorse them and the Greek authorities must notify that measure to the Commission once the terms of the final recapitalisation are known.

(70) The Commission notes that the bridge recapitalisation does not trigger the dilution of the bank's current shareholders. Until the conversion into the final recapitalisation instruments, the bank's economic and legal ownership does not change. The State does not receive any shares, despite the large size of the recapitalisation (without the State recapitalisation there would be no capital left in the bank as a result, mainly, of the extraordinary circumstances triggered by the PSI.). While such an arrangement could be acceptable as a temporary measure, to give some time to find private investors, it would not comply with the remuneration and burden-sharing principles under State aid rules if the bridge recapitalisation were to last over a protracted period.

c. Proportionality – measures limiting negative spill-over effects

(71) The Commission notes that the bank receives a very large amount of State aid. It is also the case of the three other large privately owned banks. If one also takes into account the recapitalisations of Agricultural Bank of Greece (ATE) ([29]) and Hellenic Postbank (TT) ([30]), all the domestic large and medium-sized banks in Greece will have received large amount of State aid. That situation may therefore lead to serious distortions of competition. However, it is noted that the need for the bridge recapitalisation stems mainly from the participation in the PSI programme and not from the mismanagement or excessive risk-taking from existing investors.

(72) As indicated above, the repeated rescue aid granted to the bank means that the new aid cannot be considered as a genuine rescue aid and should be scrutinized in more depth. In addition, more safeguards should be required, taking inspiration from what is required for restructuring aid.

(73) Point 38 of the Banking Communication requires that capital injections should not allow the beneficiary to engage in aggressive commercial strategies. Furthermore, point 37 of the Recapitalisation Communication acknowledges that safeguards may be necessary to prevent aggressive commercial expansion financed by State aid. Under the current approved schemes, Greece has committed that the beneficiary banks will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without consulting with the Commission in advance. The Commission doubts at this stage that those safeguards are sufficient in relation to the bridge recapitalisation under consideration. The Commission invites the beneficiary and third parties to comment on that issue.

(74) The Commission notes that the HFSF has already appointed its representatives in all of the four banks which have received a bridge recapitalisation. Although the HFSF representatives are different for each bank and the HFSF does not yet have control in the four banks, the Commission notes that there are no rules in place at this stage that prevent the HFSF's coordination between them. Moreover, adequate safeguards should be in place to ensure that commercially sensitive information is not shared between those undertakings. In order to monitor the bank closely, it seems appropriate that the Commission should be able to rely on a monitoring trustee which would be physically present in the bank. The same monitoring trustee might have in its mandate to observe any detrimental changes in the bank's commercial practices, such as mispricing, carrying out lending that is not business-oriented or offering unsustainable interest rates on deposits. The Commission invites the beneficiary and third parties to comment.

(75) The Commission notes that the restructuring plan/viability review submitted under State aid cases SA. 30342 (PN 26/2010) – "Assessment of the recapitalised Greek banks" and SA. 32788 (2011/PN) – "Viability plan of National Bank of Greece" was based on a much lower amount of aid and outdated macro-economic assumptions. For example, it does not include the effect of PSI. Therefore, the Commission requests the Greek authorities that the updated restructuring plan that Greece has to submit three months from the date of the bridge recapitalisation, as also provided under the amended HFSF law, should take account of the large aid amount received, include the new developments and update the measures envisaged by the bank to cope with the new environment.

5.3. **Conclusion**

(76) The Commission has doubts at this stage that the bridge recapitalisation by the HFSF is appropriate, limited to the minimum and proportionate. On that basis, the Commission has doubts whether the aid can be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. It therefore finds it necessary to open the procedure laid down in Article107 (3) (b) TFEU.

(77) At the same time, the Commission notes that the Greek banks are currently operating under extreme conditions. Their participation in the PSI and the deep recession have wiped out banks' capital. Given those totally exceptional circumstances which are not the result of the banks' own mismanagement or excessive risk-taking, the Commission approves the aid in the form of the commitment letter and the bridge recapitalisation for six months from the date of adoption of the current decision.

([29]) ATE, a State-owned bank was the fifth-largest banking group in Greece in 2011. It has received State aid under the support measures for credit institutions in Greece in the form of recapitalisation, guarantees and bond loans.

([30]) TT was listed on the Athens Stock Exchange in June 2006. It has a network of 146 branches in 65 cities around the country and it operates also in the 850 Hellenic Post offices. The shareholders' structure includes the Greek State which is the biggest shareholder with a participation of 34 % and the Hellenic Post with 10 %. Hellenic Postbank received a State capital injection under the Support scheme for credit institutions in Greece of approximately EUR 225 million.

(78) The Commission recalls that this temporary approval does not cover the conversion of the bridge recapitalisation into the final recapitalisation which the Greek authorities need to notify to the Commission. Upon receipt of the complete notification of that conversion, if it is received by the Commission within six months from the date of this decision, the duration of that approval will be automatically extended until the Commission reaches a final decision on those terms.

(79) The Commission observes that Greece has to submit a restructuring plan for the bank three months after granting the bridge recapitalisation.

6. **DECISION**

The Commission concludes that the commitment to provide capital to the bank in the HFSF commitment letter and the bridge recapitalisation which took place on 28 May 2012 constitutes State aid pursuant to Article 107(1) TFEU.

The Commission temporarily approves that measure as rescue aid for reasons of financial stability for a period of six months from the date of this decision. If within that period, the Greek authorities submit a complete notification of the conversion of the bridge recapitalisation into a final recapitalisation, then the duration of the approval will be automatically extended until the Commission reaches a final decision on those terms.

Moreover, in the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Greece to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to National Bank of Greece immediately.

The Commission notes that Greece accepts for reasons of urgency that the adoption of the decision be in the English language.

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

RIIGIABI – KREEKA

Riigiabi nr SA.34825 (2012/C) (ex 2012/NN) – EFG Europanga rekapitaliseerimine Kreeka Finantsstabiilsuse Fondi poolt

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 359/04)

Käesoleva kokkuvõtte järel autentses keeles 27. juulil 2012 esitatud kirjas teavitas Euroopa Komisjon Kreekat oma otsusest algatada Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ette nähtud menetlus seoses eespool nimetatud abi/meetmega.

Komisjon otsustas kiita finantsstabiilsuse tagamise huvides kohustuste võtmise kinnituse ja ajutise rekapitaliseerimise vormis meetme esialgu (kuueks kuuks alates käesoleva otsuse kuupäevast) päästmisabina heaks.

Huvitatud isikud võivad saata oma märkused abi/meetme kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

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Märkused edastatakse Kreekale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, täpsustades taotluse põhjused.

KOKKUVÕTE

MENETLUS

20. aprillil 2012 edastas Kreeka Finantsstabiilsuse Fond EFG Europangale (edaspidi „pank") kohustuste võtmise kinnituse vormis lubaduse osaleda panga aktsiakapitali suurendamises. 28. mail 2012 tehti EFG Europangale ajutise rekapitaliseerimise raames finantssüst. Samasugused kohustuste võtmise kinnitused on saadetud ka Kreeka rahvuspangale (SA. 34824 (2012/NN)), Pireuse pangale (SA. 34826 (2012/NN)) ja Alpha pangale (SA.34823 (2012/NN)), kellele on samuti võimaldatud ajutine rekapitaliseerimine. Kreeka ametiasutused teatasid nendest kohustuste võtmise kinnitustest 10. mail 2012. Kuna meede oli juba rakendatud, registreerisid komisjoni talitused selle teatamata abina numbri SA.34825 (2012/NN) all.

KOMISJONI MENETLUSE ALGATAMISE PÕHJUSEKS OLEVA ABI/MEETME KIRJELDUS

EFG Europank andis erasektori osaluse [1] raames panuse, mis kirjendati raamatupidamisarvestuses tagasiulatuvalt 2011. aasta neljandas kvartalis, ning seetõttu kahanes panga kapital märkimisväärselt. Kreeka Finantsstabiilsuse Fond saatis 20. aprillil 2012 pangale kinnituse, et osaleb panga kavandatavas aktsiakapitali suurendamises kuni 4,2 miljardi euro suuruse summaga. Selline toetus aitaks pangal saavutada kapitali adekvaatsuse kogumääraks üle 8 % […] (*). Kohustuste võtmise kinnituse alusel tegi finantsstabiilsuse fond EFG Europangale 28. mail 2012 kooskõlas Kreeka Finantsstabiilsuse Fondi asutamise muudetud seaduses sisalduvate ajutist rekapitaliseerimist käsitlevate sätetega 4,2 miljardi euro suuruse ettemakse (summa määrati kindlaks 2012. aasta esimese kvartali finantsnäitajate põhjal). Kinnituse ja ajutise rekapitaliseerimise raames eraldatud vahendite suuruse arvestas Kreeka rahvuspank nii, et pank oleks suuteline täitma sel ajal kehtivaid kapitali adekvaatsuse nõudeid. Seetõttu oli EFG Europanga bilansis 31. märtsil 2012 kapitali adekvaatsuse määraks 9 % ja esimese taseme põhikapitali osakaaluks 7,9 %. Ajutise rekapitaliseerimise raames tehtud finantssüsti suurus oli ligikaudu 9,4 % panga riskiga kaalutud varade suurusest 31. märtsi 2012. aasta seisuga. Koos 2009. aasta mais antud eelisaktsiatega on EFG Europank saanud muud kui tagatise või likviidsusabi vormis antud abi kokku ligikaudu 11,4 % tema riskiga kaalutud varadest.

MEETME/ABI HINDAMINE

Kreeka Finantsstabiilsuse Fondi 20. aprillil 2012 saadetud kohustuste võtmise kinnitus kohustab fondi osalema panga rekapitaliseerimises. Fond saab oma vahendid riigilt ning tingimused, mille alusel ta saab finantseerimisasutusi toetada, on

[1] Erasektori osalus: Kreeka ametiasutuste ja erasektori võlausaldajate kokkulepe, mille eesmärk on saavutada Kreeka valitsemissektori võla osaline kustutamine sellega vabatahtlikult nõustuvate erasektori võlausaldajate poolt. Erasektori osalus on erakorraline meede, mis mõjutab tugevalt Kreeka panku: mitu panka on kandnud selle tõttu kahju.

(*) Konfidentsiaalne teave, mis on ka edaspidi tähistatud nurksulgudega […].

Kreeka õigusaktidega üksikasjalikult kindlaks määratud ja piiratud. Riigi vahendite kasutamist võib seega käsitada riigi meetmena.

Kohustuste võtmise kinnitusega anti pangale juba eelis […]. Ajutise rekapitaliseerimise võimaldamisega 28. mail 2012 rakendati kohustuste võtmise kinnitusega võetud kohustust ja seega kujutab rekapitaliseerimine endast kõnealuse abi jätkamist. Euroopa Finantsstabiilsuse Fondi (EFSF) võlakirjade vormis tehtud ajutise rekapitaliseerimisega suurendati EFG Europanga omavahendite suhtarvu tasemeni, mis võimaldab tal turul toime tulla ja osaleda eurosüsteemi tehingutes. Seega andis ajutine rekapitaliseerimine pangale riiklike vahendite kasutamisest tuleneva eelise.

Tulemuseks oli abisaaja seisundi tugevnemine ja konkurentsi moonutamine, sest abisaaja käsutusse anti rahalisi vahendeid, et ta oleks suuteline täitma kapitalinõudeid. Kuna pank tegutseb ka muudel Euroopa finantsturgudel ja kuna teiste liikmesriikide finantseerimisasutused tegutsevad omakorda Kreekas, mõjutab meede tõenäoliselt ka liikmesriikidevahelist kaubandust.

Meetme hindamise õiguslik alus on Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkt b, millega nähakse ette võimalus käsitada siseturuga kokkusobivana abi „mõne liikmesriigi majanduses tõsise häire kõrvaldamiseks". Komisjon on seisukohal, et tingimused riigiabi heakskiitmiseks Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkti b alusel on täidetud, sest finantsturgudel on taas täheldatud pingeid ja ebakindlust, ning toetas oma seisukohta pikendusteatise vastuvõtmisega 2011. aasta detsembris. Komisjon on kiitnud järjepidevalt heaks Kreeka toetuskavad krediidiasutuste jaoks ning tunnistanud seega, et Kreeka majandust ohustab tõsine häire ning et riigi toetus pankadele on sellest ülesaamiseks sobiv vahend. EFG Europanga puhul on oht veelgi suurem, sest tegemist on suure pangaga.

Sellegipoolest kahtleb komisjon menetluse praeguses etapis, kas abimeede vastab kokkusobivuse üldkriteeriumidele ehk kas abi on asjakohane, vajalik ja proportsionaalne.

