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Contents

II Non-legislative acts

INTERNATIONAL AGREEMENTS

- ★ **Notice concerning the provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Central Africa Party of the other part** 1

REGULATIONS

- ★ **Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾** 2

Commission Implementing Regulation (EU) No 927/2014 of 27 August 2014 establishing the standard import values for determining the entry price of certain fruit and vegetables 22

DECISIONS

2014/539/EU:

- ★ **Commission Decision of 27 March 2014 on the State aid SA.34572 (13/C) (ex 13/NN) implemented by Greece for Larco General Mining & Metallurgical Company S.A. (notified under document C(2014) 1818) ⁽¹⁾** 24

⁽¹⁾ Text with EEA relevance

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

Corrigenda

- ★ **Corrigendum to Commission Regulation (EU) No 866/2014 of 8 August 2014 amending Annexes III, V and VI to Regulation (EC) No 1223/2009 of the European Parliament and the Council on cosmetic products (OJ L 238, 9.8.2014) 39**

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Central Africa Party of the other part ⁽¹⁾

The European Union and the Republic of Cameroon have notified the completion of the procedures necessary for the provisional application of the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, in accordance with Article 98 of that Agreement. Consequently, the Agreement applies provisionally as from 4 August 2014 between the European Union and the Republic of Cameroon.

⁽¹⁾ OJ L 57, 28.2.2009, p. 1.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 926/2014

of 27 August 2014

laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾, and in particular Article 35(6), Article 36(6) and Article 39(5) thereof,

Whereas:

- (1) For the purposes of having standard forms, templates and procedures for the notifications to exercise the right of establishment and the freedom to provide services, it is necessary to define some technical terms in order to make a clear distinction between the branch notifications, services notifications, notifications resulting from changes in the particulars of branch notifications and those related to a planned termination of a branch's operation.
- (2) The establishment of standard procedures covering the language and means of communication of passport notifications from credit institutions to competent authorities of home and host Member States facilitates the exercise of the right of establishment and the freedom to provide services and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities of home and host Member States.
- (3) Technical standards should require competent authorities of home Member States to assess the accuracy and completeness of the submitted passport notifications so as to clarify the respective responsibilities of the competent authorities of home and host Member States and ensure the quality of the passport notifications submitted by credit institutions.
- (4) Competent authorities of home Member States should indicate to the credit institutions the particular aspects in which passport notifications are assessed to be incomplete or incorrect to facilitate the process of identification, communication and submission of the missing or incorrect elements.
- (5) In order to ensure transparency and timely assessment of submitted passport notifications it is necessary to determine without ambiguity the commencement of the three-month period referred to in Article 35(3) of Directive 2013/36/EU so that the competent authorities of home Member States should make a decision on the adequacy of the administrative structure and the financial situation of the credit institution and communicate the passport notification to the competent authority of host Member States. It is also necessary to determine without ambiguity the commencement of the periods referred to in Article 36(3) and Article 39(2) of Directive 2013/36/EU given to competent authorities of home and host Member States to make their respective decisions and to communicate the relevant information to each other or to credit institutions.
- (6) Acknowledgement of receipt of the transmitted branch passport notifications by competent authorities of host Member States is necessary to clarify the date of receipt of the relevant notification, the time period available to competent authorities of host Member States to be prepared for supervising credit institutions and indicate to them any conditions under which, in the interests of the general good, their activities may have to be carried out and the exact date on which the credit institutions will be in a position to establish their branches and commence their activities in the territory of the host Member State.

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

- (7) In order to ensure transparency in the conditions under which, in the interest of the general good, activities may have to be carried out in host Member States, competent authorities of host Member States should inform competent authorities of home Member States of those conditions which impose restrictions on the activities carried out by branches of credit institutions in the territory of host Member States.
- (8) The procedures for change in branch particulars notification should also cover the specific case of a planned termination of the operation of the branch as this is considered a major change in branch's operations which needs to be notified to competent authorities of home and host Member States.
- (9) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the right of establishment and the freedom to provide services. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include certain regulatory technical standards required by Directive 2013/36/EU in a single Regulation.
- (10) This Regulation is based on the draft implementing technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (11) EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the standard forms, templates and procedures for the notifications to exercise the right of establishment and the freedom to provide services pursuant to Article 35(6), Article 36(6) and Article 39(5) of Directive 2013/36/EU.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'branch passport notification' means a notification made in accordance with Article 35(1) of Directive 2013/36/EU by a credit institution wishing to establish a branch within the territory of another Member State to the competent authorities of its home Member State;
- (2) 'change in branch particulars notification' means a notification made in accordance with Article 36(3) of Directive 2013/36/EU by a credit institution to the competent authorities of the home and host Member States of a change in the particulars communicated pursuant to Article 35(2)(b), (c) or (d) of that Directive;
- (3) 'services passport notification' means a notification made in accordance with Article 39(1) of Directive 2013/36/EU by a credit institution wishing to exercise the freedom to provide services by carrying out its activities within the territory of another Member State for the first time to the competent authorities of its home Member State;
- (4) 'passport notifications' means a branch passport notification, a change in branch particulars notification or a services passport notification.

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

*Article 3***General requirements for passport notifications**

1. Passport notifications submitted under this Regulation shall comply with the following requirements:
 - (a) they shall be in writing in a language accepted by the competent authorities of the home Member State and in a language accepted by the competent authorities of the host Member State, or in any Union language accepted by both the competent authorities of the home and host Member States;
 - (b) they shall be transmitted by post, or by electronic means where these are accepted by the relevant competent authorities.
2. The competent authorities shall make the following information publicly available:
 - (a) the languages accepted in accordance with paragraph 1(a);
 - (b) the address to which passport notifications are to be sent where submitted by post;
 - (c) any electronic means by which passport notifications may be submitted and any relevant contact details.

CHAPTER II

PROCEDURES FOR BRANCH PASSPORT NOTIFICATION*Article 4***Submission of the branch passport notification**

Credit institutions shall use the form laid down in Annex I to submit a branch passport notification to the competent authorities of the home Member State.

*Article 5***Assessment of completeness and accuracy of the branch passport notification**

1. On receipt of a branch passport notification the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided.
2. Competent authorities of the home Member State shall treat the three-month period referred to in Article 35(3) of Directive 2013/36/EU as having commenced on the date of receipt of the branch passport notification containing information that is assessed to be complete and correct.
3. Where the information provided in the branch passport notification is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which respect the information is assessed to be incomplete or incorrect.

*Article 6***Communication of the branch passport notification**

1. The competent authorities of the home Member State shall use the form laid down in Annex II to communicate a branch passport notification to the competent authorities of the host Member State together with a copy of the branch passport notification and with the latest available information on own funds using the form laid down in Annex III.
2. The competent authorities of the host Member State shall acknowledge receipt of the branch passport notification to the competent authorities of the home Member State without delay, stating the date on which the branch passport notification was received.

3. Following the acknowledgement of receipt from the competent authorities of the host Member State, the competent authorities of the home Member State shall inform the credit institution without delay of the following:

- (a) the communication of the branch passport notification to the competent authorities of the host Member State;
- (b) the date of receipt of the branch passport notification by the competent authorities of the host Member State.

Article 7

Communication of conditions in the interest of the general good

1. The competent authorities of the host Member State shall communicate in writing to the credit institution any conditions referred to in Article 36(1) of Directive 2013/36/EU under which, in the interest of the general good, activities may have to be carried out in the territory of the host Member State.

2. Where the conditions referred to in paragraph 1 impose restrictions on the activities of the branch, the competent authorities of the host Member State shall also communicate those conditions in writing to the competent authorities of the home Member State.

CHAPTER III

PROCEDURES FOR A CHANGE IN BRANCH PARTICULARS NOTIFICATION

Article 8

Submission of a change in branch particulars notification

1. Credit institutions shall use the form laid down in Annex I to notify a change in branch particulars notification to the competent authorities of the home and host Member States except where the change concerns a planned termination of the operation of the branch.

2. Credit institutions shall use the form laid down in Annex IV to notify a change in branch particulars notification to the competent authorities of the home and host Member States where the change concerns a planned termination of the operation of the branch.

Article 9

Assessment of completeness and accuracy of the notification

1. On receipt of a change in branch particulars notification the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided.

2. Competent authorities of the home and host Member States shall treat the one-month period referred to in Article 36(3) of Directive 2013/36/EU as having commenced on the date of receipt of the change in branch particulars notification containing information that is assessed to be complete and correct. The competent authorities of the home and host Member States shall cooperate in order to take the decisions referred to in Article 36(3) of Directive 2013/36/EU within the period referred to therein.

3. Where the information provided in the change in branch particulars notification is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which respect the information is assessed to be incomplete or incorrect.

Article 10

Communication of the decisions taken following the notification

1. The competent authorities of the home Member State shall communicate their decision referred to in Article 36(3) of Directive 2013/36/EU in writing to the credit institution and to the competent authorities of the host Member State.

