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II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2015/454

of 9 July 2014

on the State aid SA.34823 (2012/C), SA.36004 (2013/NN), SA.37965 (2013/N), SA.37966 (2013/N), SA.37967 (2013/N) implemented by Greece for Alpha Bank Group relating to:

- **Recapitalisation and restructuring of Alpha Bank S.A.,**
- **Resolution of Cooperative Bank of Western Macedonia through a transfer order to Alpha Bank S.A.,**
- **Resolution of Evia Cooperative Bank through a transfer order to Alpha Bank S.A.,**
- **Resolution of the Cooperative Bank of Dodecanese through a transfer order to Alpha Bank S.A.**

*(notified under document C(2014) 4662)***(Only the English text is authentic)****(Text with EEA relevance)**

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 Member States and other interested parties to submit their comments pursuant to those provisions,

Whereas,

1. PROCEDURE**1.1. PROCEDURE RELATED TO ALPHA BANK**

- (1) By decision of 19 November 2008 the Commission approved a scheme entitled 'Support Measures for the Credit Institutions in Greece' (the 'Greek Banks Support Scheme') designed to ensure the stability of the Greek financial system. The Greek Banks Support Scheme allows for aid to be granted under its three constituent measures, a recapitalisation measure, a guarantee measure and a government bond loan measure⁽¹⁾. In May 2009, the Alpha Bank Group ('the Bank') was recapitalised by Greece under the recapitalisation measure.
- (2) Recital 14 of the decision of 19 November 2008 recorded that a restructuring plan would be notified to the Commission in respect of the beneficiaries of the recapitalisation measure.
- (3) On 2 August 2010, the Greek authorities submitted a restructuring plan in respect of the Bank to the Commission. The Commission registered that plan and its subsequent updates as well as additional information submitted by the Greek authorities as Case SA.30342 (PN 26/2010) and then SA.32786 (2011/PN).

⁽¹⁾ Commission Decision of 19 November 2008 in State aid N 560/2008 'Support Measures for the Credit Institutions in Greece' (OJ C 125, 5.6.2009, p. 6). It was attributed the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended as described in footnote 2.

- (4) The Bank has repeatedly benefited from State guarantees on debt instruments and government bond loans under the Greek Bank Support Scheme ⁽²⁾. It also benefited from State-guaranteed emergency liquidity assistance ('State-guaranteed ELA').
- (5) On 20 April 2012, the Hellenic Financial Stability Fund ('HFSF') provided the Bank with a letter committing to participate in a planned share capital increase of the Bank. On 28 May 2012, the HFSF granted a bridge recapitalisation of EUR 1 900 million to the Bank ('first bridge recapitalisation').
- (6) In May 2012, the Greek authorities notified to the Commission the commitment letter that had been provided by the HFSF to the Bank. The Commission registered it as a non-notified aid (Case SA.34823 (2012/NN)) as the measure had already been implemented.
- (7) By decision of 27 July 2012, the Commission opened a formal investigation procedure on the first bridge recapitalisation ('the Alpha Opening Decision') ⁽³⁾.
- (8) On 12 October 2012, the HFSF gave its consent to the Bank for the acquisition of Emporiki Bank from Crédit Agricole S.A. ('Crédit Agricole'). On 16 October 2012, Crédit Agricole and the Bank signed a share purchase agreement.
- (9) Before that date, the Greek authorities had informed the Commission services about the evolution of the process and the terms of the potential acquisition of Emporiki Bank.
- (10) On 23 November 2012, the Commission services sent a letter to the Greek authorities, including their preliminary assessment of the acquisition.
- (11) In December 2012, the HFSF granted a second bridge recapitalisation of EUR 1 042 million to the Bank ('second bridge recapitalisation'). On 21 December 2012, the HFSF also provided the Bank with a commitment letter for its participation in a share capital increase of the Bank and in convertible capital instruments to be issued, for a total amount of up to EUR 1 629 million ⁽⁴⁾. The Greek authorities notified those measures to the Commission on 27 December 2012 ⁽⁵⁾.