Abi asjakohasuse kohta märgib komisjon, et peamiselt erasektori osaluse kokkuleppes osalemise tõttu vajalikuks osutunud abi eesmärk on tagada panga suutlikkus täita õigusaktidega ettenähtud kapitalinõudeid ja õigus kasutada keskpanga likviidseid vahendeid. Võttes arvesse asjaolu, et EFG Europank on Kreekas süsteemselt oluline pank ja et meetmega püütakse anda panus Kreeka finantsstabiilsuse taastamisse, näib meede esmapilgul asjakohane. Komisjoni kahtlused siiski püsivad ja tal ei ole praeguses etapis võimalik hinnata, kas kõik meetmed võeti viivitamata, et vältida panga edasist vajadust abi järele. Samuti ei ole praegu selge, kes kontrollib panka, kui ajutine rekapitaliseerimine asendatakse püsiva rekapitaliseerimisega. Ühe võimalusena võib panka kontrollida riik, teise võimalusena võivad seda teha erasektori vähemusaktsionärid, keda toetatakse väljastpoolt tugevalt rahaliste vahenditega. Mõlemal juhul soovib komisjon, et tagatud oleks panga juhtimise ja eelkõige tema laenuandmisprotsessi kvaliteet. Kui panka hakkab näiteks kontrollima riik, ei tohiks pank sattuda halva juhtimise alla, edendada halba hinnapoliitikat või anda laene majanduslikult ebatõhusatel tingimustel. Komisjonil on kahtlus, kas panga praegune üldjuhtimise raamistik suudab piirata riiklikku sekkumist ja riiklikke koordineerimismeetmeid. Seevastu kui EFG Europanga häälteenamus kuuluks tulevikus investorile, kes investeerib panka ainult piiratud hulgal raha ja omandab riigile kuuluvate aktsiate ostuoptsioonid, võiks kõnealune investor tunda kiusatust võtta liigseid riske. Seega võib panga juhtimine halveneda ning tema elujõulisuse taastamise ja finantsstabiilsuse säilitamise püüded võivad sattuda ohtu. Kuna panga tulevase omaniku ja kontrollimehhanismi suhtes puudub selgus, kahtleb komisjon menetluse praeguses etapis abimeetme asjakohasuses ning kutsub Kreeka ametiasutusi, panka ja huvitatud kolmandaid isikuid üles esitama märkusi ja täiendavat teavet.

Ehkki abisumma arvutati välja nii, et pank oleks suuteline täitma kehtivaid kapitali adekvaatsuse nõudeid, oli panka juba eelnevalt pikema aja jooksul mitu korda rekapitaliseeritud. Komisjon kahtleb, kas on võetud kõik võimalikud meetmed vältimaks panga täiendava rekapitaliseerimise vajadust tulevikus ja täitmaks Kreeka teise kohandamiskava majandus- ja rahanduspoliitika memorandumis sisalduvaid kohustusi (mille kohaselt peab pankade esimese taseme omavahendite määr olema 2012. aasta septembris 9 % ja 2013. aasta juunis 10 %). Abimeetmete eest makstava tasu kohta tuleb märkida, et Kreeka Finantsstabiilsuse Fond saab abimeetme eest tasu, mis on väiksem rekapitaliseerimise teatises sätestatud 7–9 %-st. Kui ajutise rekapitaliseerimise kestus on piisavalt lühike, on komisjonil võimalus võtta arvesse sellise rekapitaliseerimise eripära ja selle võimaldamise konteksti ning kiita väiksem tasu selle alusel heaks. Kuna ajutise rekapitaliseerimise kestus ei ole aga praegu keerulise majanduskeskkonna tõttu teada, peab komisjon abi eest makstavat tasu ebapiisavaks. Lisaks sellele ei nõrgenda ajutine rekapitaliseerimine panga praeguste aktsionäride õigusi. Panga majanduslikud ja juriidilised omandisuhted jäävad kuni ajutiselt rekapitaliseerimiselt lõplikule rekapitaliseerimisele üleminekuni praegusel kujul püsima. Seega kui ajutine rekapitaliseerimine toimub pikema ajavahemiku jooksul, ei vasta kõnealune meede riigiabi eeskirjades sätestatud abi eest makstava tasu ja koormuse jagamise tingimustele. Komisjon kutsub üles esitama nende punktide kohta märkusi.

Meetme proportsionaalsuse kohta märgib komisjon, et pank saab suures mahus abi ning see võib viia tõsiste konkurentsimoonutuste tekkeni, võttes arvesse veel ülejäänud kolme suure Kreeka panga rekapitaliseerimist Kreeka Finantsstabiilsuse Fondi poolt. Lähtudes saadud abi suurest mahust ja päästmisperioodi pikkusest, kahtleb komisjon menetluse praeguses etapis, kas seni heakskiidetud kavades sisalduvad kaitsemeetmed, näiteks dividendide maksmise keeld või keeld kasutada ostuoptsioone ilma komisjoniga eelnevalt konsulteerimata, on kõnealuse ajutise rekapitaliseerimise puhul piisavad. Komisjon kutsub Kreeka ametiasutusi, abisaajat ja kolmandaid isikuid üles esitama selle punkti kohta märkusi. Lisaks sellele märgib komisjon, et Kreeka Finantsstabiilsuse Fond on nimetanud kõigis neljas ajutiselt rekapitaliseeritavas pangas oma esindaja, aga seni puuduvad eeskirjad, mis takistaksid fondil kõnealuste pankade vahel teavet vahetada ja nende tegevust koordineerida.

Selleks et pangas toimuvat tähelepanelikult jälgida, peaks komisjonil olema võimalik toetuda seirehaldurile, kes viibiks pangas ja tuvastaks mis tahes ebasoodsad muutused panga äritavades, näiteks halva hinnakujunduse, laenude andmise majanduslikult ebatõhusatel tingimustel või ebareaalsete hoiuseintresside pakkumise. Komisjon kutsub abisaajat ja kolmandaid isikuid üles esitama märkusi ka selle punkti kohta.

Vastavalt nõukogu määruse (EÜ) nr 659/1999 artiklile 14 võib ebaseaduslikult antud abi selle saajalt tagasi nõuda.

KIRJA TEKST

„The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to temporarily approve the measure in the form of a commitment letter and bridge recapitalisation as rescue aid and to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU") in regard to that measure.

1. **PROCEDURE**

(1) In May 2009, EFG Eurobank ("the bank") was recapitalised under the recapitalisation scheme which is part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 ([2]).

(2) Recital 14 of the decision of 19 November 2008 provided that a restructuring plan needed to be notified to the Commission for the beneficiaries of that recapitalisation scheme. The extent of the restructuring plan for each bank depended on that bank's individual situation.

(3) A plan was submitted to the European Commission by the Greek authorities on 2 August 2010 describing the bank's programme for ensuring long-term viability under the macro-economic assumptions which were relevant at that point in time. That plan, its subsequent updates as well as additional information submitted by the Greek authorities were administratively registered by the Commission services under case SA.30342 (PN 26/2010) and then SA.32789 (2011/PN).

(4) EFG Eurobank has also benefited from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 and subsequently prolonged and amended ([3]).

(5) On 20 April 2012, the Hellenic Financial Stability Fund provided EFG Eurobank with a commitment letter to participate in the share capital increase of the bank. On 28 May 2012, a bridge recapitalisation of EFG Eurobank was implemented.

(6) Similar commitment letters have been sent and bridge recapitalisations granted to Alpha Bank (SA.34823 (2012/NN)), National Bank of Greece (SA.34824 (2012/NN)) and Piraeus Bank (SA.34826 (2012/NN)). In May 2012, the Greek authorities notified to the Commission the commitment letters provided to EFG Eurobank (and the other banks) in line with recital 43 of the Commission decision of 6 February 2012 ([4]). As the measure had already been taken, the Commission services registered as a non-notified aid under case SA.34825 (2012/NN).

(7) The Commission notes that Greece accepts that the adoption of the decision be in the English language.

([2]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6. It was attributed the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended (see below under footnote 2).

([3]) On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (See Commission decision of 18 September 2009 in State Aid N 504/2009 "*Prolongation and amendment of the Support Measures for the Credit Institutions in Greece*", OJ C 264, 06.11.2009, p. 5). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (See Commission decision of 25 January 2010 in State Aid N 690/2009 "*Prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 57, 09.03.2010, p. 6). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (See Commission decision of 30 June 2010 in State Aid N 260/2010 "*Extension of the Support Measures for the Credit Institutions in Greece*", OJ C 238, 03.09.2010, p. 3.). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2010 (See Commission decision of 21 December 2010 in State aid SA 31998 (2010/N) "*Fourth extension of the Support measures for the credit Institutions in Greece*", OJ C 53, 19.02.2011, p. 2). On 4 April 2011 the Commission approved an amendment (See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "*Amendment to the Support Measures for the Credit Institutions in Greece*", OJ C 164, 02.06.2011, p. 8). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (See Commission decision of 27 June 2011 in State aid SA.33153 (2011/N) "*Fifth prolongation of the Support measures for the credit Institutions in Greece*", OJ C 274, 17.09.2011, p. 6). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (See Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (See Commission decision of 6 July 2012 in State Aid case SA.35002 (2012/N) - Greece "*Seventh prolongation of the Support Scheme for Credit Institutions in Greece*", not yet published.

([4]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "*Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 101, 04.04.2012, p. 2. Recital 43 of the decision provides that the Greek authorities will '*notify individually any recapitalisation of a bank which has already received a recapitalisation from the State in the current crisis. The Commission notes that commitment will allow it to assess individually recapitalisation of banks which receive successive aid. It is important, as, in such cases, it has to be assessed more in detail whether an additional recapitalisation of the bank is the best option to preserve financial stability and limit distortions of competition. In such cases of successive aid, it has also to be verified whether the recapitalisation instrument and remuneration to be used by the HFSF are still appropriate*'.

2. DESCRIPTION

2.1. General context of the Greek banking sector

(8) As regards the performance of their assets and resulting capital needs, the Greek banks face the double challenge of high losses on their holding of Greek government bonds (GGBs) and a deep and protracted recession which has given rise to a rapidly raising default rate on loans to Greek households and companies ([5]).

(9) Greek banks have participated in the private sector bond exchange, known as Private Sector Involvement – PSI. The first decision on the PSI, envisaging a 21% write-down on GGBs, was taken in the European Council of 21 July 2011. PSI-II was put forward by the Euro-area Member States on 26 October 2011 and envisaged a bond exchange with a nominal discount of around 50% on notional Greek debt held by private investors. In February 2012, Greece put in place PSI-II and announced the results on 9 May 2012. The debt exchange resulted in significant additional losses and capital needs for the Greek banks. At that time, Euro-area Member States decided that additional financing to Greece would include the recapitalisation of Greek banks ([6]).

(10) As regards the liquidity position of the Greek banks, it has continued to tighten. Domestic deposits decreased markedly in 2011 (-18%) due to recession and political uncertainty. As Greek banks are shut out from wholesale funding markets, they are entirely dependent on Central Bank financing, a growing portion of which is in the form of emergency liquidity assistance.

(11) Since the Greek banks were expected to face substantial capital shortfalls as a result of the PSI-II and the continuing recession, the Memorandum of Economic and Financial Policies of the Second Adjustment Programme for Greece between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 11 March 2012 has made available funds for the banks' recapitalisation. Total bank recapitalisation needs and resolution costs to be financed under that programme are estimated at EUR 50 billion ([7]). An amount of EUR 25 billion was made available upfront to deal with recapitalisation needs arising from PSI and the estimated funding gap due to resolutions ([8]). The funds are available through the Hellenic Financial Stability Fund.

(12) According to the Memorandum of Economic and Financial Policies, "banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimizes the burden for taxpayers" ([9]). The recapitalisation of the Greek banking sector has to be carried out by the end of September 2012, in order for banks to comply with a Core Tier 1 ratio of 9 % by September 2012 and of 10 % by June 2013.

2.2. Description of the Schemes put in place by greece during the financial crisis

2.2.1. *Description of the Support Measures for the Credit Institutions in Greece introduced in 2008*

(13) On 19 November 2008, the Commission approved the "Support Measures for the Credit Institutions in Greece" ([10]) designed to ensure the stability of the Greek financial system. The Greek package of State aid measures for credit institutions included (i) a recapitalisation scheme, (ii) a guarantee scheme, and (iii) a government bond loan scheme. The Commission subsequently approved amendments to those measures and prolonged them several times ([11]).

2.2.2. *Description of the recapitalisation scheme for credit institutions in Greece under the Hellenic Financial Stability Fund*

(14) The Memorandum of Understanding on Specific Economic Policy Conditionality between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 3 May 2010 provided for the establishment of the Hellenic Financial Stability Fund (HFSF). The objective of the HFSF is to safeguard the stability of the Greek banking system by providing equity capital to credit institutions ([12]). On 3 September 2010, the Commission approved the HFSF as a recapitalisation scheme in line with the rules on support schemes for the financial sector during the crisis ([13]) and prolonged it several times ([14]). The Commission approved the most recent prolongation of the HFSF recapitalisation scheme on 6 February 2012 until 30 June 2012 ([15]). The

([5]) European Commission – Directorate-General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 17, available online at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf.

([6]) See the Euro Summit Statement of 26 October 2011, point 12, available online at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf.

([7]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 106.

([8]) International Monetary Fund, *Greece: Request for Extended Arrangement Under the Extended Fund Facility - Staff Report*, IMF Country Report No. 12/57, 16 March 2012, p. 28, available online at http://www.imf.org/external/pubs/ft/scr/2012/cr1257.pdf.

([9]) European Commission-Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 104.

([10]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6.

([11]) See footnote 3.

([12]) HFSF operates in parallel with the Recapitalisation Scheme. The other new role of the HFSF is to provide capital support to transitional credit institutions established under the resolution framework in Greece (Article 63 of Law 3601/2007). The HFSF's role in the resolution process was not subject to the Commission's approval.

([13]) See Commission Decision of 3 September 2010 in State aid Case N 328/2010, "*Recapitalisation of Credit Institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 316, 20.11.2010, p. 7.

([14]) See Commission Decision of 14 December 2010 under State aid case SA.31999 (2010/N), "*Prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 62, 26.02.2011, p. 16. See Commission decision of 27 June 2011 in State Aid case SA.33154 (2010/N), "*Second prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 244, 23.08.2011, p. 2.

([15]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)", OJ C 101, 04.04.2012, p. 2.