2. The competent authorities of the host Member State shall communicate their decision referred to in Article 36(3) of Directive 2013/36/EU in writing to the credit institution.

3. Where the decision referred to in paragraph 2 sets out conditions which impose restrictions on the activities of the branch, the competent authorities of the host Member State shall also communicate those conditions in writing to the competent authorities of the home Member State.

CHAPTER IV

PROCEDURES FOR SERVICES PASSPORT NOTIFICATION*Article 11***Submission of the services passport notification**

Credit institutions shall use the form laid down in Annex V to submit a services passport notification to the competent authorities of the home Member State.

*Article 12***Assessment of completeness and accuracy of the services passport notification**

1. On receipt of a services passport notification the competent authorities of the home Member State shall assess the completeness and accuracy of the information provided.
2. Competent authorities of the home Member State shall treat the one-month period referred to in Article 39(2) of Directive 2013/36/EU as having commenced on the date of receipt of the services passport notification containing information that is assessed to be complete and correct.
3. Where the information provided in the services passport notification is assessed to be incomplete or incorrect, the competent authorities of the home Member State shall inform the credit institution without delay, indicating in which respect the information is assessed to be incomplete or incorrect.

*Article 13***Communication of the services passport notification**

The competent authorities of the home Member State shall use the form laid down in Annex VI to communicate a services passport notification to the competent authorities of the host Member State.

CHAPTER V

FINAL PROVISIONS*Article 14***Entry into force**

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

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

Done at Brussels, 27 August 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Form for the submission of a branch passport notification or a change in a branch particulars notification

Where credit institutions notify changes in branch particular notifications to competent authorities of home and host Member States, credit institutions shall only complete the parts of the form which contain information that has changed.

1. Contact information

Type of notification	<i>[Branch passport notification/change in branch particulars notification]</i>
Host Member State in which the branch is to be established:	<i>[to be completed by the credit institution]</i>
Name and reference number of the credit institution:	<i>[to be completed by the credit institution]</i>
Address of the credit institution in the host Member State from which documents may be obtained:	<i>[to be completed by the credit institution]</i>
Intended principal place of business of the branch in the host Member State:	<i>[to be completed by the credit institution]</i>
Date on which the branch intends to commence its activities:	<i>[to be completed by the credit institution]</i>
Name of contact person at the branch:	<i>[to be completed by the credit institution]</i>
Telephone number:	<i>[to be completed by the credit institution]</i>
E-mail:	<i>[to be completed by the credit institution]</i>

2. Programme of operations**2.1. Types of business envisaged**

- 2.1.1. Description of the main objectives and business strategy of the branch and an explanation of how the branch will contribute to the strategy of the institution and, where applicable, of its group

[to be completed by the credit institution]

- 2.1.2. Description of the target customers and counterparties

[to be completed by the credit institution]

- 2.1.3. List of the activities referred to in Annex I to Directive 2013/36/EU that the credit institution intends to carry out in the host Member State with the indication of the activities that will constitute the core business in the host Member State, including the intended start date for each core activity

No	Activity	Activities that the credit institution intends to carry out	Activities that will constitute the core business	Intended start date for each core activity
1.	Taking deposits and other repayable funds			
2.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
3.	Financial leasing			
4.	Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council (*)			
4a.	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account			
4b.	Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account			
4c.	Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider: — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders			
4d.	Execution of payment transactions where the funds are covered by a credit line for a payment service user: — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders			
4e.	Issuing and/or acquiring of payment instruments			

No	Activity	Activities that the credit institution intends to carry out	Activities that will constitute the core business	Intended start date for each core activity
4f.	Money remittance			
4g.	Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services (**)			
5.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4			
6.	Guarantees and commitments			
7.	Trading for own account or for account of customers in any of the following:			
7a.	— Money market instruments (e.g. cheques, bills, certificates of deposits)			
7b.	— Foreign exchange			
7c.	— Financial futures and options			
7d.	— Exchange and interest-rate instruments			
7e.	— Transferable securities			
8.	Participation in securities issues and the provision of services relating to such issues			
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings			
10.	Money broking			
11.	Portfolio management and advice			

No	Activity	Activities that the credit institution intends to carry out	Activities that will constitute the core business	Intended start date for each core activity
12.	Safekeeping and administration of securities			
13.	Credit reference services			
14.	Safe custody services			
15.	Issuing electronic money			

(*) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007. on payment services in the internal market (OJ L 319, 5.12.2007, p. 1).

(**) Does the activity referred to in point 4g include the granting of credits in accordance with the conditions set out in Article 16(3) of Directive 2007/64/EC?

☐ yes ☐ no

- 2.1.4. List of the services and activities that the credit institution intends to carry out in the host Member State, and which are provided for in Sections A and B of Annex I to Directive 2004/39/EC of the European Parliament and of the Council ⁽¹⁾, when referring to the financial instruments provided for in Section C of Annex I of that Directive

Financial Instruments	Investment services and activities								Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C1															
C2															
C3															
C4															
C5															
C6															
C7															
C8															
C9															
C10															

Note 1:

Row and column headings are references to the relevant section and item number in Annex I to Directive 2004/39/EC (e.g. A1 refers to point 1 of Section A of Annex I)

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

2.2. Structural organisation of the branch

- 2.2.1. Description of the organisational structure of the branch, including functional and legal reporting lines and the position and role of the branch within the corporate structure of the institution and, where applicable, of its group

[to be completed by the credit institution]

The description can be supported by relevant documents, such as an organisational chart

- 2.2.2. Description of the governance arrangements and internal control mechanisms of the branch, including the following information:

- 2.2.2.1. risk management procedures of the branch and details of liquidity risk management of the institution, and where applicable, of its group

[to be completed by the credit institution]

- 2.2.2.2. any limits that apply to the activities of the branch, in particular to its lending activities

[to be completed by the credit institution]

- 2.2.2.3. details of the internal audit arrangements of the branch, including details of the person responsible for these arrangements and, where applicable, details of the external auditor

[to be completed by the credit institution]

- 2.2.2.4. anti-money laundering arrangements of the branch including details of the person appointed to ensure compliance with these arrangements

[to be completed by the credit institution]

- 2.2.2.5. controls over outsourcing and other arrangements with third parties in connection with the activities carried out in the branch that are covered by the institution's authorisation

[to be completed by the credit institution]

- 2.2.3. Where the branch is expected to carry out one or more of the investment services and activities defined in point 2 of Article 4(1) of Directive 2004/39/EC, a description of the following arrangements:

- 2.2.3.1. arrangements for safeguarding client money and assets

[to be completed by the credit institution]

- 2.2.3.2. arrangements for compliance with the obligations laid down in Articles 19, 21, 22, 25, 27 and 28 of Directive 2004/39/EC and measures adopted pursuant thereto by the relevant competent authorities of the host Member State

[to be completed by the credit institution]

- 2.2.3.3. internal code of conduct including controls over personal account dealing

[to be completed by the credit institution]

- 2.2.3.4. details of the person responsible for dealing with complaints in relation to the investment services and activities of the branch

[to be completed by the credit institution]

- 2.2.3.5. details of the person appointed to ensure compliance with the arrangements of the branch relating to investment services and activities

[to be completed by the credit institution]

- 2.2.4. details of professional experience of the persons responsible for the management of the branch

[to be completed by the credit institution]

2.3. *Other information*

- 2.3.1. Financial plan containing forecasts for balance sheet and profit and loss account, covering a period of three years

[to be completed by the credit institution]

This information can be provided as an attachment to the notification

- 2.3.2. Name and contact details of the Union deposit guarantee and investor protection schemes of which the institution is a member and which cover the activities and services of the branch, together with the maximum coverage of the investor protection scheme

[to be completed by the credit institution]

- 2.3.3. Details of the branch's IT arrangements

[to be completed by the credit institution]

ANNEX III

Form for the communication of the amount and composition of own funds and own funds requirements

1. Amount and composition of own funds

Item All references are to the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾	Amount (in million EUR)
Own funds Articles 4(1)(118) and 72	[data as reported in row 010 in Template 1 of Annex 1 of Commission Implementing Regulation (EU) No 680/2014 ⁽²⁾]
Tier 1 capital Article 25	[data as reported in row 015 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Common Equity Tier 1 capital Article 50	[data as reported in row 020 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Additional Tier 1 capital Article 61	[data as reported in row 530 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Tier 2 capital Article 71	[data as reported in row 750 in Template 1 of Annex 1 of Implementing Regulation (EU) No 680/2014]

(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(2) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1–1861)

2. Own fund requirements

Item All references are to the provisions of Regulation (EU) No 575/2013	Amount (in million EUR)
Total risk exposure amount Articles 92(3), 95, 96 and 98	[data as reported in row 010 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Risk weighted exposure amounts for credit, counterparty credit and dilution risks and free deliveries Points (a) and (f) of Article 92(3)	[data as reported in row 040 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Total risk exposure amount for settlement/delivery Point (c) (ii) of Article 92(3) and point (b) of Article 92(4)	[data as reported in row 490 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]
Total risk exposure amount for position, foreign exchange and commodities risks Points (b)(i), (c)(i) and (c)(iii) of Article 92(3) and point (b) of Article 92(4)	[data as reported in row 520 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]