⁽²⁾ On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (see Commission Decision of 18 September 2009 in State aid N 504/2009 'Prolongation and amendment of the Support Measures for the Credit Institutions in Greece' (OJ C 264, 6.11.2009, p. 5)). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (see Commission Decision of 25 January 2010 in State aid N 690/2009 'Prolongation of the Support Measures for the Credit Institutions in Greece' (OJ C 57, 9.3.2010, p. 6)). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (see Commission Decision of 30 June 2010 in State aid N 260/2010 'Extension of the Support Measures for the Credit Institutions in Greece' (OJ C 238, 3.9.2010, p. 3)). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2010 (see Commission Decision of 21 December 2010 in State aid SA 31998 (2010/N) 'Fourth extension of the Support measures for the credit Institutions in Greece' (OJ C 53, 19.2.2011, p. 2)). On 4 April 2011 the Commission approved an amendment (see Commission Decision of 4 April 2011 in State aid SA.32767 (2011/N) 'Amendment to the Support Measures for the Credit Institutions in Greece' (OJ C 164, 2.6.2011, p. 8)). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (see Commission Decision of 27 June 2011 in State aid SA.33153 (2011/N) 'Fifth prolongation of the Support measures for the credit Institutions in Greece' (OJ C 274, 17.9.2011, p. 6)). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (see Commission Decision of 6 February 2012 in State aid SA.34149 (2011/N) 'Sixth prolongation of the Support Measures for the Credit Institutions in Greece' (OJ C 101, 4.4.2012, p. 2)). On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (see Commission Decision of 6 July 2012 in State aid case SA.35002 (2012/N) — Greece 'Prolongation of the Support Scheme for Credit Institutions in Greece' (OJ C 77, 15.3.2013, p. 14)). On 22 January 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2013 (see Commission Decision of 22 January 2013 in State aid case SA.35999 (2012/N) — Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece' (OJ C 162, 7.6.2013, p. 6)). On 25 July 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 31 December 2013 (see Commission Decision of 25 July 2013 in State aid case SA.36956 (2013/N) — Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece' (OJ C 141, 9.5.2014, p. 3)). On 14 January 2014, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2014 (see Commission Decision of 14 January 2014 in State aid case SA. 37958 (2013/N) — Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece', not yet published).

⁽³⁾ See Commission Decision of 27 July 2012 in State aid SA.34823 (2012/C) (ex 2012 NN), 'Recapitalisation Alpha Bank by the Hellenic Financial Stability Fund' (OJ C 357, 20.11.2012, p. 36).

⁽⁴⁾ HFSF press release, 24 December 2012, available online at: http://www.hfsf.gr/files/press_release_20121224_en.pdf

⁽⁵⁾ Those measures were registered by the Commission as case SA.36004 (2013/NN).

- (12) In May 2013, the Bank announced the successful completion of its EUR 457,1 million rights issue and the allocation of all shares offered in an additional EUR 92,9 million private placement. On 3 June 2013, the HFSF converted the first and second bridge recapitalisations into equity and injected a further EUR 1 079 million of capital into the Bank (the 'Spring 2013 recapitalisation').
- (13) On 19 December 2013, the Greek authorities submitted information to the Commission regarding the terms of the Spring 2013 recapitalisation.
- (14) On 12 June 2014 the Greek authorities submitted a final restructuring plan for the Bank ('the restructuring plan') to the Commission. On the same date they provided information on the State-guaranteed ELA. They indicated that they intended to continue providing the Bank with liquidity support, as well as State guarantees on debt instruments and government bond loans under the Greek Banks Support Scheme ⁽⁶⁾.
- (15) The Commission has had numerous meetings, teleconferences and electronic mail exchanges with representatives of the Greek authorities and the Bank.
- (16) Greece accepts that exceptionally this Decision is adopted in the English language only.

1.2. PROCEDURE RELATED TO THE STATE SUPPORT GRANTED TO THE THREE COOPERATIVE BANKS

- (17) On 3 December 2013, Greece informed the Commission about the anticipated resolution of three cooperative banks ('the three Cooperative Banks'), namely Cooperative Bank of Dodecanese ('Dodecanese Bank'), Cooperative Bank of Evia ('Evia Bank') and Cooperative Bank of Western Macedonia ('Western Macedonia Bank').
- (18) On 4 December 2013, the Commission services asked Greece to submit information regarding the anticipated resolution of the three Cooperative Banks.
- (19) On 5 December 2013, Greece submitted the requested information to the Commission services.
- (20) On 8 December 2013, the Bank of Greece proceeded with the resolution of the three Cooperative Banks and the transfer of the selected liabilities of the three Cooperative Banks to the Bank.
- (21) On 17 December 2013, Greece notified the State support provided in the framework of the resolution of the three Cooperative Banks.

2. DESCRIPTION

2.1. THE BANK AND ITS DIFFICULTIES

2.1.1. General context of the Greek banking sector

- (22) Greece's real gross domestic product ('GDP') fell by 20 % from 2008 to 2012, as shown in Table 1. As a result, Greek banks faced a rapidly increasing default rate on loans to Greek households and companies ⁽⁷⁾. Those developments have adversely affected the performance of the assets of Greek banks and given rise to capital needs.