HFSF Law has subsequently been amended as regards the recapitalisation scheme. The provisions referred to below were in place when the commitment letter was sent and the bridge recapitalisation took place. Since the later amendments were adopted after the date of the Commission's most recent decision on the HFSF recapitalisation scheme, they were not part of the Commission's approval at the time.

Provisions of the HFSF Law

(15) A credit institution whose viability has been confirmed by the Bank of Greece may submit a request to the HFSF for capital support, following an instruction from the Bank of Greece.

(16) A credit institution's request for the provision of capital support must be accompanied by the following documents:

a) a business plan, that shows how the credit institution will ensure viability for the next three to five years under conservative/prudent assumptions and that has been assessed as sustainable and credible by the Bank of Greece, establishing the amount of the required capital support and detailing the measures that the credit institution intends to take so as to safeguard and strengthen its solvency as soon as possible, in particular by increasing its capital (including through capital support from the HFSF), sale of parts of the credit institution, and/or restoring its profitability through cost-cutting, reducing risks or securing support from other companies within its group; and

b) a detailed timetable for the implementation of the measures described in the business plan.

(17) Following the finalisation of the terms and conditions of the share capital increase, the HFSF will provide capital support in compliance with the EU State aid legislation.

(18) The credit institution must prepare a detailed restructuring plan or amend the plan already submitted to the European Commission, in accordance with the applicable EU State aid rules. The restructuring plan will be approved by the HFSF. Within three months from the provision of capital support, the Ministry of Finance must submit the restructuring plan to the European Commission for approval.

(19) The implementation period of the restructuring plan may not exceed three years. An extension of up to two years may be granted by decision of the HFSF, following consultation with the Bank of Greece and subject to approval by the European Commission.

(20) Until the share capital increase is finalised, the relevant HFSF legal framework specifies that the HFSF may provide two temporary solutions as capital support:

I. A commitment letter;

II. A bridge recapitalisation.

I. COMMITMENT LETTERS PROVIDED BY THE HFSF

(21) The HFSF, upon a decision of the Bank of Greece, may provide a credit institution with a letter stating that it will participate in that bank's share capital increase (hereinafter "commitment letter"). That credit institution (i) has to be assessed as viable by the Bank of Greece and (ii) has to submit a request for capital support to the HFSF.

(22) The HFSF provides the commitment letter on condition that:

a) the business plan of the credit institution has been assessed as viable and credible by the Bank of Greece,

b) the request for capital support has been approved by the Bank of Greece,

c) the Bank of Greece has considered that the provision of that letter is necessary for the credit institution:

i. to continue operating on a going concern basis;

ii. to meet the current capital adequacy requirements set up by the Bank of Greece ([16]); and

iii. to maintain the financial stability of the Greek banking system.

(23) For a credit institution for which the HFSF has issued a commitment letter and until the completion of the share capital increase, the HFSF:

a) appoints up to two representatives in the Board of Directors of the credit institution;

b) may request from the credit institution any data and information which it considers necessary, e.g. due diligence.

(24) The HFSF's representative in the Board of Directors of the credit institution has the following rights:

a) to call the General Assembly of Shareholders;

b) to veto any decision of the credit institution's Board of Directors:

i. regarding the distribution of dividends and the bonus policy concerning the Chairman, the Managing Director and the other members of the Board of Directors, as well as the general managers and their deputies; or

ii. where the decision in question could seriously compromise the interests of depositors, or impair the credit institution's liquidity or solvency or its overall sound and smooth operation (e.g. business strategy, asset/liability management, etc.);

c) to request an adjournment of any meeting of the credit institution's Board of Directors for three business days, until instructions are given by the HFSF's Executive Board, following consultation with the Bank of Greece;

d) the right to request that the Board of Directors of the credit institution be convened;

e) the right to approve the Economic Director.

([16]) The current capital adequacy requirements of the Bank of Greece are set at 8 %.

(25) In exercising its rights, the HFSF's representative in the Board of Directors must respect the credit institution's business autonomy.

II. BRIDGE RECAPITALISATIONS PROVIDED BY THE HFSF

(26) In view of its participation in the future capital increase of a credit institution that has been deemed viable by the Bank of Greece, the HFSF may advance its contribution (hereinafter "bridge recapitalisation") to such an increase or part thereof, up to the amount specified by the Bank of Greece.

(27) The bridge recapitalisation is paid by the HFSF to the bank in the form of European Financial Stability Fund (EFSF) floating notes with maturities of six and ten years with an issue date of 19 April 2012.

(28) The EFSF notes are deposited into an account of the credit institution with the Bank of Greece exclusively for the purpose of the HFSF participation in the capital increase. The EFSF notes can be used only for the purpose of ensuring liquidity through repurchase transactions with market participants or/and through Euro-system operations.

(29) The terms of the bridge recapitalisation are enshrined into a pre-subscription agreement agreed between the credit institution, the HFSF and the EFSF.

(30) For the period between the date of the bridge recapitalisation and the date of the conversion of the bridge recapitalisation into ordinary shares and other convertible financial instruments (hereinafter "conversion into the final recapitalisation instruments"), the pre-subscription agreement provides that:

a) the bank must pay to the HFSF a 1% annual fee on the nominal value of the EFSF notes;

b) any coupon payments and accrued interest to the EFSF notes for that period will count as additional capital contribution by the HFSF ([17]).

(31) The HFSF grants the bridge recapitalisation following a decision of the Bank of Greece, provided that:

a) The credit institution has submitted to the HFSF an application for capital support, accompanied by a business plan and a detailed timetable;

b) The application for capital support has been approved by the Bank of Greece, while the business plan has been assessed by the Bank of Greece as being viable and credible;

c) The Bank of Greece considers that the bridge recapitalisation is necessary in order for:

i. the credit institution to meet the capital adequacy requirements set up by the Bank of Greece;

ii. the credit institution to maintain access to the monetary policy operations of the Euro-system; and

iii. to ensure the stability of the Greek banking system;

d) The credit institution has agreed with the HFSF and the EFSF a presubscription agreement for the capital increase.

(32) The Minister of Finance, following an opinion of the HFSF, may decide to provide additional corporate governance safeguards until the conversion into the final recapitalisation instruments.

2.3. **Beneficiary**

(33) EFG Eurobank Ergasias Group ("the Group"), composed of EFG Eurobank Ergasias SA and its subsidiaries, is a European banking organisation offering universal banking services across eight countries. The Group offers a full range of banking and financial products and services to households and enterprises. It is active in retail, corporate and private banking, asset management, insurance, treasury, capital markets and other services. EFG Eurobank is incorporated in Greece and its shares are listed on the Athens Stock Exchange. The Group operates mainly in Greece and in Central, Eastern and South-eastern Europe. At the end of 2011, the Group employed 19 156 people, 9 319 in Greece and 9 837 in South Eastern Europe.

(34) The Group participated in the PSI programme exchanging GGBs and other eligible securities of face value of around EUR 7.3 billion. In that framework, the total PSI-impairment charge amounted to around EUR 5.8 billion before tax, entirely booked in 2011 accounts.

(35) The key figures of the Group in December 2010, December 2011 and Q1 of 2012 (consolidated data) are:

Selective Volume figures (EUR million)	31 March 2012	31 December 2011	31 December 2010
Net Interest Income	451	2,039	2,103
Total Operating Income	568	2,456	2,730
Total Operating Expenses	293	1,198	1,280
Pre Provision Income	275	1,258	1,450
Impairment Losses	365	1,333	1,273

([17]) The pre-subscription agreement provided that: "The Effective Risk payable to the Bank shall include the EFSF bonds and any coupon payments and accrued interest to the EFSF bonds for the period from the issuance of the bonds until the conversion of the Advance into share capital and other convertible financial instruments as prescribed herein".

Selective Volume figures (EUR million)	31 March 2012	31 December 2011	31 December 2010
Net Profit/Loss before PSI and one-offs	—	(29)	113
Net Profit/Loss	(236) (*)	(5,508) (**)	68
Total Gross Loans	50,515	51,491	53,412
Total Deposits	31,591	32,459	41,173
Total Assets	73,587	76,822	87,188
Total Equity	482	875	6,094

Source: *EFG Eurobank-Press Release, Full Year 2011Results, p. 5 and 6, available on line at*: http://www.eurobank.gr/Uploads/pdf/AFY2011%20Results%20Press%20Release.pdf *and EFG Eurobank-Press Release, First Quarter 2012 Financial Results p. 4 and 5, available on line at* http://www.eurobank.gr/Uploads/pdf/1Q2012%20Results%20Press%20Release.pdf.

(*) after impairment of GGBs

(**) after PSI and one-offs

2.4. **State recapitalisation already received by the bank**

(36) In May 2009, EFG Eurobank received a capital injection of EUR 950 million, equivalent to around 2 % of its risk weighted assets ("RWA") at the time from the Greek State under the recapitalisation scheme.

(37) The recapitalisation took the form of preference shares subscribed by the State which have a fixed remuneration of 10 %.

2.5. **State liquidity support already received by the bank**

(38) EFG Eurobank has benefited and still benefits from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece". As of 22 May 2012 ([17]), the guarantees granted to the bank amounted to around EUR 17.8 billion. The bank has been allocated around EUR 2.9 billion under the bond loan scheme which, according to the information submitted by the Greek authorities in the mid-term report, has not been granted ([18]). The bank has benefited and still benefits also from the emergency liquidity assistance granted by the Bank of Greece.

3. **DESCRIPTION OF THE AID MEASURE**

(39) Following its participation in the PSI, which was booked retrospectively in the account of the fourth quarter of 2011, the capital of EFG Eurobank diminished significantly.

(40) On 20 April 2012, the HFSF provided a letter committing to participate for an amount of up to EUR 4.2 billion in the planned share capital increase of EFG Eurobank. The commitment for that support would bring the Group's Total Adequacy Ratio above 8 % ([19]) […] (*).

(41) On the basis of the obligation already undertaken in the commitment letter, the HFSF advanced EUR 3.97 billion to EFG Eurobank on 28 May 2012, in line with the provisions for bridge recapitalisations laid down in the HFSF Law. Both the amounts provided in the commitment letter and in the bridge recapitalisation were calculated by the Bank of Greece in order to ensure the bank's compliance with the current capital adequacy requirements. Therefore, in the balance sheet of 31 March 2012, EFG Eurobank registered a capital adequacy ratio of 9 % and a Core Tier 1 of 7.9 %.

(42) The difference of EUR 230 million between the amounts included in the commitment letter and the bridge recapitalisation arises from the fact that the amount in the commitment letter was estimated based on the financial figures of the fourth quarter of 2011, while the amount of bridge recapitalisation was determined based on the financial figures of the first quarter of 2012.

(43) The amount of bridge recapitalisation represents around 9.4% of EFG Eurobank's RWA as of 31 March 2012 ([20]). With the preference shares injected in May 2009, the amount of aid received by EFG Eurobank in forms other than guarantees and liquidity assistance stands at around 11.4 % of the bank's RWA.

4. **THE POSITION OF GREECE**

(44) The Greek authorities acknowledged that the commitment to provide capital to EFG Eurobank contained in the letter provided to the bank constitutes State aid.

([17]) According to the mid-term report on the operation of the guarantee and the bond loan schemes submitted by the Ministry of Finance on 27 June 2012. See recital 38 of the Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2.

([18]) As at 31 December 2011, the special Greek Government bonds borrowed by the Bank matured and were not renewed. See note 4 to the Consolidated Statements for EFG Eurobank, Annual Financial Report for the year ended 31 December 2011.

([19]) See p. 2 of the Director's Report and Note 6 on page 19 of the Notes to the Consolidated Statements for EFG Eurobank, Annual Financial Report for the year ended 31 December 2011 also available online at: http://www.eurobank.gr/Uploads/pdf/REPORT2011tT4%20SITE.PDF.

(*) Confidential information also indicated below by […].

([20]) The amount of RWA as of 31 March 2012 stood at EUR 42.253 billion.

(45) The Greek authorities consider that the measures are compatible with the internal market under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU").

5. ASSESSMENT OF THE AID

5.1. Existence of aid in the form of the commitment letter and bridge recapitalisation

(46) As stated in Article 107(3)(b) TFEU any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(47) The Commission notes that the commitment letter provided by the HFSF on 20 April 2012 firmly commits the HFSF to recapitalise the bank. HFSF receives its resources from the State. The HFSF has a limited duration up to 2017, and so any profit or loss it incurs will eventually be borne by the State. The Commission therefore concludes that the letter commits State resources and that the bridge recapitalisation involves State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by the Law. Accordingly the use of those State resources is imputable to the State.

(48) As regards the existence of an advantage, the commitment letter already granted an advantage to the bank. […]. The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid. The bridge recapitalisation in the form of EFSF notes increased the bank's capital ratio to a level that allows the functioning of the bank on the market and access to Eurosystem operations. Therefore, the bridge recapitalisation also granted an advantage to the bank from State resources.

(49) As a result, the position of the beneficiary was strengthened since the bank was provided with the financial resources to continue to comply with the capital requirements, thus leading to competition distortions. As the bank is active in other European financial markets and as financial institutions from other Member States operate in Greece, the bridge recapitalisation by the HFSF is also likely to affect trade between Member States.

(50) The bridge recapitalisation in essence implements the commitment contained in the HFSF letter to EFG. The Commission considers that the commitment letter and the bridge recapitalisation refer to one and the same measure. The Commission will hereafter refer to 'the measure' and only make reference to the bridge recapitalisation when necessary.