Item All references are to the provisions of Regulation (EU) No 575/2013	Amount (in million EUR)
Total risk exposure amount for operational risk Point (e) of Article 92(3) and point (b) of Article 92(4)	<i>[data as reported in row 590 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Additional risk exposure amount due to fixed overheads Articles 95(2), 96(2), 97 and 98(1) point (a)	<i>[data as reported in row 630 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount for credit valuation adjustment Point (d) of Article 92(3)	<i>[data as reported in row 640 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Total risk exposure amount related to large exposures in the trading book Point (b)(ii) of Article 92(3) and Articles 395 to 401	<i>[data as reported in row 680 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>
Other risk exposure amounts Articles 3, 458, 459 and 500 and risk exposure amounts which cannot be assigned to one of the other items of this table	<i>[data as reported in row 690 in Template 2 of Annex 1 of Implementing Regulation (EU) No 680/2014]</i>

ANNEX IV

Form for the submission of a change in branch particulars notification which concerns a planned termination of the operation of a branch

Name of the contact person at the credit institution or branch:

Telephone number:

E-mail:

Address of the competent authorities of the home Member State:

Address of the competent authorities of the host Member State:

[Date]

[Ref:]

Submission of a change in branch particulars notification which concerns a planned termination of the operation of a branch

[The notification shall include at least the following information:

- name and reference number of the credit institution;
- name of the branch in the territory of the host Member State;
- competent authorities responsible for the authorisation and supervision of the credit institution;
- statement on the credit institution's intention to terminate the operation of the branch in the territory of the host Member State and the date by which the termination will be effective;
- name and contact details of the persons who will be responsible for the process of terminating the operation of the branch;
- estimated schedule for the planned termination;
- information on the process of terminating the business relations with branch customers.]

[Contact details]

ANNEX V

Form for the submission of services passport notification**1. Contact information**

Type of notification	Services passport notification
Host Member State in which the credit institution intends to carry out its activities:	
Name and reference number of the credit institution:	
Address of the head office of the credit institution:	
Name of contact person at the credit institution:	
Telephone number:	
E-mail:	

2. List of the activities referred to in Annex I to Directive 2013/36/EU that the credit institution intends to carry out in the host Member State with the indication of the activities that will constitute the core business of the credit institution in the host Member State, including the intended commencement date for each core service activity

No	Activity	Activities that the credit institution intends to carry out	Activities that will constitute the core business	Intended start date for each core activity
1.	Taking deposits and other repayable funds			
2.	Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting)			
3.	Financial leasing			
4.	Payment services as defined in Article 4(3) of Directive 2007/64/EC			
4a	Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account			
4b	Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account			

No	Activity	Activities that the credit institution intends to carry out	Activities that will constitute the core business	Intended start date for each core activity
4c	Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider: — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders			
4d	Execution of payment transactions where the funds are covered by a credit line for a payment service user: — execution of direct debits, including one-off direct debits — execution of payment transactions through a payment card or a similar device — execution of credit transfers, including standing orders			
4e	Issuing and/or acquiring of payment instruments			
4f	Money remittance			
4g	Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services (*)			
5.	Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4			
6.	Guarantees and commitments			
7.	Trading for own account or for account of customers in any of the following:			
7a	— money market instruments (e.g. cheques, bills, certificates of deposits)			
7b	— foreign exchange			

Financial Instruments	Investment services and activities								Ancillary services						
	A 1	A 2	A 3	A 4	A 5	A 6	A 7	A 8	B 1	B 2	B 3	B 4	B 5	B 6	B 7
C8															
C9															
C10															

Note 1:

Row and column headings are references to the relevant section and item number in Annex I to Directive 2004/39/EC (e.g. A1 refers to point 1 of Section A of Annex I).

ANNEX VI

Form for the communication of services passport notification

Competent authorities of the home Member State:

Name of the contact person:

Telephone number:

E-mail:

Address of the competent authorities of the host Member State:

[Date]

Ref:

Communication of services passport notification

[The communication shall include at least the following information:

- name and reference number of the credit institution;
- competent authorities responsible for the authorisation and supervision of the credit institution;
- statement on the credit institution's intention to carry out activities in the territory of the host Member State in the exercise of the freedom to provide services.]

[Contact details]

COMMISSION IMPLEMENTING REGULATION (EU) No 927/2014**of 27 August 2014****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 27 August 2014.

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

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	TR	91,2
	ZZ	91,2
0709 93 10	TR	112,1
	ZZ	112,1
0805 50 10	AR	158,3
	TR	83,0
	UY	148,7
	ZA	167,9
0806 10 10	ZZ	139,5
	BR	183,6
	CL	73,7
	EG	200,0
	TR	122,9
	ZA	315,5
	ZZ	179,1
	AR	83,7
0808 10 80	BR	73,1
	CL	86,0
	CN	120,5
	NZ	130,0
	US	131,3
	ZA	114,8
	ZZ	105,6
	AR	40,6
0808 30 90	CL	77,3
	TR	121,5
	ZA	100,7
	ZZ	85,0
	MK	71,8
0809 30	TR	110,6
	ZZ	91,2
	BA	36,8
0809 40 05	MK	33,2
	ZA	206,3
	ZZ	92,1
	ZZ	92,1

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

DECISIONS

COMMISSION DECISION

of 27 March 2014

on the State aid SA.34572 (13/C) (ex 13/NN) implemented by Greece for Larco General Mining & Metallurgical Company S.A.

(notified under document C(2014) 1818)

(Only the English text is authentic)

(Text with EEA relevance)

(2014/539/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

- (1) In the context of its economic adjustment programme, Greece has undertaken a privatisation programme ⁽²⁾. Larco General Mining & Metallurgical Company S.A. ('Larco') has been earmarked as a State-owned company for privatisation.
- (2) In March 2012 the Hellenic Republic Asset Development Fund ('HRADF') ⁽³⁾ informed the Commission about the proposed privatisation of Larco. In order to clarify whether any State aid issues could arise in the context of the privatisation project, the Commission opened a case *ex officio* and initiated a preliminary assessment in April 2012.
- (3) In the context of those discussions, it became apparent from the Greek authorities' reply to a questionnaire on 16 March 2012 that Larco had already benefited from State measures. The Commission requested further information by e-mails dated 18 April 2012, 24 April 2012, 5 July 2012, 22 August 2012 and 7 December 2012, and by letters of 4 May 2012 and 14 January 2013, to which the Greek authorities replied on 20 April 2012, 26 April 2012, 3 October 2012, 13 November 2012, 15 November 2012, 7 December 2012, 24 December 2012 and 18 January 2013. Meetings between the Commission services and representatives of the Greek authorities took place on 30 April 2012 and 11 September 2012 in Athens and on 25 January 2013 in Brussels.
- (4) By letter dated 6 March 2013 ('the decision of 6 March 2013'), the Commission informed Greece that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of certain aid measures described in Section 2.2 below ('the formal investigation procedure').

⁽¹⁾ OJ C 136, 15.5.2013, p. 27.

⁽²⁾ See the *Second Economic Adjustment Programme for Greece — First Review December 2012*, http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp123_en.pdf

⁽³⁾ The Hellenic Republic Asset Development Fund (HRADF) is an S.A. entity established on 1 July 2011 in order to manage the privatisation process.

- (5) The decision of 6 March 2013 was published in the *Official Journal of the European Union* ⁽⁴⁾. The Commission invited the Greek authorities and interested parties to submit their comments on the aid measures.
- (6) The Commission received comments from the Greek authorities on 30 April 2013. It received no comments from interested parties.
- (7) By e-mail of 21 January 2014, the Greek authorities informed the Commission that they agreed with the adoption of the decision in English.

2. DESCRIPTION OF THE AID MEASURES

2.1. The beneficiary

- (8) Larco is specialised in the extraction and processing of laterite ore, extraction of lignite and production of ferro-nickel and by-products. Its activities include exploration, development, mining, smelting and trading of its products worldwide. Larco is one of the largest ferronickel producers in the world. In 2012 it had 960 employees, and therefore qualified as a large enterprise ⁽⁵⁾.
- (9) At the time of the formal investigation procedure, 55,2 % of Larco's shares were owned by the Greek State through HRADE, 33,4 % by the National Bank of Greece S.A. ('NBG', a private financial institution) and 11,4 % by Public Power Corporation S.A. ('PPC', the incumbent electricity producer in Greece, of which the State is the majority shareholder).
- (10) Larco operates a smelting plant in Larymna, in central Greece. Larco also holds mining rights in various locations in Greece in four bundles: the Agios Ioannis mines (near Larymna), the Evia mines, the Kastoria mines and the Servia lignite mine.
- (11) Larco was established in 1989 as a new corporate entity following the liquidation of Hellenic Mining and Metallurgical S.A. of Larymna ('Old Larco'). Old Larco is still under liquidation, but its assets were contributed to Larco along with the corresponding liabilities in 1989. Old Larco is therefore a creditor of Larco.