Table 1

Real GDP Growth in Greece, 2008-13

Greece	2008	2009	2010	2011	2012	2013
Real GDP growth, %	- 0,2	- 3,1	- 4,9	- 7,1	- 7,0	- 3,9

Source: Eurostat, available online at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00115>

⁽⁶⁾ The notification was registered under number SA.34823 (2012/C) (ex 2012 NN).

⁽⁷⁾ European Commission – Directorate-General Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece — March 2012*, p. 17, available online at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf

- (23) In addition, in February 2012, Greece implemented a private sector bond exchange known as Private Sector Involvement ('the PSI programme'). Greek banks were involved in the PSI programme, in the course of which the Greek government offered existing private bondholders new securities (including new Greek Government Bonds ('GGBs'), GDP-linked securities and PSI payment notes issued by the European Financial Stability Fund ('EFSF')) in exchange for existing GGBs, with a nominal discount of 53,5 % and longer maturities⁽⁸⁾. The Greek authorities announced the results of that exchange of bonds on 9 March 2012⁽⁹⁾. The exchange resulted in significant losses for the bondholders (estimated by the Bank of Greece at 78 % of the face amount of old GGBs on average for the Greek banks) and capital needs which were retroactively booked in the Greek banks' 2011 financial statements.

Table 2

Total PSI losses of the main Greek banks (EUR million)

Banks	Face amount Face amount of GGBs (1)	Face amount of state related loans (2)	Total face amount (3) = (1) + (2)	PSI loss of GGBs (4)	PSI loss of state-related loans (5)	Total gross PSI loss (6) = (4) + (5)	Total gross PSI loss/Core Tier 1 ⁽¹⁾ (Dec 2011) (%)	Total gross PSI loss/Total assets (Dec 2011) (%)
NBG	13 748	1 001	14 749	10 985	751	11 735	161,0	11,0
Eurobank	7 001	335	7 336	5 517	264	5 781	164,5	7,5
Alpha	3 898	2 145	6 043	3 087	1 699	4 786	105,7	8,1
Piraeus	7 063	280	7 343	5 686	225	5 911	226,0	12,0
Emporiki	351	415	766	270	320	590	40,3	2,7

Source: Bank of Greece, *Report on the Recapitalisation and the Restructuring of the Greek Banking Sector*, December 2012, p. 14.

⁽¹⁾ The Core Tier 1 ratio of a bank is one of the regulatory capital ratio watched by the banking supervisor in the framework of the Capital Requirement Directive.

- (24) Since the Greek banks faced substantial capital shortfalls as a result of the PSI programme and the continuing recession, the Memorandum of Economic and Financial Policies ('MEFP') of the Second Adjustment Programme for Greece between the Greek government, the European Union, the International Monetary Fund ('IMF') and the European Central Bank ('ECB') dated 11 March 2012 made funds available for those banks' recapitalisation. The Greek authorities estimated the total bank recapitalisation needs and resolution costs to be financed under that programme at EUR 50 billion⁽¹⁰⁾. That amount was calculated on the basis of a stress test performed by the Bank of Greece for the period starting December 2011 and ending December 2014 ('the stress test of 2012'), which relied on the loan losses forecast performed by Blackrock⁽¹¹⁾. The funds for the recapitalisation of the Greek banks are available through the HFSF. Table 3 summarises the calculation of capital needs for the main Greek banks as they result from the stress test of 2012.

⁽⁸⁾ See section II 'The restructuring of the Greek Sovereign Debt' of the *Report on the Recapitalisation and Restructuring of the Greek Banking Sector*, Bank of Greece, December 2012, available online at: http://www.bankofgreece.gr/BogEkdoseis/Report_on_the_recapitalisation_and_restructuring.pdf

⁽⁹⁾ Press release of Ministry of Finance of 9 March 2012, available online at: <http://www.pdma.gr/attachments/article/80/9%20MARCH%202012%20-%20RESULTS.pdf>

⁽¹⁰⁾ See footnote 7, p. 106.

⁽¹¹⁾ See footnote 8.