5.2. Compatibility of the aid

5.2.1. *Application of Article 107(3)(b) TFEU*

(51) Article 107(3)(b) TFEU provides for the possibility that State aid can be regarded as compatible with the internal market where it is granted "*to remedy a serious disturbance in the economy of a Member State*".

(52) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. The Commission explained its approach in the Banking Communication ([21]), the Recapitalisation Communication ([22]) and the Restructuring Communication ([23]). The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication in December 2011 ([24]).

(53) In respect to the Greek economy, the Commission has acknowledged in its successive approval of the Greek support schemes for credit institutions that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Such a threat is even greater here as EFG Eurobank is a large bank. Therefore, the legal basis for the assessment of the aid measure should be Article 107(3)(b) TFEU.

5.2.2. *Compatibility of the aid measure under Article 107(3)(b) TFEU*

(54) In line with point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility ([25]):

a) *Appropriateness*: The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b) *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance.

c) *Proportionality*: The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

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

([22]) Commission Communication "Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition", OJ C 10, 15.1.2009, p. 2.

([23]) Commission Communication "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.

([24]) 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.

([25]) See recital 41 of Commission decision in Case NN 51/2008 Guarantee scheme for banks in Denmark, OJ C 273, 28.10.2008, p. 2.

(55) The Recapitalisation Communication elaborates further on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability.

(56) The Commission has doubts on the application of all three criteria i.e. the criteria of "*appropriateness*", "*necessity*" and "*proportionality*".

5.2.3. *Compatibility with the Banking and Recapitalisation Communications*

a. *Appropriateness of the measure*

(57) The measure aims to help the bank to comply with the current regulatory capital requirements of the Bank of Greece, i.e. a total capital adequacy ratio of 8%. In addition, in order to be eligible for Central bank financing a bank has to comply with the regulatory capital requirements. In the present case, the measure helps the bank to remain eligible to obtain Central bank liquidity until the final recapitalisation of the bank takes place.

(58) In that respect, the Commission notes that the bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, EFG Eurobank is a systemically important bank for Greece. Consequently, a default of the bank would create a serious disturbance in the Greek economy. Under the current circumstances where all financial institutions in Greece have difficulties in accessing funding, which limits to a certain extent the provisions of loans to the Greek economy, the disturbance to the economy would be aggravated by such a default. Moreover, the Commission notes that the measure came about mainly as a result of PSI, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the banks. The measure thereby aims to mainly deal with the results of PSI and contribute to maintain financial stability in Greece. For those reasons, the measure would at first seem appropriate.

(59) However, the Commission notes that the aid comes after prior recapitalisations and liquidity aid. The Commission can therefore not treat the aid as rescue aid received for the first time by a company. That context of repeated rescue aid measures requires additional safeguards. The context of a protracted rescue period blurs the distinction between rescue aid - which is normally temporarily approved without the Commission seeking many commitments from the Member State restraining the beneficiary's actions during the rescue period - and restructuring aid which is approved only after a thorough assessment. In particular, the Commission doubts at this stage that all the measures possible have been taken immediately to avoid that the bank again needs aid in the future.

(60) There is no clarity at this stage about who will control the bank in the future once the bridge recapitalisation is replaced by a permanent recapitalisation. The bank may either come under the control of the State or the minority private owners may enjoy control and high leverage. The Commission would wish to ensure that the quality of the bank's management, and notably its lending process, should not deteriorate in either case.

(61) If the bank comes under State control, the bank should not suffer from poor management or mispricing or carry out lending that was not business-oriented. The bank's assessment of credit applications has to include, inter alia, the quality of collateral, the pricing and the solvency of the borrower. If such decisions were no longer taken on the basis of commercial criteria due to, for instance, State interference, it would increase the bank's need for aid (or reduce the remuneration for the shareholder i.e. the State) and endanger the restoration of viability. In light of the poor track record of some State-controlled banks in Greece, additional safeguards might have to be put in place in order to limit the public interference in the day-to-day management of banks, including regarding pricing and lending decisions. In that respect, lending to public companies should be scrutinised and normal commercial practices applied in the assessment of their borrowing capacity. The Commission has doubts, at this stage, whether the current corporate governance framework can limit public interference and coordination (coordination due to the high amounts of State aid provided by the HFSF which thus becomes a shareholder in several banks which may, inter alia, lead to an infringement of the EU rules in mergers and anti-trust).

(62) If, conversely, the majority of the voting rights of the bank were held in the future by an investor which had invested only a limited amount of money and enjoyed call options on the shares held by the State, that investor might be tempted to take excessive risks. In such a scenario, in case of success it would earn a large and disproportionate return thanks to the leverage offered by the call options. The Commission notes that the current situation of the bank already presents such a risk as, while the State has provided all the capital to the bank through the bridge recapitalisation, all the regular shares of the bank are held by its historical shareholders

(63) In conclusion, there is a risk that the way the bank is managed will deteriorate and it could endanger the restoration of viability and preservation of financial stability. In the absence of clarity about who will own and control the bank in the future, the Commission has doubts at this stage that the aid measure is appropriate. The Commission therefore finds it necessary to open the procedure under Article 108(2) TFEU on that new aid in order to collect all the facts from the Greek authorities and allow interested parties to comment.

b. *Necessity – limitation of the aid to the minimum*

(64) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective. Thus the capital injection must be of the minimum amount necessary to reach the objective.

(65) As regards the amount of aid, the Commission notes that it was calculated in order to ensure the bank's compliance with the current capital adequacy requirements of the Bank of Greece. It therefore does not seem to provide the bank with excess capital. However, as indicated above, that aid comes after several other aid measures in the context of a protracted rescue period. In particular, as indicated above, the Commission doubts at this stage that all the measures possible have been taken to avoid that the bank again needs aid in the future.

(66) As regards the remuneration of the aid, the Commission notes that, for the period until the conversion of the bridge recapitalisation into a permanent recapitalisation, the HFSF will receive a fee of 1 % plus the accrued interest on the EFSF notes. It will not receive any shares in the bank. That remuneration is below the range of 7 % to 9 % laid down in the Recapitalisation Communication. At this stage, the duration of the bridge recapitalisation period is uncertain. If it is sufficiently short, the Commission might be able to take into account the specific characteristics of the bridge recapitalisation and the context in which it was granted, and so to accept the lower remuneration. It is indeed recalled that the bridge recapitalisation aims at immediately covering the large capital gap which was the result of the PSI, while leaving some time to the bank to try to raise capital on the market (and thereby reduce the amount of recapitalisation aid which would have to be permanently injected in the bank). Accordingly, the bridge recapitalisation seems acceptable if it is truly a short-term solution to give time to find private investors. However, it would become problematic if it remains in its current form for a long period without being converted. In conclusion, given that at this stage the duration of the bridge recapitalisation is uncertain, the Commission has doubts that its remuneration is sufficient.

(67) The bridge recapitalisation will be converted into a permanent recapitalisation at a later stage. However, as regards the remuneration of the aid once the bridge recapitalisation is converted into a permanent one, the terms of the conversion are still unknown. The Commission can therefore not assess them at this stage. The present decision cannot therefore endorse them and the Greek authorities must notify that measure once the terms of the final recapitalisation are known.

(68) The Commission notes that the bridge recapitalisation does not trigger the dilution of the bank's current shareholders. Until the conversion into the final recapitalisation instruments, the bank's economic and legal ownership does not change. The State does not receive any shares, despite the large size of the recapitalisation (without the State recapitalisation there would be almost no capital left in the bank as a result mainly of the extraordinary consequences triggered by the PSI). While such an arrangement could be acceptable as a temporary measure, to give some time to find private investors, it would not comply with the remuneration and burden-sharing principles under State aid rules if the bridge recapitalisation were to last over a protracted period.

c. *Proportionality – measures limiting negative spill-over effects*

(69) The Commission notes that the bank receives a very large amount of State aid. It is also the case of the three other large privately-owned banks. If one also takes into account the recapitalisations of Agricultural Bank of Greece (ATE) ([26]) and Hellenic Postbank (TT) ([27]), all the domestic large and medium-sized banks in Greece will have received large amount of State aid. That situation may therefore lead to serious distortions of competition. However, it is noted that the need for the bridge recapitalisation stems mainly from the participation in the PSI programme and not from the mismanagement or excessive risk-taking from the existing investors.

(70) As indicated above, the repeated rescue aid granted to the bank means that the new aid cannot be considered as a genuine rescue aid and should be scrutinized in more depth. In addition, more safeguards should be required, taking inspiration from what is required for restructuring aid.

(71) Point 38 of the Banking Communication requires that capital injections should not allow the beneficiary to engage in aggressive commercial strategies. Furthermore, point 37 of the Recapitalisation Communication acknowledges that safeguards may be necessary to prevent aggressive commercial expansion financed by State aid. Under the current approved schemes, Greece has committed that the beneficiary banks will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without consulting with the Commission in advance. The Commission doubts at this stage that those safeguards are sufficient in relation to the bridge recapitalisation under consideration. The Commission invites the beneficiary and third parties to comment on that issue.

(72) The Commission notes that the HFSF has already appointed its representatives in all of the four banks which have received a bridge recapitalisation. The HFSF representatives are different for each bank and the HFSF does not yet have control in the four banks. Nevertheless, the Commission notes that there are no rules in place that prevent the HFSF from carrying out coordination between them. Moreover, adequate safeguards should be in place to ensure that commercially sensitive information is not

([26]) ATE, a State-owned bank was the fifth-largest banking group in Greece in 2011. It has received State aid under the support measures for credit institutions in Greece in the form of recapitalisation, guarantees and bond loans.

([27]) TT was listed on the Athens Stock Exchange in June 2006. It has a network of 146 branches in 65 cities around the country and it operates also in the 850 Hellenic Post offices. The shareholders' structure includes the Greek State which is the biggest shareholder with a participation of 34 % and the Hellenic Post with 10 %. Hellenic Postbank received a State capital injection under the Support scheme for credit institutions in Greece of approximately EUR 225 million.

shared between those undertakings which could lead to distortions of competition. In order to monitor the bank closely, it seems appropriate that the Commission should be able to rely on a monitoring trustee which would be physically present in the bank. The same monitoring trustee might have in its mandate to observe any detrimental changes in the bank's commercial practices, such mispricing, carrying out lending that is not business-oriented or offering unsustainable interest rates on deposits. The Commission invites the beneficiary and third parties to comment.

(73) The Commission notes that the restructuring plan/viability review submitted under State aid cases SA.30342 (PN 26/2010) – "Assessment of the recapitalised Greek banks" and SA.32789 (2011/PN) – "Viability plan of EFG Eurobank" was based on a much lower amount of aid and outdated macro-economic assumptions. For example, it does not include the effect of PSI. Therefore, the Commission requests the Greek authorities that the updated restructuring plan that Greece has to submit three months from the date of the bridge recapitalisation, as also provided under the amended HFSF law, should take account of the large aid amount received, include the new developments and update the measures envisaged by the bank to cope with the new environment.

5.3. **Conclusion**

(74) The Commission has doubts at this stage that the bridge recapitalisation by the HFSF is appropriate, limited to the minimum and proportionate. On that basis, the Commission has doubts whether the aid can be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. It therefore finds it necessary to open the procedure laid down in Article 107(3)(b) TFEU.

(75) At the same time, the Commission notes that the Greek banks are currently operating under extreme conditions. Their participation in the PSI and the deep recession have wiped out banks' capital. Given those totally exceptional circumstances which are not the result of the banks' own mismanagement or excessive risk-taking, the Commission approves the aid in the form of the commitment letter and the bridge recapitalisation for six months from the date of adoption of the current decision.

(76) The Commission recalls that this temporary approval does not cover the conversion of the bridge recapitalisation into the final recapitalisation which the Greek authorities need to notify to the Commission. Upon the receipt of the complete notification of that conversion, if it is received by the Commission within six months from the date of this decision, the duration of that approval will be automatically extended until the Commission reaches a final decision on those terms.

(77) The Commission observes that Greece has to submit a restructuring plan for the bank three months after granting the bridge recapitalisation.

6. **DECISION**

The Commission concludes that the commitment to provide capital to the bank in the HFSF commitment letter and the bridge recapitalisation which took place on 28 May 2012 constitutes State aid pursuant to Article 107(1) TFEU.

The Commission temporarily approves that measure as rescue aid for reasons of financial stability for a period of six months from the date of this decision. If within that period, the Greek authorities submit a complete notification of the conversion of the bridge recapitalisation into a final recapitalisation, then the duration of the approval will be automatically extended until the Commission reaches a final decision on those terms.

Moreover, in the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Greece to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to EFG Eurobank immediately.

The Commission notes that Greece accepts for reasons of urgency that the adoption of the decision be in the English language.

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

RIIGIABI – KREEKA

Riigiabi nr SA.34826 (2012/C) (ex 2012/NN) – Pireuse panga rekapitaliseerimine Kreeka Finantsstabiilsuse Fondi poolt

Kutse märkuste esitamiseks vastavalt Euroopa Liidu toimimise lepingu artikli 108 lõikele 2

(EMPs kohaldatav tekst)

(2012/C 359/05)

Käesoleva kokkuvõtte järel autentses keeles 27. juulil 2012 esitatud kirjas teavitas Euroopa Komisjon Kreekat oma otsusest algatada Euroopa Liidu toimimise lepingu artikli 108 lõikega 2 ette nähtud menetlus seoses eespool nimetatud abi/meetmega.

Komisjon otsustas kiita finantsstabiilsuse tagamise huvides kohustuste võtmise kinnituse ja ajutise rekapitaliseerimise vormis meetme esialgu (kuueks kuuks alates käesoleva otsuse kuupäevast) päästmisabina heaks.