2.2. Description of the measures

2.2.1. Measure 1: non-collection of debt to the Ministry of Finance

- (12) In April 1998, a debt settlement agreement was reached between Larco and its major creditors, namely Old Larco, PPC and the Greek State. According to the 1998 agreement, Larco's liability to those creditors was supposed to be serviced with an interest of 6 % *per annum* ('p.a.'). However, the debt to the Greek State has remained stable or increased slightly at least since 2004 ⁽⁶⁾, whereas the debt to PPC and Old Larco has been eliminated or decreased ⁽⁷⁾.
- (13) It thus appears that the State treated its credit to Larco in a different manner from the other two creditors.

2.2.2. Measure 2: the 2008 State guarantee

- (14) On 22 December 2008 the State provided a guarantee for a loan of EUR 30 million from ATE Bank to Larco. The guarantee covered 100 % of the loan for up to 3 years and had a guarantee premium of 1 % p.a.

2.2.3. Measure 3: the 2009 capital increase

- (15) In 2009, in the light of its negative equity, Larco's Board of Directors proposed, and the three shareholders approved, a share capital increase of EUR 134 million. However, only the Greek State exercised its rights in full, whilst NBG exercised its rights in part and PPC did not participate at all in the share capital increase. No new shareholders contributed to the share capital increase.

⁽⁴⁾ Cf. footnote 1.

⁽⁵⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽⁶⁾ In 2004 it was EUR 10,3 million and has been increasing steadily, reaching EUR 13,5 million in 2011.

⁽⁷⁾ PPC: EUR 39 million in 2004, zero in 2011; Old Larco: EUR 48,3 million in 2007, EUR 43,8 million in 2011.

- (16) The actual share capital increase only amounted to EUR 65,5 million, with the State contributing approximately EUR 45 million (69 % of the total capital injection) and NBG EUR 20,5 million (31 %). Despite Larco's bad financial situation, it appears that the capital increase was not based on a restructuring plan to restore the company's viability, whereas NBG appears to have written-off the book value of the company 'because the Group does not foresee to recover the book value of the investment, given that the company encounters significant financial difficulties' ⁽⁸⁾ (see recital 45 of the decision of 6 March 2013).

2.2.4. Measure 4: the 2010 State guarantee

- (17) On 10 May 2010 the State provided a guarantee, to cover a letter of guarantee that NBG would provide to Larco for the amount of approximately EUR 10,8 million. The guarantee covered 100 % of the letter of guarantee and had an indefinite duration and a guarantee premium of 2 % p.a.

2.2.5. Measure 5: letters of guarantee instead of pre-payment of a tax fine in 2010

- (18) In 2010 the Greek tax authorities audited Larco's financial statements and rejected the accounting treatment of certain losses resulting from hedging contracts for the price of nickel. As a result of the wrongful registration of the losses, a tax fine of EUR 190 million was imposed ⁽⁹⁾.
- (19) Larco subsequently challenged the imposition of the tax fine in the Greek courts. According to Greek law ⁽¹⁰⁾, an entity liable for a tax fine must pre-pay 25 % of the amount in question, in order to challenge the imposition of the tax fine in court (in this case the 25 % would amount to EUR 47 million).
- (20) However, in the case of Larco, a Greek administrative court decided to alleviate the company from the obligation to pre-pay 25 % of the tax fine, replacing it with the obligation to deposit letters of guarantees of just EUR 1,5 million.

2.2.6. Measure 6: the 2011 State guarantees

- (21) On 30 December 2011, the State provided two guarantees for two loans of EUR 30 million and EUR 20 million from ATE Bank. One of the loans (of EUR 20 million) was overdue at the time the guarantee was granted. The guarantees provided 100 % coverage and had a premium of 1 % p.a.

2.3. Grounds for initiating the formal investigation procedure

- (22) In the decision of 6 March 2013 (recitals 18-25), the Commission reached the preliminary conclusion that Larco could be considered a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines ⁽¹¹⁾ since 2007. Against that background, the Commission reached the preliminary conclusion that all six measures constituted State aid and it expressed doubts as regards their compatibility with the internal market.
- (23) If the measures identified were to constitute State aid, they would have been granted in breach of the notification and stand-still obligations established in Article 108(3) of the Treaty.

3. COMMENTS FROM GREECE

3.1. Firm in difficulty

- (24) In its comments in the context of the formal investigation procedure, the Greek authorities argued that Larco was not a firm in difficulty during the years 2008 and 2009, because the registered losses were due to the decrease of the global price of ferronickel during those years. The Greek authorities claimed that Larco has only been a firm in difficulty since 2010.

⁽⁸⁾ Note 24: participations in linked companies.

⁽⁹⁾ The Greek authorities clarified subsequently that the measure in question concerns an additional tax, rather than a tax fine. Thus, Measure 5 is understood to refer to an additional tax and not to a tax fine, as erroneously mentioned in the decision of 6 March 2013.

⁽¹⁰⁾ Greek Income Taxation Code law 2238/1994 (Official gazette FEK A/151/16.9.94), Article 74(9).

⁽¹¹⁾ Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

3.2. Measure 1: non-collection of debt to the Ministry of Finance

- (25) The Greek authorities argued that the credit of the State towards Larco did not amount to State resources, since it was originally a private credit provided by the Organisation for Enterprise Restructuring S.A. ('OER'). When OER was liquidated, according to Law 2741/1999, all its claims were transferred to the State.
- (26) In addition, they explained that the 1998 debt settlement agreement contained specific rules for the treatment and collection of the outstanding debt which would be applicable at the end of each financial year as follows:
- a. if Larco had profits during a financial year, the interest accrued (6 % p.a.) would be repaid to the creditors first, before the repayment of the debt's principle;
 - b. after any repayment of interest, Larco would keep a certain amount from the profits for investments;
 - c. After applying (a) and (b), any remaining profit in Larco's accounts would be allocated proportionally to Larco's creditors.
- (27) If Larco did not make any profits after 1999, the creditors had the right to pursue the repayment of their debt through various means, such as considering the payment due, capitalising the debt etc. However, the creditors were not entitled to any forced execution of the outstanding debt, such as seizing the company's assets or forcing the launch of the bankruptcy procedure against the company.
- (28) Until 2003, the creditors received the accrued interest, as agreed. For the period 2004-2007, Larco did not make any profits and there was therefore no repayment of the interest accrued. In 2007 PPC concluded a raw material agreement with Larco, agreed by all creditors, whereby Larco provided lignite to PPC, which reduced the debt accordingly. The debt to PPC was completely eliminated in 2011.
- (29) The administrator of Old Larco has been pursuing the collection of the debt through judicial means and it appears that certain amounts have already been paid. By 2011, Old Larco had collected EUR 5 million of its outstanding debt under the 1998 agreement. Since Old Larco also has debts towards the Greek State, the latter collected the entire amount of those EUR 5 million.
- (30) As regards Larco's direct debt to the Greek State, the State has regularly sent invoices for the annual amount of the debt, including the annual accrued interest, to Larco.
- (31) Thus, the Greek authorities argued that the debt stemming from the 1998 agreement could not amount to State resources and in any event that there was no selective advantage in favour of Larco.

3.3. Measure 2: the 2008 State guarantee

- (32) The Greek authorities invoked the Guarantee Notice ⁽¹²⁾ and in particular Section 3.2 of the Notice, which includes the conditions, under which the Commission can rule out the presence of State aid in an individual guarantee. According to the Greek authorities:
- a. Larco was not a firm in difficulty at the time of the guarantee was granted;
 - b. the extent of the guarantee could be properly measured when it was granted;
 - c. the guarantee was granted for a debt security (bond loan), and could therefore exceed 80 % of the outstanding loan;
 - d. the 1 % premium paid for the guarantee was a market-oriented price, reflecting Larco's financial standing.
- (33) Thus, the Greek authorities argued that the 2008 State guarantee did not constitute State aid.
- (34) The Greek authorities clarified that measure 2 was granted by virtue of the ministerial decision YA 2/93378/0025 dated 22 December 2008 and covered the exact amount of EUR 30 000 000.

⁽¹²⁾ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

3.4. Measure 3: the 2009 capital increase

- (35) The Greek authorities argued that the State's participation in the capital increase was intended to protect the value of the company, in view of its upcoming privatisation and in order to implement a restructuring plan. In its decision, the State took into account the potential growth of Larco, the value of its assets and the general situation in the ferronickel market as well as restructuring and cost-cutting measures.
- (36) NBG contributed 31 % of the capital increase. Unlike the State NBG decided to exercise its rights only in part. The Greek authorities argued that NBG's objective was to maintain a certain control over the company and thus its actions should not be viewed as a lack of trust in Larco's future. Indeed, NBG reduced its shareholding in Larco to the minimum necessary under Greek law in order to have a veto over certain important decisions in the Board of Directors.
- (37) The third shareholder, PPC, explicitly decided not to participate in the capital increase, accepting that its shareholding would be diluted. The Greek authorities argued that PPC did not participate because its intention was to allow the State to have a larger shareholding majority, in view of the privatisation of the company.
- (38) In conclusion, the Greek authorities argued that the State acted like a market economy investor and that, therefore, the 2009 capital increase did not constitute State aid.
- (39) As regards the granting date, the Greek authorities did not provide conclusive information. The minutes of the shareholders meeting show that the Greek State provided EUR 15 000 000 towards the capital increase on 15 April 2009, by virtue of the document Οικ2/27694/0025 of the Ministry of Finance in view of the total contribution of the State to the share capital increase, which amounted to EUR 44 999 999,40. The 2009 financial statement of Larco shows that the capital increase was decided on 14 May 2009, but does not clarify when the actual injection of the new capital took place.

3.5. Measure 4: the 2010 State guarantee

- (40) The Greek authorities explained that in the context of the 1998 agreement, Old Larco had been pursuing the repayment of Larco's debt in the Greek courts and there has been a series of court judgments and annulments, inter alia, regarding a debt of approximately EUR 10,5 million ⁽¹³⁾.
- (41) In the context of an appeal by Larco and because of the danger of irreparable damage, the Greek Supreme Court suspended the payment of the debt of approximately EUR 10,5 million, until final judgment by the relevant court. The suspension was granted on condition that Larco provided a letter of guarantee to Old Larco for the suspended amount. NBG provided the letter of guarantee for approximately EUR 10,8 million (EUR 10,5 million of the originally contested debt + EUR 0,3 million for legal fees and expenses) to Larco. The letter of guarantee was in turn covered by a State guarantee for the entire amount with a premium of 2 % p.a. for an unlimited period.
- (42) The Greek authorities explained that that measure was provided by the State as a shareholder with the intention of fulfilling the conditions of the suspension and protecting its investment from debts being declared overdue. Otherwise, the suspension would not have been applicable and Old Larco would have had the right to pursue the collection of the debt, possibly by seizing Larco's assets. Larco could then have become insolvent. According to the Greek authorities, NBG would not have granted the letter of guarantee without the State guarantee.
- (43) The Greek authorities clarified that measure 4 was granted by virtue of the ministerial decision YA 2/923/0025 dated 10 May 2010 and covered the exact amount of EUR 10 510 824,95 and EUR 310 000 for legal fees and expenses, thus in total EUR 10 820 824,95.

3.6. Measure 5: letters of guarantee instead of pre-payment of a tax fine in 2010

- (44) The Greek authorities clarified that the measure in question concerns an additional tax, rather than a tax fine. The additional tax was imposed because the tax authorities did not agree that the losses resulting from hedging contracts should be deducted from Larco's net revenue, as Larco argued. The Greek authorities also clarified that Larco was asked by the court to provide letters of guarantee of a total value of EUR 4,7 million.

⁽¹³⁾ According to Old Larco, this represents the interest accrued to the principle recognised by the 1998 agreement.

- (45) The Greek authorities provided evidence that Larco was authorised to replace the pre-payment of the additional tax by letters of guarantee on the basis of a general legal provision. The court judgment allowing Larco to replace the pre-payment of the additional tax by letters of guarantee, in accordance with the national law ⁽¹⁴⁾, applied a balancing test, taking into account the benefits of the creditor (the State) and the viability of the debtor (Larco) and thus decided on the temporary suspension of the obligation to pre-pay EUR 47 million (that is to say, 25 % of the additional tax), replacing it with letters of guarantee of EUR 4,7 million in total. That suspension was to apply until a final judgment was delivered, in respect of the litigation lodged by Larco against the State for the imposition of the additional tax.
- (46) In addition, the Greek authorities argued that decisions of national courts cannot be imputable to the State.
- (47) The Greek authorities also explained that, despite the temporary suspension, the State had in practice overruled the financial effect of that suspension, by offsetting the additional tax due by Larco against amounts due by the State to Larco, such as income tax or VAT returns. This has been allowed by recent legislation for the acceleration of the collection of taxes in Greece.
- (48) Thus, the State appeared in effect to have already collected at least EUR 16,1 million of the amount due in respect of the pre-payment of Larco's additional tax.

3.7. Measure 6: the 2011 State guarantees

- (49) The Greek authorities clarified that neither of the two loans for which the guarantees were provided was overdue. The loan of EUR 20 million was provided by ATE Bank as a refinancing of an older loan of EUR 20 million, which was overdue.
- (50) The Greek authorities argued that the two State guarantees did not involve State resources, as the State owed EUR 60 million to Larco from VAT returns. Thus, if the guarantees were called, the amounts could offset the outstanding debt from the State.
- (51) The authorities also argued that, if the measure did constitute aid, it should be considered compatible with the internal market, as it complied with the Temporary Framework ⁽¹⁵⁾ and the relevant temporary Greek scheme for loan guarantees ('temporary guarantee scheme') ⁽¹⁶⁾. In particular, the authorities considered that, apart from the fact that Larco was a firm in difficulty at the time the measure was granted, the other conditions of the scheme were met:
- Larco was a large company;
 - the EUR 30 million loan was an investment loan, whereas the EUR 20 million was a loan refinancing an older loan, which was granted for investment purposes;
 - the guarantees were granted before the end of 2011;
 - the total amount of the two guaranteed loans exceeded the annual wage bill of Larco only by EUR 3 million;
 - the guarantees covered 100 % of the loan, but such a measure was the only possibility for Larco to access financing, due to the particular situation of the Greek economy.
 - the guarantees included a 1 % p.a. premium, which should be considered as a market premium.
- (52) Finally, the Greek authorities argued that if the Commission concluded that the measure constituted aid and that the conditions of the temporary guarantee scheme were not met, the measures should be considered as rescue aid. Such aid should have been considered notified, as the Commission was made aware of the measure in the reply of 16 March 2012 to the questionnaire, when it was at the stage of the *ex-officio* preliminary investigation.
- (53) According to the Greek authorities, the aid complied with the requirements of the Rescue and Restructuring Guidelines, since:
- it was liquidity support in the form of loan guarantees;
 - it was warranted on the grounds of serious social difficulties and had no undue adverse spill over effects on other Member States;

⁽¹⁴⁾ Articles 200-205 of the Administrative Procedures Code.

⁽¹⁵⁾ Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7.4.2009, p. 1).

⁽¹⁶⁾ N 308/2009, adopted on 30 June 2009.

- c. the Greek authorities were preparing a restructuring plan in cooperation with the Commission;
 - d. it was restricted to the amount needed to keep the firm in business for a limited period;
 - e. it respected the 'one time, last time' condition, as Larco had not been subject to rescue or restructuring aid in the past;
 - f. Larco presented a business plan to the State, justifying the necessity of the funding of EUR 30 million for investments.
- (54) The Greek authorities clarified that measure 6 was granted by virtue of (i) the ministerial decision YA 2/95156/0025 dated 30 December 2011 covering the exact amount of EUR 30 000 000 and (ii) the ministerial decision YA 2/95161/0025 dated 30 December 2011 for the exact amount of EUR 20 000 000.

4. ASSESSMENT

- (55) This Decision addresses as a preliminary point the issue of whether Larco is a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines. Subsequently, the Decision will assess whether the measures under scrutiny constitute State aid to Larco within the meaning of Article 107(1) of the Treaty and, finally, whether such aid might be compatible with the internal market.

4.1. Difficulties of Larco

- (56) In the Decision of 6 March 2013 and in particular recitals 18-25 thereof, the Commission concluded on a preliminary basis that Larco was a firm in difficulty at the time the 6 measures in question were provided. Larco's key financial data during the period 2007-2011 are set out in the table:

Larco's key financial data 2007-6/2012 (EUR million)

	2007	2008	2009	2010	2011	H1 2012 (*)
Turnover	549,3	284	98,8	239	311	154,6
EBT	23	- 116	- 105	6,4	6,5	- 12,2
Registered capital	163,8	163,8	109	109	109	109
Own equity	104	- 0,4	- 35	- 31	- 26	- 39
Total Debt	141,2	230,1	233,9	261,8	262,7	326,0
Debt/Equity (ratio)	1,3	- 575,0	- 6,6	- 8,3	- 10,1	- 8,4

(*) Data submitted by HRADF.

- (57) Point 10(a) of the Rescue and Restructuring Guidelines states that a limited liability company is considered to be in difficult when 'more than half of registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months'. This reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term (as set out in point 9 of the Rescue and Restructuring Guidelines).
- (58) Furthermore, according to point 11 of the Rescue and Restructuring Guidelines, a firm may be considered to be in difficulty 'where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value'. In this respect, according to the General Court, 'the existence of negative own capital which [...] may be considered to be an important indicator that an undertaking is in a difficult financial situation' ⁽¹⁷⁾.