Huvitatud isikud võivad saata oma märkused abi/meetme kohta, mille suhtes komisjon algatab menetluse, ühe kuu jooksul alates käesoleva kokkuvõtte ja sellele järgneva kirja avaldamisest järgmisel aadressil:

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Märkused edastatakse Kreekale. Märkusi esitavad huvitatud isikud võivad kirjalikult taotleda neid käsitlevate andmete konfidentsiaalsust, täpsustades taotluse põhjused.

KOKKUVÕTE

MENETLUS

20. aprillil 2012 edastas Kreeka Finantsstabiilsuse Fond Pireuse pangale (edaspidi „pank") kohustuste võtmise kinnituse vormis lubaduse osaleda panga aktsiakapitali suurendamises. 28. mail 2012 tehti Pireuse pangale ajutise rekapitaliseerimise raames finantssüst. Samasugused kohustuste võtmise kinnitused on saadetud ka Kreeka rahvuspangale (SA. 34824 (2012/NN)), EFG Europangale (SA. 34825 (2012/NN)) ja Alpha pangale (SA. 34823 (2012/NN)), kellele on samuti võimaldatud ajutine rekapitaliseerimine. Kreeka ametiasutused teatasid nendest kohustuste võtmise kinnitustest 10. mail 2012. Kuna meede oli juba rakendatud, registreerisid komisjoni talitused selle teatamata abina numbri SA.34826 (2012/NN) all.

KOMISJONI MENETLUSE ALGATAMISE PÕHJUSEKS OLEVA ABI/MEETME KIRJELDUS

Pireuse pank andis erasektori osaluse [1] raames panuse, mis kirjendati raamatupidamisarvestuses tagasiulatuvalt 2011. aasta neljandas kvartalis, ning seetõttu muutus panga kapital negatiivseks. Kreeka Finantsstabiilsuse Fond saatis 20. aprillil 2012 pangale kinnituse, et osaleb panga kavandatavas aktsiakapitali suurendamises kuni 5 miljardi euro suuruse summaga. […] (*) .2011. aasta lõpus oli kapitali adekvaatsuse määr, mis hõlmas etteulatuvalt juba Kreeka Finantsstabiilsuse Fondi lubatud kapitalitoetust, (arvestuslikult) 9,7 %. Kohustuste võtmise kinnituse alusel tegi finantsstabiilsuse fond Pireuse pangale 28. mail 2012 kooskõlas Kreeka Finantsstabiilsuse Fondi asutamise muudetud seaduses sisalduvate ajutist rekapitaliseerimist käsitlevate sätetega 4,7 miljardi euro suuruse ettemakse (summa määrati kindlaks 2012. aasta esimese kvartali finantsnäitajate põhjal). Kinnituse ja ajutise rekapitaliseerimise raames eraldatud vahendite suuruse arvestas Kreeka rahvuspank nii, et ta oleks suuteline täitma sel ajal kehtivaid kapitali adekvaatsuse nõudeid. Seetõttu oli Pireuse panga bilansis 31. märtsil 2012 kapitali adekvaatsuse määraks 9 % ja esimese taseme põhikapitali osakaaluks 8 %. Ajutise rekapitaliseerimise raames tehtud finantssüsti suurus oli ligikaudu 13,8 % Pireuse panga riskiga kaalutud varade suurusest 31. märtsi 2012. aasta seisuga. Koos 2009. aasta mais ja 2011. aasta detsembris antud eelisaktsiatega on Pireuse pank saanud muud kui tagatise või likviidsusabi vormis antud abi kokku ligikaudu 16,1 % tema riskiga kaalutud varadest.

[1] Erasektori osalus: Kreeka ametiasutuste ja erasektori võlausaldajate kokkulepe, mille eesmärk on saavutada Kreeka valitsemissektori võla osaline kustutamine sellega vabatahtlikult nõustuvate erasektori võlausaldajate poolt. Erasektori osalus on erakorraline meede, mis mõjutab tugevalt Kreeka panku: mitu panka on kandnud selle tõttu kahju.

(*) Konfidentsiaalne teave, mis on ka edaspidi tähistatud nurksulgudega [...].

MEETME/ABI HINDAMINE

Kreeka Finantsstabiilsuse Fondi 20. aprillil 2012 saadetud kohustuste võtmise kinnitus kohustab fondi osalema panga rekapitaliseerimises. Fond saab oma vahendid riigilt ning tingimused, mille alusel ta saab finantseerimisasutusi toetada, on Kreeka õigusaktidega üksikasjalikult kindlaks määratud ja piiratud. Riigi vahendite kasutamist võib seega käsitada riigi meetmena.

Kohustuste võtmise kinnitusega anti pangale juba eelis […]. Ajutise rekapitaliseerimise võimaldamisega 28. mail 2012 rakendati kohustuste võtmise kinnitusega võetud kohustust ja seega kujutab rekapitaliseerimine endast kõnealuse abi jätkamist. Euroopa Finantsstabiilsuse Fondi (EFSF) võlakirjade vormis tehtud ajutise rekapitaliseerimisega suurendati Pireuse panga omavahendite suhtarvu tasemeni, mis võimaldab tal turul toime tulla ja osaleda eurosüsteemi tehingutes. Seega andis ajutine rekapitaliseerimine pangale riiklike vahendite kasutamisest tuleneva eelise.

Tulemuseks oli abisaaja seisundi tugevnemine ja konkurentsi moonutamine, sest abisaaja käsutusse anti rahalisi vahendeid, et ta oleks suuteline täitma kapitalinõudeid. Kuna pank tegutseb ka muudel Euroopa finantsturgudel ja kuna teiste liikmesriikide finantseerimisasutused tegutsevad omakorda Kreekas, mõjutab meede tõenäoliselt ka liikmesriikidevahelist kaubandust.

Meetme hindamise õiguslik alus on Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkt b, millega nähakse ette võimalus käsitada siseturuga kokkusobivana abi „mõne liikmesriigi majanduses tõsise häire kõrvaldamiseks". Komisjon on seisukohal, et tingimused riigiabi heakskiitmiseks Euroopa Liidu toimimise lepingu artikli 107 lõike 3 punkti b alusel on täidetud, sest finantsturgudel on taas täheldatud pingeid ja ebakindlust, ning toetas oma seisukohta pikendusteatise vastuvõtmisega 2011. aasta detsembris. Komisjon on kiitnud järjepidevalt heaks Kreeka toetuskavad krediidiasutuste jaoks ning tunnistanud seega, et Kreeka majandust ohustab tõsine häire ning et riigi toetus pankadele on sellest ülesaamiseks sobiv vahend. Pireuse panga puhul on oht veelgi suurem, sest tegemist on suure pangaga.

Sellegipoolest kahtleb komisjon menetluse praeguses etapis, kas abimeede vastab kokkusobivuse üldkriteeriumidele ehk kas abi on asjakohane, vajalik ja proportsionaalne.

Abi asjakohasuse kohta märgib komisjon, et peamiselt erasektori osaluse kokkuleppes osalemise tõttu vajalikuks osutunud abi eesmärk on tagada panga suutlikkus täita õigusaktidega ettenähtud kapitalinõudeid ja õigus kasutada keskpanga likviidseid vahendeid. Võttes arvesse asjaolu, et Pireuse pank on Kreekas süsteemselt oluline pank ja et meetmega püütakse anda panus Kreeka finantsstabiilsuse taastamisse, näib meede esmapilgul asjakohane. Komisjoni kahtlused siiski püsivad ja tal ei ole praeguses etapis võimalik hinnata, kas kõik meetmed võeti viivitamata, et vältida panga edasist vajadust abi järele. Samuti ei ole praegu selge, kes kontrollib panka, kui ajutine rekapitaliseerimine asendatakse püsiva rekapitaliseerimisega. Ühe võimalusena võib panka kontrollida riik, teise võimalusena võivad seda teha erasektori vähemusaktsionärid, keda toetatakse väljastpoolt tugevalt rahaliste vahenditega. Mõlemal juhul soovib komisjon, et tagatud oleks panga juhtimise ja eelkõige tema laenuandmisprotsessi kvaliteet. Kui panka hakkab näiteks kontrollima riik, ei tohiks pank sattuda halva juhtimise alla, edendada halba hinnapoliitikat või anda laene majanduslikult ebatõhusatel tingimustel. Komisjonil on kahtlus, kas panga praegune üldjuhtimise raamistik suudab piirata riiklikku sekkumist ja riiklikke koordineerimismeetmeid. Seevastu kui Pireuse panga häälteenamus kuuluks tulevikus investorile, kes investeerib panka ainult piiratud hulgal raha ja omandab riigile kuuluvate aktsiate ostuoptsioonid, võiks kõnealune investor tunda kiusatust võtta liigseid riske. Seega võib panga juhtimine halveneda ning tema elujõulisuse taastamise ja finantsstabiilsuse säilitamise püüded võivad sattuda ohtu. Kuna panga tulevase omaniku ja kontrollimehhanismi suhtes puudub selgus, kahtleb komisjon menetluse praeguses etapis abimeetme asjakohasuses ning kutsub Kreeka ametiasutusi, panka ja huvitatud kolmandaid isikuid üles esitama märkusi ja täiendavat teavet.

Ehkki abisumma arvutati välja nii, et pank oleks suuteline täitma kehtivaid kapitali adekvaatsuse nõudeid, oli panka juba eelnevalt pikema aja jooksul mitu korda rekapitaliseeritud. Komisjon kahtleb, kas on võetud kõik võimalikud meetmed vältimaks panga täiendava rekapitaliseerimise vajadust tulevikus ja täitmaks Kreeka teise kohandamiskava majandus- ja rahanduspoliitika memorandumis sisalduvaid kohustusi (mille kohaselt peab pankade esimese taseme omavahendite määr olema 2012. aasta septembris 9 % ja 2013. aasta juunis 10 %). Abimeetmete eest makstava tasu kohta tuleb märkida, et Kreeka Finantsstabiilsuse Fond saab abimeetme eest tasu, mis on väiksem rekapitaliseerimise teatises sätestatud 7–9 %-st. Kui ajutise rekapitaliseerimise kestus on piisavalt lühike, on komisjonil võimalus võtta arvesse sellise rekapitaliseerimise eripära ja selle võimaldamise konteksti ning kiita väiksem tasu selle alusel heaks. Kuna ajutise rekapitaliseerimise kestus ei ole aga praegu keerulise majanduskeskkonna tõttu teada, peab komisjon abi eest makstavat tasu ebapiisavaks. Lisaks sellele ei nõrgenda ajutine rekapitaliseerimine panga praeguste aktsionäride õigusi. Panga majanduslikud ja juriidilised omandisuhted jäävad kuni ajutiselt rekapitaliseerimiselt lõplikule rekapitaliseerimisele üleminekuni praegusel kujul püsima. Seega kui ajutine rekapitaliseerimine toimub pikema ajavahemiku jooksul, ei vasta kõnealune meede riigiabi eeskirjades sätestatud abi eest makstava tasu ja koormuse jagamise tingimustele. Komisjon kutsub üles esitama nende punktide kohta märkusi.

Meetme proportsionaalsuse kohta märgib komisjon, et pank saab suures mahus abi ning see võib viia tõsiste konkurentsimoonutuste tekkeni, võttes arvesse veel ülejäänud kolme suure Kreeka panga rekapitaliseerimist Kreeka Finantsstabiilsuse Fondi poolt. Lähtudes saadud abi suurest mahust ja päästmisperioodi pikkusest, kahtleb komisjon menetluse praeguses etapis, kas seni heakskiidetud kavades sisalduvad kaitsemeetmed, näiteks dividendide maksmise keeld või keeld kasutada ostuoptsioone ilma komisjoniga eelnevalt konsulteerimata, on kõnealuse ajutise rekapitaliseerimise puhul piisavad. Komisjon kutsub Kreeka ametiasutusi, abisaajat ja kolmandaid isikuid üles esitama selle punkti kohta märkusi. Lisaks sellele märgib komisjon, et Kreeka Finantsstabiilsuse Fond on nimetanud kõigis neljas ajutiselt rekapitaliseeritavas pangas oma esindaja, aga seni puuduvad eeskirjad, mis takistaksid fondil kõnealuste pankade vahel teavet

vahetada ja nende tegevust koordineerida. Selleks et pangas toimuvat tähelepanelikult jälgida, peaks komisjonil olema võimalik toetuda seirehaldurile, kes viibiks pangas ja tuvastaks mis tahes ebasoodsad muutused panga äritavades, näiteks halva hinnakujunduse, laenude andmise majanduslikult ebatõhusatel tingimustel või ebareaalsete hoiuseintresside pakkumise. Komisjon kutsub abisaajat ja kolmandaid isikuid üles esitama märkusi ka selle punkti kohta.

Vastavalt nõukogu määruse (EÜ) nr 659/1999 artiklile 14 võib ebaseaduslikult antud abi selle saajalt tagasi nõuda.

KIRJA TEKST

„The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to temporarily approve the measure in the form of a commitment letter and bridge recapitalisation as rescue aid and to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU") in regard to that measure.

1. **PROCEDURE**

(1) In May 2009, Piraeus Bank ("the bank") was recapitalised under the recapitalisation scheme which is part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 ([2]).

(2) Recital 14 of the decision of 19 November 2008 provided that a restructuring plan needed to be notified to the Commission for the beneficiaries of that recapitalisation scheme. The extent of the restructuring plan for each bank depended on that bank's individual situation.