⁽¹⁷⁾ Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, [2010] ECR II-585, paragraph 106.

- (59) According to the financial statements of Larco for the period 2007-H1 2012, the registered capital of the company did not decrease by more than half. However, over the same period the company's own equity turned negative. In previous cases the Commission has considered that where a company has negative equity, this implies that the entire registered capital of that company has been lost and there is an *a priori* assumption that the criteria of point 10(a) of the Rescue and Restructuring Guidelines are met ⁽¹⁸⁾.
- (60) In the case of Larco, the Commission considers that its registered capital only appears not to have been decreased by more than half, because the company did not adopt appropriate measures, as normally foreseen by Greek legislation ⁽¹⁹⁾. Such appropriate measures aim at turning a company's own equity from negative to positive and, at the same time, at increasing it to an adequate level. Such appropriate measures could be either the capitalisation of losses or a capital increase or both.
- (61) In this respect, the Commission considers that a capitalisation of losses would have resulted in the loss of the entire registered capital of the company, since the accumulated losses were higher than the registered capital. For this reason the Commission considers that the criteria in point 10(a) of the Rescue and Restructuring Guidelines have been met in this case since 2008.
- (62) In addition, as regards the criteria in point 11 of the Rescue and Restructuring Guidelines, Larco incurred a significant decrease of turnover from 2007 until 2009 and significant losses in 2008 and 2009, with a total amount of EUR 221 million (EUR 116 million and EUR 105 million respectively). In 2010 and 2011 the company had increased turnover and earnings, but those increases were not sufficient to allow Larco's financial recovery. During the same period its equity remained negative and its debt continued to grow. Furthermore, Larco's operations again became loss-making in H1 2012.
- (63) The Commission does not agree with the argument of the Greek authorities that Larco was not in difficulty during the years 2008 and 2009 because the losses were due to the decreased price of ferronickel.
- (64) First, the fact that a decrease in the price of ferronickel led to losses and contributed to Larco's difficulties does not in itself mitigate the finding that Larco showed the usual signs of a firm being in difficulty. A healthy firm would need to adapt its costs to such price changes in order to avoid losses.
- (65) Secondly, in the years 2008 and 2009 the company had negative equity and increasing debt (63 % increase between 2007-2008). Although the price of ferronickel and turnover increased significantly after 2010, the subsequent financial results of Larco indicate that its difficulties persisted. Thus, it cannot be concluded that the losses of 2008 and 2009 were only the result of low ferronickel prices.
- (66) In the light of the above, it is concluded that Larco was a firm in difficulty within the meaning of the Rescue and Restructuring Guidelines at the time the 6 measures in question were granted.

4.2. Existence of State aid

- (67) Article 107(1) of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (68) According to the settled practice of the Commission and as confirmed by the case law, the criterion for assessing whether a transaction between a public body and an undertaking amounts to State aid is the market economy investor or creditor principle ('MEIP' or 'MECP') ⁽²⁰⁾. It follows from that principle that, when the State acts in a market as a commercial operator, it must do so in a way comparable to a private operator. If the State does not do so, State aid could be involved. In other words, the benchmark for appreciating whether a transaction involves State aid is whether a private operator placed in a similar situation would have behaved in the same way. In applying this principle, non-economic considerations cannot be taken into account as reasons for granting support measures.

⁽¹⁸⁾ Commission Decision in case C 38/2007 *Arbel Fauvet Rail* (OJ L 238, 5.9.2008, p. 27), Commission Decision in case C 27/2010 *United Textiles* (OJ L 279, 12.10.2012, p. 30).

⁽¹⁹⁾ According to Article 47 of Greek Law 2190/1920, where a company's own equity falls below 50 % of its share capital, the company's shareholders must decide (within 6 months from the expiry of the relevant fiscal year) either to dissolve the company or to adopt other measures.

⁽²⁰⁾ See, e.g., Case C-305/89 *Italy v Commission* ('ALFA Romeo') [1991] ECR I-1603, paragraphs 18 and 19; Case T-16/96 *Cityflyer Express v Commission* [1998] ECR II-757, paragraph 51; Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 104; Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria v Commission* [2012] ECR II-0000, paragraph 48.

4.2.1. *Measure 1: non-collection of debt to the Ministry of Finance*

- (69) Based on the information available, the Commission cannot agree with the argument of the Greek authorities that the credit from OER was a private credit. According to Greek law 1386/1983 (Article 1) ⁽²¹⁾ establishing OER, 'OER will operate to the benefit of the social interest and under the supervision of the State'. According to Article 3 of the same law, the State was the only shareholder of OER. In addition, the State had the possibility to directly appoint the chairman along with 2 out of 8 members of the Board of Directors and, indirectly, another 4 members. It follows from the above that the resources of OER amount to State resources and thus any credit from OER seems to be imputable to the State.
- (70) The evidence provided by the Greek authorities show that Larco's debt to OER (subsequently transferred to the State) had been regularly reported and invoiced, in accordance with the 1998 debt settlement agreement agreed under the 1998 debt settlement agreement. Part of the debt was collected, when the profitability of the company allowed it. Larco undertook investments during that period, which reduced repayments, but those investments were agreed by all creditors. According to the agreement, the creditors were not entitled to any forced execution of the outstanding debt.
- (71) In the light of the above, it is concluded that Measure 1 complied with the MECP, since the State, as creditor, acted in a way comparable to that of a private creditor, since it used all the means at its disposal and within the contractually agreed framework, in order to collect its debt.

4.2.2. *Measure 2: the 2008 State guarantee*

- (72) State guarantees put State resources at risk, as their call is paid through the State budget. Moreover, any guarantee that is not properly remunerated implies a loss of financial resources for the State. Thus, the criterion of State resources and imputability to the State is fulfilled for this measure and this is not disputed by the Greek authorities.
- (73) The Commission disagrees with the argument of the Greek authorities that the conditions of Section 3.2 of the Guarantee Notice are fulfilled. The Commission has established that Larco was a firm in difficulty in 2008. In addition, an annual guarantee premium of 1 % cannot be considered as reflecting the risk of default for the guaranteed loans, given the significant financial difficulties of Larco and in particular its high debt to equity ratio.
- (74) The Commission considers that a reasonable market creditor would not have provided Larco with a guarantee under those conditions. Since the measure was provided selectively to Larco, the Commission concludes that the 2008 State guarantee provided a selective advantage to the beneficiary.
- (75) Larco is active in a sector in which products are traded among Member States and itself exports most of its production to other Member States. In addition, there is nickel mining, smelting and refining in 6 Member States apart from Greece, namely in Austria, Finland, France (New Caledonia), Spain, Sweden and the United Kingdom ⁽²²⁾. Nickel is traded in almost all Member States ⁽²³⁾.
- (76) The measures in question enable Larco to continue operating so that, unlike other competitors with financial difficulties, it does not have to face the consequences normally deriving from its difficult financial results. This distorts competition as other companies active in the same markets need to operate without such State support.
- (77) Thus, it is concluded that Measure 2 constitutes State aid within the meaning of Article 107(1) of the Treaty. The Commission considers that the aid is equal to the amount of the guaranteed loan, because it is doubtful that Larco, in view of its economic difficulties, would have found any funding in the market irrespective of the conditions. In other words, the Commission considers that Larco received an advantage equal to the amount of the guaranteed loan, because without the State guarantee it would not have been able to receive that financing from the market.
- (78) The Commission does not have any information indicating that the guarantee has been triggered.

4.2.3. *Measure 3: the 2009 capital increase*

- (79) The participation of the State in Larco's 2009 share capital increase involves State resources and is imputable to the State. Thus, this criterion is fulfilled and is not disputed by the Greek authorities.

⁽²¹⁾ Hellenic Republic Official Journal FEK A-107.

⁽²²⁾ Sources: British Geological Survey, European Mineral Statistics 2006-2010, <http://www.bgs.ac.uk/>; also Nickel Institute, <http://www.nickelinstitute.org>

⁽²³⁾ Source: British Geological Survey, European Mineral Statistics 2006-2010, <http://www.bgs.ac.uk/>

- (80) The Commission has not received any convincing evidence from the Greek authorities which would justify their argument that the State acted as a reasonable market investor. Indeed, minutes of the shareholders meetings provided as evidence suggest that no restructuring plan was provided to the shareholders prior to the capital increase, despite Larco being a firm in difficulty. In addition, the final amount of the capital increase was eventually insufficient to cover the negative equity of Larco and could thus not be seen as a measure protecting the company's value and supporting its restructuring.
- (81) As regards the participation of NBG, the Commission recalls the Court's clarification that 'simultaneity cannot in itself, even where significant private investments have been made, suffice for a finding that there has been no aid within the meaning of Article 87(1) EC without taking into consideration the other relevant facts and points of law.' ⁽²⁴⁾.
- (82) Indeed, the partial participation of NBG cannot be used as evidence of concomitance between State and private shareholders because NBG was exposed to Larco not only as a shareholder, but also as a creditor. Its decision to participate partially in the capital increase was thus a means to protect not only the value of its investment but also its position as a creditor.
- (83) Furthermore, the State had already provided Larco with the 2008 State guarantee. Thus, as established by relevant case law, the provision of the State's participation to the 2009 capital increase cannot be seen in isolation, but must be considered in the context of other aid measures ⁽²⁵⁾.
- (84) Finally, the minutes of the shareholders' meetings do not support the argument of the Greek authorities that PPC's intention was to allow the State a large shareholding majority. Instead, PPC simply declared that it would not participate in the share capital increase.
- (85) Thus, the Commission considers that a reasonable market investor would not have participated in Larco's share capital increase under those conditions. Since the measure was provided selectively to Larco, the Commission concludes that the State's participation in the 2009 capital increase provided the beneficiary with a selective advantage.
- (86) For the reasons set out in recitals 75-76 above, the measure has the potential to affect trade between Member States and to distort competition.
- (87) Thus, it is concluded that measure 3 constitutes State aid within the meaning of Article 107(1) of the Treaty. Since it is not disputed that the State exercised its full rights to the share capital increase [unclear], the value of Measure 3 amounts to EUR 44 999 999,40.
- (88) As regards the granting date, it follows from the minutes of the shareholders meeting of 14 May 2009 that the Greek State provided EUR 15 000 000 to the capital increase on 15 April 2009 ⁽²⁶⁾, with a view to the total contribution of the State to the share capital increase[unclear], which amounted to EUR 44 999 999,40. The Commission does not have information about the date on which the remaining amount of the State's contribution to the Company's share capital increase was granted.

4.2.4. Measure 4: the 2010 State guarantee

- (89) For the same reasons as for Measure 2, the criterion of State resources and imputability to the State is fulfilled for Measure 4 and this was not disputed by the Greek authorities.
- (90) The Commission acknowledges that it may be common business practice for shareholders to provide guarantees in circumstances similar to this case. However, since NBG was also a shareholder of Larco, the Commission considers that it would be normal for shareholders to share proportionately the exposure stemming from the guarantee in question. Instead, the State assumed the entire risk, providing a guarantee for a debt, while Larco was in difficulty and already had mounting debt.
- (91) As for Measure 2, the conditions of Section 3.2 of the Guarantee Notice are not fulfilled for this measure either, since a 2 % premium cannot be considered as reflecting the risk of Larco's default.

⁽²⁴⁾ Case T-565/08 *Corsica Ferries v Commission*, judgment of 11 September 2012, paragraph 122.

⁽²⁵⁾ Joined Cases C-399 10 P and C-401 10 P *Bouygues SA, Bouygues Télécom SA v Commission*, and Case T-11/95 *BP Chemicals v Commission* [1998], paragraph 171.

⁽²⁶⁾ By virtue of the document OIK/27694/0025 of the Ministry of Finance.

- (92) Thus, the Commission considers that a reasonable market creditor would not have provided Larco with a guarantee under those conditions. Since the measure was provided selectively to Larco, the Commission concludes that it provided a selective advantage to the beneficiary.
- (93) For the reasons set out in recitals 75-76 above, the measure has the potential to affect trade between Member States and to distort competition.
- (94) Thus, it is concluded that measure 4 constitutes State aid within the meaning of Article 107(1) of the Treaty. The Commission considers that the amount of the aid is equal to the guaranteed amount, because it is clear that, irrespective of the conditions, no reasonable market player would have been able to guarantee that amount for Larco, in view of its economic difficulties. In other words, the Commission considers that Larco received an advantage equal to the guaranteed amount, because without the State guarantee it would not have been able to receive any guarantee by the market.
- (95) The Commission does not have any information indicating that the guarantee has been triggered.

4.2.5. Measure 5: letters of guarantee instead of pre-payment of an additional tax in 2010

- (96) The Commission takes note of the clarifications provided by the Greek authorities as regards the factual background of Measure 5.
- (97) In the light of the evidence provided by the Greek authorities, the Commission agrees that the right to replace the pre-payment of the additional tax with letters of guarantee was granted to Larco by the court on the basis of objective criteria, which would have applied to any company in a similar situation. Thus, it is concluded that Measure 5 did not involve a selective advantage to Larco.

4.2.6. Measure 6: the 2011 State guarantees

- (98) The Commission takes note of the clarifications provided by the Greek authorities as regards the factual background to Measure 6.
- (99) The Commission disagrees with the Greek authorities that Measure 6 does not involve State resources. First, as explained in respect of Measure 2, State guarantees put State resources at risk, as their call is paid through the State budget. Moreover, any guarantee that is not properly remunerated with a market premium implies a loss of financial resources for the State. Furthermore, the argument about the outstanding debt of EUR 60 million in VAT seems contradictory to the comments provided in respect of Measure 5, whereby the Greek authorities argued that they legally and intentionally did not return VAT due, in order to offset the suspension of the pre-payment of the additional tax.
- (100) Thus, the Commission considers that the criterion of State resources and imputability to the State is fulfilled for this measure.
- (101) Similar to Measures 2 and 4, the conditions of Section 3.2 of the Guarantee Notice are not fulfilled for this measure either.
- (102) Thus, the Commission considers that a reasonable market creditor would not have provided Larco with a guarantee under those conditions. Since the measure was provided selectively to Larco, the Commission concludes that it provided a selective advantage to the beneficiary.
- (103) For the reasons set out in recitals 75-76 above, the measure has the potential to affect trade between Member States and to distort competition.
- (104) Thus, it is concluded that Measure 6 constitutes State aid within the meaning of Article 107(1) of the Treaty. As for Measure 2, the Commission considers that the amount of the aid is equal to the amount of the guaranteed loans, because it is doubtful that Larco, in view of its economic difficulties, would have found any funding in the market irrespective of the conditions.
- (105) The Commission does not have any information indicating that the guarantee has been triggered.

4.2.7. Conclusion on existence of State aid

- (106) In the light of the above, the Commission considers that Measures 1 and 5 do not constitute State aid, whereas Measures 2, 3, 4 and 6 constitute State aid within the meaning of Article 107(1) of the Treaty.
- (107) Thus, the State aid comprised in Measure 2 amounts to EUR 30 000 000, granted on 22 December 2008. The State aid comprised in Measure 3 amounts to EUR 44 999 999,40, but the granting date(s) need to be clarified by the Greek authorities. The State aid comprised in Measure 4 amounts to EUR 10 820 824,95, granted on 10 May 2010 and the total State aid comprised in Measure 6 amounts to EUR 50 000 000 (resulting from EUR 30 000 000 + EUR 30 000 000) granted on 30 December 2011.

4.3. Unlawful aid

- (108) The Measures 2, 3, 4 and 6 constitute State aid and were granted in breach of the notification and stand-still obligations established in Article 108(3) of the Treaty. Thus, those measures constitute unlawful State aid.

4.4. Compatibility of the aid

- (109) Inasmuch as certain measures constitute State aid within the meaning of Article 107(1) of the Treaty, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.
- (110) According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met ⁽²⁷⁾.

4.4.1. Compatibility of measures 2, 4 and 6

- (111) For Measures 2 and 4 the Greek authorities did not invoke any possible grounds of compatibility, because they argued that the measures did not constitute State aid.
- (112) Given that the measures constitute State aid, they should be assessed with regards to their compatibility under Article 107(3)(c) of the Treaty and in particular under the Rescue and Restructuring Guidelines, since Larco has been a firm in difficulty at least since 2008. According point 20 of the Rescue and Restructuring Guidelines, 'a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Commission considers that aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest only if the conditions set out in these Guidelines are met.'
- (113) However, the relevant conditions of the Rescue and Restructuring Guidelines (Section 3.1) are not fulfilled in this case. The guarantees were not terminated after 6 months and the Greek authorities did not notify a restructuring plan that would restore the company's viability, whilst there were no compensatory measures implemented in order to mitigate the distortions of competition. Finally, there is no evidence that the aid was limited to the minimum necessary, notably through a significant own contribution of the aid beneficiary. The authorities did not provide a liquidation plan.
- (114) As regards Measure 6, the Greek authorities have argued that it was compatible with the Temporary Framework and the temporary guarantee scheme and in any event that it qualified as rescue aid.
- (115) The Commission disagrees with the arguments of the Greek authorities. It considers that the conditions of the Temporary Framework and the temporary guarantee scheme were not met, since Larco was a firm in difficulty. The total amount of the two guarantees exceeded Larco's annual wage bill, the guarantee exceeded 90 % of the loan and 1 % p.a. could not be considered as a market premium, reflecting the risk of default for the guaranteed amount.
- (116) As regards the argument that the measure amounted to rescue aid, although the Commission has held discussions with the Greek authorities concerning Larco since 2011, the authorities never mentioned that the 2011 guarantees should be considered as rescue aid and never provided any notification to that effect. Indeed, in their reply of 16 March 2012 to the questionnaire, the Greek authorities explicitly declared that the company had not benefited from rescue and/or restructuring aid for the past 10 years.