(3) A plan was submitted to the European Commission by the Greek authorities on 23 July 2010 describing the bank's programme for ensuring long-term viability under the macro-economic assumptions which were relevant at that point in time. That plan, its subsequent updates as well as additional information submitted by the Greek authorities were administratively registered by the Commission services under case SA. 30342 (PN 26/2010) and then SA. 32787 (2011/PN).

(4) On 28 December 2011, the Commission approved a second recapitalisation for Piraeus Bank ([3]).

(5) Piraeus Bank has also benefited from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 and subsequently prolonged and amended ([4]).

(6) On 20 April 2012, the Hellenic Financial Stability Fund provided Piraeus Bank with a commitment letter to participate in the share capital increase of the bank. On 28 May 2012, a bridge recapitalisation of Piraeus Bank was implemented.

(7) Similar commitment letters have been sent and bridge recapitalisations granted to Alpha Bank (SA. 34823 (2012/NN)), National Bank of Greece (SA. 34824 (2012/NN)) and EFG Eurobank (SA. 34825 (2012/NN)). On 10 May 2012, the Greek authorities formally notified to the Commission the commitment letters provided to Piraeus Bank (and the other banks) in line with recital 43 of the Commission decision of 6 February 2012. ([5]) As the measure had already been taken, the Commission services registered as non-notified aid under case SA. 34826 (2012/NN).

([2]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6. It was attributed the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended (see below under footnote 3).

([3]) See Commission Decision of 28 December 2011 in State aid SA.34122 (2011/N) "*Second recapitalisation of Piraeus Bank under the Greek recapitalisation scheme*", recital 16, OJ C 101, 04.04.2012, p. 1.

([4]) On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (See Commission decision of 18 September 2009 in State Aid N 504/2009 "*Prolongation and amendment of the Support Measures for the Credit Institutions in Greece*", OJ C 264, 06.11.2009, p. 5). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (See Commission decision of 25 January 2010 in State Aid N 690/2009 "*Prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 57, 09.03.2010, p. 6). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (See Commission decision of 30 June 2010 in State Aid N 260/2010 "*Extension of the Support Measures for the Credit Institutions in Greece*", OJ C 238, 03.09.2010, p. 3.). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2010 (See Commission decision of 21 December 2010 in State aid SA 31998 (2010/N) "*Fourth extension of the Support measures for the credit Institutions in Greece*", OJ C 53, 19.02.2011, p. 2). On 4 April 2011 the Commission approved an amendment (See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "*Amendment to the Support Measures for the Credit Institutions in Greece*", OJ C 164, 02.06.2011, p. 8). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (See Commission decision of 27 June 2011 in State aid SA.33153 (2011/N) "*Fifth prolongation of the Support measures for the credit Institutions in Greece*", OJ C 274, 17.09.2011, p. 6). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (See Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (See Commission decision of 6 July 2012 in State aid SA.35002 (2012/N) "*Seventh prolongation of the Support Scheme for Credit Institutions in Greece*", not yet published.

([5]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)", OJ C 101, 04.04.2012, p. 2. Recital 43 of the decision provides that the Greek authorities will '*notify individually any recapitalisation of a bank which has already received a recapitalisation from the State in the current crisis. The Commission notes that commitment will allow it to assess individually recapitalisation of banks which receive successive aid. It is important, as, in such cases, it has to be assessed more in detail whether an additional recapitalisation of the bank is the best option to preserve financial stability and limit distortions of competition. In such cases of successive aid, it has also to be verified whether the recapitalisation instrument and remuneration to be used by the HFSF are still appropriate*'.

(8) The Commission notes that Greece accepts that the adoption of the decision be in the English language.

2. DESCRIPTION

2.1. General context of the Greek banking sector

(9) As regards the performance of their assets and resulting capital needs, the Greek banks face the double challenge of high losses on their holding of Greek government bonds (GGBs) and a deep and protracted recession which has given rise to a rapidly raising default rate on loans to Greek households and companies ([6]).

(10) Greek banks have participated in the private sector bond exchange, known as Private Sector Involvement – PSI. The first decision on the PSI, envisaging a 21 % write-down on GGBs, was taken in the European Council of 21 July 2011. PSI II was put forward by the Euro-area Member States on 26 October 2011 and envisaged a bond exchange with a nominal discount of around 50 % on notional Greek debt held by private investors. In February 2012, Greece put in place PSI II and announced the results on 9 May 2012. The debt exchange resulted in significant additional losses and capital needs for the Greek banks. At that time, Euro-area Member States decided that additional financing to Greece would include the recapitalisation of Greek banks ([7]).

(11) As regards the liquidity position of the Greek banks, it has continued to tighten. Domestic deposits decreased markedly in 2011 (– 18 %) due to recession and political uncertainty. As Greek banks are shut out from wholesale funding markets, they are entirely dependent on Central Bank financing, a growing portion of which is in the form of emergency liquidity assistance.

(12) Since the Greek banks were expected to face substantial capital shortfalls as a result of the PSI II and the continuing recession, the Memorandum of Economic and Financial Policies of the Second Adjustment Programme for Greece between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 11 March 2012 has made available funds for the banks' recapitalisation. Total bank recapitalisation needs and resolution costs to be financed under that programme are estimated at EUR 50 billion ([8]). An amount of EUR 25 billion was made available upfront to deal with recapitalisation needs arising from PSI and the estimated funding gap due to resolutions ([9]). The funds are available through the Hellenic Financial Stability Fund.

(13) According to the Memorandum of Economic and Financial Policies, "banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimizes the burden for taxpayers" ([10]). The recapitalisation of the Greek banking sector has to be carried out by the end of September 2012, in order for banks to comply with a Core Tier 1 ratio of 9 % by September 2012 and of 10 % by June 2013.

2.2. Description of the Schemes put in place by greece during the financial crisis

2.2.1. *Description of the Support Measures for the Credit Institutions in Greece introduced in 2008*

(14) On 19 November 2008, the Commission approved the "Support Measures for the Credit Institutions in Greece" ([11]) designed to ensure the stability of the Greek financial system. The Greek package of State aid measures for credit institutions included (i) a recapitalisation scheme, (ii) a guarantee scheme, and (iii) a government bond loan scheme. The Commission subsequently approved amendments to those measures and prolonged them several times ([12]).

2.2.2. *Description of the recapitalisation scheme for credit institutions in Greece under the Hellenic Financial Stability Fund*

(15) The Memorandum of Understanding on Specific Economic Policy Conditionality between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 3 May 2010 provided for the establishment of the Hellenic Financial Stability Fund (HFSF). The objective of the HFSF is to safeguard the stability of the Greek banking system by providing equity capital to credit institutions ([13]). On 3 September 2010, the Commission approved the HFSF as a recapitalisation scheme in line with the rules on support schemes for the financial sector during the crisis ([14]) and prolonged it several times ([15]). The Commission approved the most recent prolongation of the HFSF recapitalisation scheme

([6]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 17, available online at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf.

([7]) See the Euro Summit Statement of 26 October 2011, point 12, available online at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf.

([8]) European Commission-Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 106.

([9]) International Monetary Fund, *Greece: Request for Extended Arrangement Under the Extended Fund Facility - Staff Report*, IMF Country Report No. 12/57, 16 March 2012, p. 28, available online at http://www.imf.org/external/pubs/ft/scr/2012/cr1257.pdf.

([10]) European Commission-Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 104.

([11]) See Commission decision of 19 November 2008 in State Aid N 560/2008 "*Support Measures for the Credit Institutions in Greece*", OJ C 125, 05.06.2009, p. 6.

([12]) See footnote 4.

([13]) HFSF operates in parallel with the Recapitalisation Scheme. The other new role of the HFSF is to provide capital support to transitional credit institutions established under the resolution framework in Greece (Article 63 of Law 3601/2007). The HFSF's role in the resolution process was not subject to the Commission's approval.

([14]) See Commission Decision of 3 September 2010 in State aid Case N 328/2010, "*Recapitalisation of Credit Institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 316, 20.11.2010, p. 7.

([15]) See Commission Decision of 14 December 2010 under State aid case SA.31999 (2010/N), "*Prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 62, 26.02.2011, p. 16. See Commission decision of 27 June 2011 in State Aid case SA.33154 (2010/N), "*Second prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 244, 23.08.2011, p. 2.

on 6 February 2012 until 30 June 2012 ([16]). The HFSF Law has subsequently been amended as regards the recapitalisation scheme. The provisions referred to below were in place when the commitment letter was sent and the bridge recapitalisation took place. Since the later amendments were adopted after the date of the Commission's most recent decision on the HFSF recapitalisation scheme, they were not part of the Commission's approval at the time.

Provisions of the HFSF Law

(16) A credit institution whose viability has been confirmed by the Bank of Greece may submit a request to the HFSF for capital support, following an instruction from the Bank of Greece.

(17) A credit institution's request for the provision of capital support must be accompanied by the following documents:

a) a business plan, that shows how the credit institution will ensure viability for the next three to five years under conservative/prudent assumptions and that has been assessed as sustainable and credible by the Bank of Greece, establishing the amount of the required capital support and detailing the measures that the credit institution intends to take so as to safeguard and strengthen its solvency as soon as possible, in particular by increasing its capital (including through capital support from the HFSF), sale of parts of the credit institution, and/or restoring its profitability through cost-cutting, reducing risks or securing support from other companies within its group; and

b) a detailed timetable for the implementation of the measures described in the business plan.

(18) Following the finalisation of the terms and conditions of the share capital increase, the HFSF will provide capital support in compliance with the EU State aid legislation.

(19) The credit institution must prepare a detailed restructuring plan or amend the plan already submitted to the European Commission, in accordance with the applicable EU State aid rules. The restructuring plan will be approved by the HFSF. Within three months from the provision of capital support, the Ministry of Finance must submit the restructuring plan to the European Commission for approval.

(20) The implementation period of the restructuring plan may not exceed three years. An extension of up to two years may be granted by decision of the HFSF, following consultation with the Bank of Greece and subject to approval by the European Commission.

(21) Until the share capital increase is finalised, the relevant HFSF legal framework specifies that the HFSF may provide two temporary solutions as capital support:

I. A commitment letter;

II. A bridge recapitalisation.

I. **COMMITMENT LETTERS PROVIDED BY THE HFSF**

(22) The HFSF, upon a decision of the Bank of Greece, may provide a credit institution with a letter stating that it will participate in that bank's share capital increase (hereinafter "commitment letter"). That credit institution (i) has to be assessed as viable by the Bank of Greece and (ii) has to submit a request for capital support to the HFSF.

(23) The HFSF provides the commitment letter on condition that:

a) the business plan of the credit institution has been assessed as viable and credible by the Bank of Greece,

b) the request for capital support has been approved by the Bank of Greece,

c) the Bank of Greece has considered that the provision of that letter is necessary for the credit institution:

i. to continue operating on a going concern basis;

ii. to meet the current capital adequacy requirements set up by the Bank of Greece ([17]); and

iii. to maintain the financial stability of the Greek banking system.

(24) For a credit institution for which the HFSF has issued a commitment letter and until the completion of the share capital increase, the HFSF:

a) appoints up to two representatives in the Board of Directors of the credit institution;

b) may request from the credit institution any data and information which it considers necessary, e.g. due diligence.

(25) The HFSF's representative in the Board of Directors of the credit institution has the following rights:

a) to call the General Assembly of Shareholders;

b) to veto any decision of the credit institution's Board of Directors:

i. regarding the distribution of dividends and the bonus policy concerning the Chairman, the Managing Director and the other members of the Board of Directors, as well as the general managers and their deputies; or

ii. where the decision in question could seriously compromise the interests of depositors, or impair the credit institution's liquidity or solvency or its overall sound and smooth operation (e.g. business strategy, asset/liability management, etc.);

([16]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) *"Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)"*, OJ C 101, 04.04.2012, p. 2.

([17]) The current capital adequacy requirements of the Bank of Greece are set at 8 %.

c) to request an adjournment of any meeting of the credit institution's Board of Directors for three business days, until instructions are given by the HFSF's Executive Board, following consultation with the Bank of Greece;

d) the right to request that the Board of Directors of the credit institution be convened;

e) the right to approve the Economic Director.

(26) In exercising its rights, the HFSF's representative in the Board of Directors must respect the credit institution's business autonomy.

II. **BRIDGE RECAPITALISATIONS PROVIDED BY THE HFSF**

(27) In view of its participation in the future capital increase of a credit institution that has been deemed viable by the Bank of Greece, the HFSF may advance its contribution (hereinafter "bridge recapitalisation") to such an increase or part thereof, up to the amount specified by the Bank of Greece.

(28) The bridge recapitalisation is paid by the HFSF to the bank in the form of European Financial Stability Fund (EFSF) floating notes with maturities of six and ten years with an issue date of 19 April 2012.

(29) The EFSF notes are deposited into an account of the credit institution with the Bank of Greece exclusively for the purpose of the HFSF participation in the capital increase. The EFSF notes can be used only for the purpose of ensuring liquidity through repurchase transactions with market participants or/and through Euro-system operations.

(30) The terms of the bridge recapitalisation are enshrined into a pre-subscription agreement agreed between the credit institution, the HFSF and the EFSF.

(31) For the period between the date of the bridge recapitalisation and the date of the conversion of the bridge recapitalisation into ordinary shares and other convertible financial instruments (hereinafter "conversion into the final recapitalisation instruments"), the pre-subscription agreement provides that:

a) the bank must pay to the HFSF a 1 % annual fee on the nominal value of the EFSF notes;

b) any coupon payments and accrued interest to the EFSF notes for that period will count as additional capital contribution by the HFSF ([18]).