⁽²⁷⁾ Case C-364/90, *Italy v Commission*, [1993] ECR I-2097, paragraph 20.

- (117) The relevant conditions of the Rescue and Restructuring Guidelines are in any event not fulfilled in this case either. The 2011 guarantees were not terminated after 6 months and the Greek authorities did not notify a restructuring plan or a liquidation plan. The business plan justifying the need for EUR 30 million for investments cannot form the basis of a compatible restructuring plan for the purposes of the Rescue and Restructuring Guidelines. That is because that plan did not aim to restore the company's viability, and there were no compensatory measures envisaged or implemented in order to mitigate the distortions of competition. Finally, there was no evidence that the aid was limited to the minimum necessary, notably through a significant own contribution of the aid beneficiary. The authorities did not provide a liquidation plan either.
- (118) The Commission has not identified any other possible grounds for the compatibility of Measures 2, 4 and 6.
- (119) In the light of the above, the Commission considers Measures 2, 4 and 6 to be incompatible with the internal market.

4.4.2. Compatibility of measure 3

- (120) The Greek authorities did not identify any possible grounds for the compatibility of Measure 3, because they argued that the measure did not constitute State aid.
- (121) Given that the measure constitutes State aid, it should also be assessed with regard to its compatibility under the Rescue and Restructuring Guidelines, for the reasons set out in recital 112 above. However, the relevant conditions of the Rescue and Restructuring Guidelines are not fulfilled in this case either. The Greek authorities never notified a restructuring plan that would restore the company's viability, and there were no compensatory measures implemented in order to mitigate the distortions of competition. Finally, there is no evidence that the aid was limited to the minimum necessary, notably through a significant own contribution of the aid beneficiary.
- (122) The Commission has not identified any other possible grounds for the compatibility of this measure.
- (123) Against this background, the Commission considers Measure 3 to be incompatible with the internal market.

4.5. Recovery

- (124) According to the Treaty and the Court's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market ⁽²⁸⁾. The Court has also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽²⁹⁾. In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ⁽³⁰⁾.
- (125) In line with the case-law, Article 14(1) of Council Regulation (EC) No 659/1999 ⁽³¹⁾ stated that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary [...]'.
- (126) Thus, given that none of the measures in question were notified to the Commission, in violation of Article 108 of the Treaty and are, therefore, to be considered as unlawful and incompatible aid, they must be recovered in order to re-establish the situation that existed on the market prior to their granting. Recovery should cover the time from when the advantage accrued to the beneficiary, that is to say when the aid was put at the disposal of the beneficiary, until effective recovery, and the sums to be recovered should bear interest until effective recovery.

5. CONCLUSION

- (127) Measures 1 and 5 do not constitute aid within the meaning of Article 107(1) of the Treaty.
- (128) Greece unlawfully implemented Measures 2, 3, 4 and 6 in breach of Article 108(3) of the Treaty.

⁽²⁸⁾ See Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13.

⁽²⁹⁾ See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75.

⁽³⁰⁾ See Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraphs 64 and 65.

⁽³¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

- (129) In particular, Measures 2, 4 and 6 (State guarantees of 2008, 2010 and 2011) in favour of Larco constituted State aid within the meaning of Article 107(1) of the Treaty and were incompatible with the internal market, because the relevant conditions of the Rescue and Restructuring Guidelines were not met and no other compatibility grounds were identified.
- (130) Measure 3 (the State's participation in the 2009 capital increase of Larco) also constituted State aid and was incompatible with the Treaty, because the relevant conditions of the Rescue and Restructuring Guidelines were not met and no other compatibility basis was identified.
- (131) The Commission notes that Greece has agreed the present decision to be adopted in the English language,

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

The State aid amounting to EUR 135 820 824,35 in the form of State guarantees to Larco General Mining & Metallurgical Company S.A. in 2008, 2010 and 2011 and the State's participation to the company's capital increase in 2009, unlawfully granted by Greece in breach of Article 108(3) of the Treaty is incompatible with the internal market.

Article 3

1. Greece shall recover the incompatible aid referred to in Article 2 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽³²⁾, as amended.
4. As regards measure 3, Greece shall provide the exact date(s) when it provided its contribution to the 2009 share capital increase.
5. Greece shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of adoption of this Decision.

Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.
2. Greece shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 5

1. Within two months following notification of this Decision, Greece shall submit the following information:
 - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and planned to comply with this Decision;
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.

⁽³²⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

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

Article 6

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 27 March 2014.

For the Commission

Joaquín ALMUNIA

Vice-President

ANNEX

INFORMATION ABOUT THE AMOUNTS OF AID RECEIVED, TO BE RECOVERED AND ALREADY RECOVERED

Identity of the beneficiary — measure	Total amount of aid received	Total amount of aid to be recovered (Principal)	Total amount already reimbursed	
			Principal	Recovery interest
Larco — measure 2	30 000 000	30 000 000	0	0
Larco — measure 3	44 999 999,40	44 999 999,40	0	0
Larco — measure 4	10 820 824,95	10 820 824,95	0	0
Larco — measure 6	50 000 000	50 000 000	0	0

CORRIGENDA

Corrigendum to Commission Regulation (EU) No 866/2014 of 8 August 2014 amending Annexes III, V and VI to Regulation (EC) No 1223/2009 of the European Parliament and the Council on cosmetic products

(Official Journal of the European Union L 238 of 9 August 2014)

On page 5, the Annex to the Regulation is replaced by the following:

‘ANNEX

Annexes III, V and VI to Regulation (EC) No 1223/2009 are amended as follows:

(1) In Annex III, the following entries 286 and 287 are added:

Reference number	Substance Identification				Conditions			Wording of conditions of use and warnings
	Chemical name/ INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	
a	b	c	d	e	f	g	h	i
“286	C ₁₆ -alkyltrimethylammonium chloride	Cetrimonium chloride ⁽¹⁾	112-02-7	203-928-6	(a) Rinse-off hair products	(a) 2,5 % for the individual concentrations or the sum of the individual concentrations of cetrimonium chloride and steartrimonium chloride	For purposes other than inhibiting the development of micro-organisms in the product. The purpose has to be apparent from the presentation of the product.	
	C ₁₈ -alkyltrimethylammonium chloride	Steartrimonium chloride ⁽¹⁾	112-03-8	203-929-1	(b) Leave-on hair products	(b) 1,0 % for the individual concentrations or the sum of the individual concentrations of cetrimonium chloride and steartrimonium chloride		
					(c) Leave-on face products	(c) 0,5 % for the individual concentrations or the sum of the individual concentrations of cetrimonium chloride and steartrimonium chloride		

(2) Annex V is amended as follows:

(a) entry 44 is replaced by the following:

	Substance Identification				Conditions			
Reference number	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	Wording of conditions of use and warnings
a	b	c	d	e	f	g	h	i
“44	Alkyl (C ₁₂₋₂₂) trimethyl ammonium bromide and chloride	Behentrimonium chloride ⁽¹⁾ ,	17301-53-0,	241-327-0,		0,1 %		
		cetrimonium bromide,	57-09-0,	200-311-3,				
		cetrimonium chloride ⁽²⁾ ,	112-02-7,	203-928-6,				
		laurtrimonium bromide,	1119-94-4,	214-290-3,				
		laurtrimonium chloride,	112-00-5,	203-927-0,				
		steartrimonium bromide,	1120-02-1,	214-294-5,				
		steartrimonium chloride ⁽²⁾	112-03-8	203-929-1				

⁽¹⁾ For use other than as a preservative, see Annex III, No 287.
⁽²⁾ For use other than as a preservative, see Annex III, No 286.”

(b) entry 59 is added:

	Substance Identification				Conditions			
Reference number	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	Wording of conditions of use and warnings
a	b	c	d	e	f	g	h	i
“59	1,2,3-Propanetricarboxylic acid, 2-hydroxy-, monohydrate and 1,2,3-Propanetricarboxylic acid, 2-hydroxy-, silver(1+) salt, monohydrate	Citric acid (and) Silver citrate	—	460-890-5		0,2 %, corresponding to 0,0024 % of silver	Not to be used in oral products and eye products”	

(3) In Annex VI entry 29 is added:

Reference number	Substance Identification				Conditions			Wording of conditions of use and warnings
	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	
a	b	c	d	e	f	g	h	i
"29	1,3,5-Triazine, 2,4,6-tris [1,1'-biphenyl]-4-yl-, including as nanomaterial	Tris-biphenyl triazine Tris-biphenyl triazine (nano)	31274-51-8	—		10 %	Not to be used in sprays. Only nanomaterials having the following characteristics are allowed: — median primary particle size > 80 nm; — Purity ≥ 98 %; — Uncoated"	