(32) The HFSF grants the bridge recapitalisation following a decision of the Bank of Greece, provided that:

a) The credit institution has submitted to the HFSF an application for capital support, accompanied by a business plan and a detailed timetable;

b) The application for capital support has been approved by the Bank of Greece, while the business plan has been assessed by the Bank of Greece as being viable and credible;

c) The Bank of Greece considers that the bridge recapitalisation is necessary in order for:

i. the credit institution to meet the capital adequacy requirements set up by the Bank of Greece;

ii. the credit institution to maintain access to the monetary policy operations of the Euro-system; and

iii. to ensure the stability of the Greek banking system;

d) The credit institution has agreed with the HFSF and the EFSF a presubscription agreement for the capital increase.

(33) The Minister of Finance, following an opinion of the HFSF, may decide to provide additional corporate governance safeguards until the conversion into the final recapitalisation instruments.

2.3. **Beneficiary**

(34) Piraeus Bank, the parent company of the Group, was founded in 1916 and is the fourth-largest bank in Greece. The bank provides a complete range of banking services and is specialized in SMEs, retail banking, e-banking and capital markets. In June 2000, the bank absorbed Xiosbank and Macedonia-Thrace Bank, while in December 2003 it also absorbed ETBA bank, thus creating one of the largest private banks in Greece. The bank's stocks have been listed in the Athens Stock Exchange (ATHEX) since 1918.

(35) Piraeus Bank Group has an international presence, focused in South-Eastern Europe and the Eastern Mediterranean but also in London and New York. At the end of December 2011, Piraeus Group had 797 branches, 346 of which were in Greece and 451 in 8 countries abroad. Piraeus Group employed 11,246 people, 6,171 in Greece and 5,075 abroad.

(36) Piraeus Group participated in the PSI programme with all eligible bonds and loans it owned, whose nominal value amounted to EUR 7,7 billion. In that framework, the total PSI-impairment charge amounted to EUR 5,9 billion, entirely booked in 2011 accounts.

(37) The key figures of Piraeus Group in December 2011 (consolidated data) are as follows:

([18]) The pre-subscription agreement provided that: "*The Effective Risk payable to the Bank shall include the EFSF bonds and any coupon payments and accrued interest to the EFSF bonds for the period from the issuance of the bonds until the conversion of the Advance into share capital and other convertible financial instruments as prescribed herein*".

	31 December 2011	31 December 2010	Δ % y-o-y
Selective Volume Figures (EUR mil)			
Assets	49,352	57,561	– 14 %
— Assets from Discontinued Operations in Egypt (for sale)	1,157	1,703	– 32 %
Gross Loans	37,058	38,218	– 3 %
Deposits & Retail Bonds	22,038	28,675	– 23 %
Total Equity	(1,940)	3,274	> – 100 %
Total Equity excluding PSI in 2011	3,209	3,274	– 2 %
Summary Results (EUR mil)			
Net Interest Income	1,173	1,188	– 1 %
Net Fee & Commission Income	190	188	1 %
Trading Results	(110)	9	> – 100 %
Other Income & Dividend Income	(41)	91	> – 100 %
Total Net Revenues	**1,213**	**1,477**	**– 18 %**
Total Operating Costs	**(796)**	**(837)**	**– 5 %**
— o/w Greece	(560)	(597)	– 6 %
Profit before Tax & Provisions	**385**	**635**	**– 39 %**
Organic (*) Profit before Tax & Provisions	**592**	**638**	**– 7 %**
Provisions and impairments	**(7,884)**	**(611)**	**– 92 %**
Profit/(Loss) after tax	**(6,618)**	**(21)**	**– 99 %**

(*) excluding both trading results and the loss from the valuation at fair value of Citylink investment property
Source: *Piraeus Bank, Presentation of the Full Year 2011 Results, p.3, available online at http://www.piraeusbank.gr/ecPage.asp?id=233460&lang=2&nt=103&sid=&fid=233458*
Piraeus Bank, 12M Financial Statements Information of Piraeus Bank Group & Piraeus Bank, available online at: http://www.piraeusbank.gr/Documents/internet/ConsolidatedCo2011/12m_Group_en.pdf.

(38) The key figures of Piraeus Group for Q1 2012 are as follows:

	Q1 2012 (data excl. Egypt)
Selective Volume Figures (EUR mil)	
Total Assets	46,406
— Assets from Discontinued Operations in Egypt (for sale)	1,088
Gross Loans	35,860
Total Deposits	20,905
Total Equity (inc. advance by HFSF)	3,047
Summary Results (EUR mil)	
Net Interest Income	236

	Q1 2012 (data excl. Egypt)
Net Fee & Commission Income	43
Net Revenues	392
Operating costs	174
Profit before Tax and Impairment	**217**
Provision Expense (Loans, PSI, Other Assets)	296
Profit before tax	– 80
Net Profit/Loss after tax attributable to shareholders	298
Key Ratios	
Net Loan/Deposits	158 %
Total Capital Adequacy Ratio(incl. advance by HFSF)	**9 %**

Source: *Piraeus Bank - Financial Highlights of the Group, available online at http://www.piraeusbank.gr/ecPage.asp?id=301354&lang=2&nt=96&sid=&fid=233555.*

2.4. **State recapitalisations already received by the bank**

(39) In May 2009, Piraeus Bank received a capital injection of EUR 370 million, equivalent to 1,2 % of its risk weighted assets ("RWA") at the time from the Greek State under the recapitalisation scheme.

(40) On 28 December 2011, the Commission approved a second recapitalisation of EUR 380 million in favour of Piraeus Bank, equivalent to around 1,1 % of RWA ([19]). The second recapitalisation was carried out from the Greek State under the recapitalisation scheme and was notified to the Commission in compliance with the obligation to notify any second capital injection.

(41) When added to the EUR 370 million received in 2009, the total of those two recapitalisations is equivalent to around 2,1 % of RWA or about 2,3 % if the 2009 recapitalisation is compared to the then-lower RWA.

(42) The recapitalisations took the form of preference shares subscribed by the State which have a fixed remuneration of 10 %.

2.5. **State liquidity support already received by the bank**

(43) Piraeus Bank has benefited and still benefits from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece". As of 22 May 2012 ([20]), the guarantees granted to Piraeus Bank amounted to around EUR 13,5 billion and the bond loans to about EUR 0,4 billion. The bank has benefited and still benefits also from the emergency liquidity assistance granted by the Bank of Greece.

3. **DESCRIPTION OF THE AID MEASURE**

(44) Following its participation in the PSI, which was booked retrospectively in the account of the fourth quarter of 2011, the capital of Piraeus Bank turned negative.

(45) On 20 April 2012, the HFSF provided a letter committing to participate for an amount of up to EUR 5 billion in the planned share capital increase of Piraeus Bank ([21]). […] (*). The capital adequacy ratio at end-2011 already included the retroactive effect of the capital support included in the HFSF commitment letter, thus reaching 9,7 % (pro-forma) ([22]).

(46) On the basis of the obligation already undertaken in the commitment letter, the HFSF advanced EUR 4,7 billion to Piraeus Bank on 28 May 2012 ([23]), in line with the provisions for bridge recapitalisations laid down in the HFSF Law. Both the amounts provided in the commitment letter and in the bridge recapitalisation were calculated by the Bank of Greece in order to ensure the bank's compliance with the current capital adequacy requirements. Therefore, in the balance sheet of 31 March 2012, Piraeus Bank registered a capital adequacy ratio of 9 % and a Core Tier 1 of 8 %.

([19]) See Commission Decision of 28 December 2011 in State aid SA.34122 (2011/N) "*Second recapitalisation of Piraeus Bank under the Greek recapitalisation scheme*", recital 16, OJ C 101, 04.04.2012, p. 1.

([20]) According to the mid-term report on the operation of the guarantee and the bond loan schemes submitted by the Ministry of Finance on 27 June 2012. See recital 38 of the Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2.

([21]) See Piraeus Bank Group, *Consolidated Financial Statements – 31 December 2011*, chapter 2.1. – Basis of preparation of the consolidated financial statements, p. 8, available online at http://www.piraeusbank.gr/Documents/intemet/ConsolidatedCo2011/12M_en.pdf.

(*) Confidential information, also indicated below by […]

([22]) See Piraeus Bank Group, *Annual Financial Report 2011 - Board of Directors' Management Report*, p. 5, available online at http://www.piraeusbank.gr/Documents/internet/ConsolidatedCo2011/12M_en.pdf.

([23]) See Piraeus Bank Group, *Consolidated Interim Condensed Financial Information, 31 March 2012*, p. 7, available online at http://www.piraeusbank.gr/Documents/internet/ConsolidatedCo2012/3M_Group_ENG.pdf.

(47) The difference of EUR 300 million between the amounts included in the commitment letter and the bridge recapitalisation arises from the fact that the amount in the commitment letter was estimated based on the financial figures of the fourth quarter of 2011, while the amount of bridge recapitalisation was determined based on the financial figures of the first quarter of 2012.

(48) The amount of bridge recapitalisation represents around 13,8 % of Piraeus Bank's RWA as of 31 March 2012 ([24]). With the preference shares injected in May 2009 and December 2011, the amount of aid received by Piraeus Bank in forms other than guarantees and liquidity assistance stands at around 16,1 % of the bank's RWA.

4. THE POSITION OF GREECE

(49) The Greek authorities acknowledged that the commitment to provide capital to Piraeus bank contained in the letter provided to the bank constitutes State aid.

(50) The Greek authorities consider that the measures are compatible with the internal market under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU").

5. ASSESSMENT OF THE AID

5.1. Existence of aid in the form of the commitment letter and bridge recapitalisation

(51) As stated in Article 107(3)(b) TFEU any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(52) The Commission notes that the commitment letter provided by the HFSF on 20 April 2012 firmly commits the HFSF to recapitalise the bank. HFSF receives its resources from the State. The HFSF has a limited duration up to 2017, and so any profit or loss it incurs will eventually be borne by the State. The Commission therefore concludes that the letter commits State resources and that the bridge recapitalisation involves State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by the Law. Accordingly the use of those State resources is imputable to the State.

(53) As regards the existence of an advantage, the commitment letter already granted an advantage to the bank. […]. The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid. The bridge recapitalisation in the form of EFSF notes increased the bank's capital ratio to a level that allows the functioning of the bank on the market and access to Eurosystem operations. Therefore, the bridge recapitalisation also granted an advantage to the bank from State resources.

(54) As a result, the position of the beneficiary was strengthened since the bank was provided with the financial resources to continue to comply with the capital requirements, thus leading to competition distortions. As the bank is active in other European financial markets and as financial institutions from other Member States operate in Greece, the bridge recapitalisation by the HFSF is also likely to affect trade between Member States.

(55) The bridge recapitalisation in essence implements the commitment contained in the HFSF letter to Piraeus Bank. The Commission considers that the commitment letter and the bridge recapitalisation refer to one and the same measure. The Commission will hereafter refer to 'the measure' and only make reference to the bridge recapitalisation when necessary.

5.2. Compatibility of the aid

5.2.1. *Application of Article 107(3)(b) TFEU*

(56) Article 107(3)(b) TFEU provides for the possibility that State aid can be regarded as compatible with the internal market where it is granted "*to remedy a serious disturbance in the economy of a Member State*".

(57) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. The Commission explained its approach in the Banking Communication ([25]), the Recapitalisation Communication ([26]) and the Restructuring Communication ([27]). The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication in December 2011 ([28]).

(58) In respect to the Greek economy, the Commission has acknowledged in its successive approval of the Greek support schemes for credit institutions that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Such a threat is even greater here as Piraeus is a large bank. Therefore, the legal basis for the assessment of the aid measure should be Article 107(3)(b) TFEU.

([24]) The amount of RWA as of 31 March 2012 stood at EUR 34,026 billion. See *Piraeus Bank – Presentation of 1st Quarter 2012 Financial Results*, 30 May 2012, p. 4, available online at: http://www.piraeusbank.gr/Documents/intemet/Group_Presentations/2012/Q1_Results_Presentation_en.pdf.

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

([26]) Commission Communication "Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition", OJ C 10, 15.1.2009, p. 2.

([27]) Commission Communication "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.

([28]) 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.

5.2.2. *Compatibility of the aid measure under Article 107(3)(b) TFEU*

(59) In line with point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility ([29]):

a) *Appropriateness:* The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b) *Necessity:* The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance.

c) *Proportionality:* The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(60) The Recapitalisation Communication elaborates further on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability.

(61) The Commission has doubts on the application of all three criteria i.e. the criteria of "*appropriateness*", "*necessity*" and "*proportionality*".

5.2.3. *Compatibility with the Banking and Recapitalisation Communications*

a. *Appropriateness of the measure*

(62) The measure aims to help the bank to comply with the current regulatory capital requirements of the Bank of Greece, i.e. a total capital adequacy ratio of 8 %. In addition, in order to be eligible for Central bank financing a bank has to comply with the regulatory capital requirements. In the present case, the measure helps the bank to remain eligible to obtain Central bank liquidity until the final recapitalisation of the bank takes place.

(63) In that respect, the Commission notes that the bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, Piraeus Bank is a systemically important bank for Greece. Consequently, a default of the bank would create a serious disturbance in the Greek economy. Under the current circumstances where all financial institutions in Greece have difficulties in accessing funding, which limits to a certain extent the provisions of loans to the Greek economy, the disturbance to the economy would be aggravated by such a default. Moreover, the Commission notes that the measure came about mainly as a result of PSI, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the banks. The measure thereby aims to mainly deal with the results of PSI and contribute to maintain financial stability in Greece. For those reasons, the measure would at first seem appropriate.

(64) However, the Commission notes that the aid comes after prior recapitalisations and liquidity aid. The Commission can therefore not treat the aid as rescue aid received for the first time by a company. That context of repeated rescue aid measures requires additional safeguards. The context of a protracted rescue period blurs the distinction between rescue aid - which is normally temporarily approved without the Commission seeking many commitments from the Member State restraining the beneficiary's actions during the rescue period - and restructuring aid which is approved only after a thorough assessment. In particular, the Commission doubts at this stage that all the measures possible have been taken immediately to avoid that the bank again needs aid in the future.

(65) There is no clarity at this stage about who will control the bank in the future once the bridge recapitalisation is replaced by a permanent recapitalisation. The bank may come under the control of the State or the minority private owners may enjoy control and high leverage. The Commission would wish to ensure that the quality of the bank's management, and notably its lending process, should not deteriorate in either case.

(66) If the bank comes under State control, the bank should not suffer from poor management or mispricing or carry out lending that was not business-oriented. The bank's assessment of credit applications has to include, inter alia, the quality of collateral, the pricing and the solvency of the borrower. If such decisions were no longer taken on the basis of commercial criteria due to, for instance, State interference, it would increase the bank's need for aid (or reduce the remuneration for the shareholder i.e. the State) and endanger the restoration of viability. In light of the poor track record of some State-controlled banks in Greece, additional safeguards might have to be put in place in order to limit the public interference in the day-to-day management of banks, including regarding pricing and lending decisions. In that respect, lending to public companies should be scrutinised and normal commercial practices applied in the assessment of their borrowing capacity. The Commission has doubts, at this stage, whether the current corporate governance framework can limit public interference and coordination (coordination due to the high amounts of State aid provided by the HFSF which thus becomes a shareholder in several banks which may, inter alia, lead to an infringement of the EU rules in mergers and anti-trust).

(67) If, conversely, the majority of the voting rights of the bank were held in the future by an investor which had invested only a limited amount of money and enjoyed call options on the shares held by the State, that investor might be tempted to take excessive risks. In such a scenario, in case of success it would earn a large and disproportionate return thanks to the leverage offered by the call options. The Commission notes that the current situation of the bank already presents such a risk as, while the State has provided all the capital to the bank through the bridge recapitalisation, all the regular shares of the bank are held by its historical shareholders.

([29]) See recital 41 of Commission decision in Case NN 51/2008 Guarantee scheme for banks in Denmark, OJ C 273, 28.10.2008, p. 2.

(68) In conclusion, there is a risk that the way the bank is managed will deteriorate and it could endanger the restoration of viability and preservation of financial stability. In the absence of clarity about who will own and control the bank in the future, the Commission has doubts at this stage that the aid measure is appropriate. The Commission therefore finds it necessary to open the procedure under Article 108(2) TFEU on that new aid in order to collect all the facts from the Greek authorities and allow interested parties to comment.

b. *Necessity – limitation of the aid to the minimum*

(69) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective. Thus the capital injection must be of the minimum amount necessary to reach the objective.

(70) As regards the amount of aid, the Commission notes that it was calculated in order to ensure the bank's compliance with the current capital adequacy requirements of the Bank of Greece. It therefore does not seem to provide the bank with excess capital. However, as indicated above, that aid comes after several other aid measures in the context of a protracted rescue period. In particular, as indicated above, the Commission doubts at this stage that all the measures possible have been taken to avoid that the bank again needs aid in the future.

(71) As regards the remuneration of the aid, the Commission notes that, for the period until the conversion of the bridge recapitalisation into a permanent recapitalisation, the HFSF will receive a fee of 1 % plus the accrued interest on the EFSF notes. It will not receive any shares in the bank. That remuneration is below the range of 7 % to 9 % laid down in the Recapitalisation Communication. At this stage, the duration of the bridge recapitalisation period is uncertain. If it is sufficiently short, the Commission might be able to take into account the specific characteristics of the bridge recapitalisation and the context in which it was granted, and so to accept the lower remuneration. It is indeed recalled that the bridge recapitalisation aims at immediately covering the large capital gap which was the result of the PSI, while leaving some time to the bank to try to raise capital on the market (and thereby reduce the amount of recapitalisation aid which would have to be permanently injected in the bank). Accordingly, the bridge recapitalisation seems acceptable if it is truly a short-term solution to give time to find private investors. However, it would become problematic if it remains in its current form for a long period without being converted. In conclusion, given that at this stage the duration of the bridge recapitalisation is uncertain, the Commission has doubts that its remuneration is sufficient.

(72) The bridge recapitalisation will be converted into a permanent recapitalisation at a later stage. However, as regards the remuneration of the aid once the bridge recapitalisation is converted into a permanent one, the terms of the conversion are still unknown. The Commission can therefore not assess them at this stage. The present decision cannot therefore endorse them and the Greek authorities must notify that measure once the terms of the final recapitalisation are known.

(73) The Commission notes that the bridge recapitalisation does not trigger the dilution of the bank's current shareholders. Until the conversion into the final recapitalisation instruments, the bank's economic and legal ownership does not change. The State does not receive any shares, despite the large size of the recapitalisation (without the State recapitalisation there would be no capital left in the bank as a result, mainly, of the extraordinary circumstances triggered by the PSI). While such an arrangement could be acceptable as a temporary measure, to give some time to find private investors, it would not comply with the remuneration and burden-sharing principles under State aid rules if the bridge recapitalisation were to last over a protracted period.

c. *Proportionality – measures limiting negative spill-over effects*

(74) The Commission notes that the bank receives a very large amount of State aid. It is also the case of the three other large privately-owned banks. If one also takes into account the recapitalisations of Agricultural Bank of Greece (ATE) ([30]) and Hellenic Postbank (TT) ([31]), all the domestic large and medium-sized banks in Greece will have received large amount of State aid. That situation may therefore lead to serious distortions of competition. However, it is noted that the need for the bridge recapitalisation stems mainly from the participation in the PSI programme and not from the mismanagement or excessive risk taking from existing investors.

(75) As indicated above, the repeated rescue aid granted to the bank means that the new aid cannot be considered as a genuine rescue aid and should be scrutinized in more depth. In addition, more safeguards should be required, taking inspiration from what is required for restructuring aid.

(76) Point 38 of the Banking Communication requires that capital injections should not allow the beneficiary to engage in aggressive commercial strategies. Furthermore, point 37 of the Recapitalisation Communication acknowledges that safeguards may be necessary to prevent aggressive commercial expansion financed by State aid. Under the current approved schemes, Greece has committed that the beneficiary banks will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without consulting with the Commission in advance. The Commission doubts at this stage that those safeguards are sufficient in relation to the bridge recapitalisation under consideration. The Commission invites the beneficiary and third parties to comment on that issue.

([30]) ATE, a State-owned bank was the fifth-largest banking group in Greece in 2011. It has received State aid under the support measures for credit institutions in Greece in the form of recapitalisation, guarantees and bond loans.

([31]) TT was listed on the Athens Stock Exchange in June 2006. It has a network of 146 branches in 65 cities around the country and it operates also in the 850 Hellenic Post offices. The shareholders' structure includes the Greek State which is the biggest shareholder with a participation of 34 % and the Hellenic Post with 10 %. Hellenic Postbank received a State capital injection under the Support scheme for credit institutions in Greece of approximately EUR 225 million.

(77) The Commission notes that the HFSF has already appointed its representatives in all of the four banks which have received a bridge recapitalisation. The HFSF representatives are different for each bank and the HFSF does not yet have control in the four banks. Nevertheless, the Commission notes that there are no rules in place that prevent the HFSF from carrying out coordination between them. Moreover, adequate safeguards should be in place to ensure that commercially sensitive information is not shared between those undertakings which could lead to distortions of competition. In order to monitor the bank closely, it seems appropriate that the Commission should be able to rely on a monitoring trustee which would be physically present in the bank. The same monitoring trustee might have in its mandate to observe any detrimental changes in the bank's commercial practices, such mispricing, carrying out lending that is not business-oriented or offering unsustainable interest rates on deposits. The Commission invites the beneficiary and third parties to comment.

(78) The Commission notes that the restructuring plan/viability review submitted under State aid cases SA. 30342 (PN 26/2010) – "Assessment of the recapitalised Greek banks" and SA. 32787 (2011/PN) – "Viability plan of Piraeus Bank" was based on a much lower amount of aid and outdated macro-economic assumptions. For example, it does not include the effect of PSI. Therefore, the Commission requests the Greek authorities that the updated restructuring plan that Greece has to submit three months from the date of the bridge recapitalisation, as also provided under the amended HFSF law, should take account of the large aid amount received, include the new developments and update the measures envisaged by the bank to cope with the new environment.

5.3. **Conclusion**

(79) The Commission has doubts at this stage that the bridge recapitalisation by the HFSF is appropriate, limited to the minimum and proportionate. On that basis, the Commission has doubts whether the aid can be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. It therefore finds it necessary to open the procedure laid down in Article 107(3)(b) TFEU.

(80) At the same time, the Commission notes that the Greek banks are currently operating under extreme conditions. Their participation in the PSI and the deep recession have wiped out banks' capital. Given those totally exceptional circumstances which are not the result of the banks' own mismanagement or excessive risk-taking, the Commission approves the aid in the form of the commitment letter and the bridge recapitalisation for six months from the date of adoption of the current decision.

(81) The Commission recalls that this temporary approval does not cover the conversion of the bridge recapitalisation into the final recapitalisation which the Greek authorities need to notify to the Commission. Upon the receipt of the complete notification of that conversion, if it is received by the Commission within six months from the date of this decision, the duration of that approval will be automatically extended until the Commission reaches a final decision on those terms.

(82) The Commission observes that Greece has to submit a restructuring plan for the bank three months after granting the bridge recapitalisation.

6. **DECISION**

The Commission concludes that the commitment to provide capital to the bank in the HFSF commitment letter and the bridge recapitalisation which took place on 28 May 2012 constitutes State aid pursuant to Article 107(1) TFEU.

The Commission temporarily approves that measure as rescue aid for reasons of financial stability for a period of six months from the date of this decision. If within that period, the Greek authorities submit a complete notification of the conversion of the bridge recapitalisation into a final recapitalisation, then the duration of the approval will be automatically extended until the Commission reaches a final decision on those terms.

Moreover, in the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Greece to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to Piraeus Bank immediately.

The Commission notes that Greece accepts for reasons of urgency that the adoption of the decision be in the English language.

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

Tellimishinnad aastal 2012 (ilma käibemaksuta, sisaldavad tavalise saatmise kulusid)

Euroopa Liidu Teataja L- ja C-seeria väljaanne ainult paberkandjal	ELi 22 ametlikus keeles	1 200 eurot aastas
Euroopa Liidu Teataja L- ja C-seeria paberkandjal + DVD-l aastane väljaanne	ELi 22 ametlikus keeles	1 310 eurot aastas
Euroopa Liidu Teataja L-seeria väljaanne ainult paberkandjal	ELi 22 ametlikus keeles	840 eurot aastas
Euroopa Liidu Teataja L- ja C-seeria igakuiselt ja kumulatiivselt DVD-l	ELi 22 ametlikus keeles	100 eurot aastas
Euroopa Liidu Teataja lisa (S-seeria – avalikud hanked ja pakkumismenetlused) kord nädalas DVD-l	mitmekeelne: ELi 23 ametlikus keeles	200 eurot aastas
Euroopa Liidu Teataja C-seeria – värbamiskonkursid	konkursside keeled	50 eurot aastas

Euroopa Liidu Teatajat saab tellida Euroopa Liidu 22 ametlikus keeles. Teataja on jaotatud L-seeriaks (õigusaktid) ja C-seeriaks (teave ja teatised).

Iga keeleversioon tuleb tellida eraldi.

Vastavalt nõukogu määrusele (EÜ) nr 920/2005, mis avaldati ELTs L 156 18. juunil 2005 ja milles sätestatakse, et Euroopa Liidu institutsioonid ei ole ajutiselt kohustatud koostama ja avaldama kõiki õigusakte iiri keeles, müüakse ELT iirikeelseid väljaandeid eraldi.

Euroopa Liidu Teataja lisa (S-seeria – avalikud hanked ja pakkumismenetlused) tellimus sisaldab kõiki 23 keeleversiooni ühel mitmekeelsel DVD-l.

Soovi korral saab koos *Euroopa Liidu Teataja* tellimusega mitmesuguseid *Euroopa Liidu Teataja* kaasandeid. Kaasannete ilmumisest teavitatakse tellijaid teadaande vahendusel, mis avaldatakse *Euroopa Liidu Teatajas*.

Müük ja tellimused

Erinevate tasuliste perioodikaväljaannete tellimusi, k.a *Euroopa Liidu Teataja* tellimust, saab vormistada meie edasimüüjate kaudu. Edasimüüjate nimekiri on kättesaadav järgmisel veebilehel:

http://publications.europa.eu/others/agents/index_et.htm

EUR-Lexi (http://eur-lex.europa.eu) kaudu pakutakse otsest ja tasuta juurdepääsu Euroopa Liidu õigusaktidele. Nimetatud veebilehel saab tutvuda *Euroopa Liidu Teatajaga* ning ka lepingute, õigusaktide, kohtupraktika ja ettevalmistatavate õigusaktidega.

Lisateavet Euroopa Liidu kohta saab veebilehelt http://europa.eu

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