Table 3

Stress test of 2012: Capital needs of the main Greek banks (EUR million)

Banks	Reference Core Tier 1 (Dec 2011) (1)	Total gross PSI loss (Dec 2011) (2)	Provisions related to PSI (June 2011) (3)	Gross Cumulative Loss Projections for credit risk (4)	Loan loss reserves (Dec 2011) (5)	Internal capital generation (6)	Target Core Tier 1 (Dec 2014) (7)	Capital needs (8) = (7) - [(1) + (2) + (3) + (4) + (5) + (6)]
NBG	7 287	- 11 735	1 646	- 8 366	5 390	4 681	8 657	9 756
Eurobank	3 515	- 5 781	830	- 8 226	3 514	2 904	2 595	5 839
Alpha	4 526	- 4 786	673	- 8 493	3 115	2 428	2 033	4 571
Piraeus	2 615	- 5 911	1 005	- 6 281	2 565	1 080	2 408	7 335
Emporiki	1 462	- 590	71	- 6 351	3 969	114	1 151	2 475
Postbank (TT Bank)	557	- 3 444	566	- 1 482	1 284	- 315	903	3 737

Source: Bank of Greece, *Report on the Recapitalisation and the Restructuring of the Greek Banking Sector*, December 2012, p. 8

- (25) According to the MEFP, 'banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimises the burden for taxpayers' ⁽¹²⁾. The Bank of Greece found that only the four largest banks (Eurobank, National Bank of Greece, Piraeus Bank and Alpha Bank) submitted viable capital raising plans ⁽¹³⁾. They received a first bridge recapitalisation by the HFSF in May 2012.
- (26) Domestic deposits in the banks in Greece decreased by 37 % in total between the end of 2009 and June 2012 due to the recession and political uncertainty. Those banks had to pay higher interest rates to try to retain deposits. The costs of deposits increased, reducing the net interest margin of the banks. As Greek banks were shut out from wholesale funding markets, they became entirely dependent on Eurosystem financing ⁽¹⁴⁾, a growing portion of which was in the form of State-guaranteed ELA granted by the Bank of Greece.
- (27) On 3 December 2012, Greece launched a buy-back programme on the new GGBs received by the investors in the framework of the PSI programme, at prices ranging from 30,2 % to 40,1 % of their nominal value ⁽¹⁵⁾. The Greek banks participated in that buy-back programme which crystallised further losses on their balance sheets, since most of the accounting loss (that is, the difference between market value and nominal value) booked on those new GGBs at the time of the PSI programme became definitive and irreversible ⁽¹⁶⁾.
- (28) In December 2012, the four largest Greek banks received a second bridge recapitalisation from the HFSF.
- (29) In spring 2013, the bridge recapitalisation of the four banks was converted into permanent recapitalisation in ordinary shares, with the HFSF holding more than 80 % of the shareholding of each of the four banks. For the banks which managed to attract a pre-determined amount of private capital (the Bank, Piraeus Bank S.A. and National Bank of Greece S.A.), the HFSF received non-voting shares and private investors were granted warrants on the shares of the HFSF.

⁽¹²⁾ See footnote 7, p. 104.

⁽¹³⁾ See footnote 8.

⁽¹⁴⁾ The European Central Bank and the national central banks together constitute the Eurosystem, the system of central banks of the euro area.

⁽¹⁵⁾ Press release of Ministry of Finance of 3 December 2012, available online at: <http://www.pdma.gr/attachments/article/248/Press%20Release%20-%20December%2003.pdf>

That buy-back of its own debt at a price deeply below face value generated a significant debt reduction for Greece.

⁽¹⁶⁾ In the absence of such a buy-back, the market value of those new GGBs could have increased depending on the evolution of market parameters such as interest rates and the probability of default of Greece.

- (30) In July 2013, the Bank of Greece commissioned an advisor to carry out a diagnostic study on the loan portfolios of all Greek banks. That advisor carried out credit loss projections ('CLPs') on all domestic loan books of the Greek banks as well as on loans carrying Greek risk in foreign branches and subsidiaries over a three-and-a-half-year and a loan-lifetime horizon. The analysis provided CLPs under two macroeconomic scenarios, a baseline and an adverse one. The CLPs for foreign loan portfolios were estimated by the Bank of Greece using some input from the advisor.
- (31) Based on the advisor's assessment of the CLPs, in autumn 2013 the Bank of Greece launched a new stress test exercise ('the stress test of 2013') to assess the robustness of the Greek banks' capital position under both a baseline and an adverse scenario. The Bank of Greece conducted the capital needs assessment with the technical support of a second advisor.
- (32) The key components of the capital needs assessment under the stress test of 2013 were: (i) the CLPs⁽¹⁷⁾ on banks' loan portfolios on a consolidated basis for Greek risk and foreign risk, net of existing loan reserves; and (ii) the estimated operating profitability of banks for the period from June 2013 to December 2016, based on a conservative adjustment of the restructuring plans which had been submitted to the Bank of Greece during the fourth quarter of 2013. Table 4 summarises the calculation of capital needs for the main Greek banks on a consolidated basis under the baseline scenario for that stress test of 2013.

Table 4

Stress test of 2013: Capital needs of the Greek banks on a consolidated basis in the baseline scenario (EUR million)

Banks	Reference Core Tier 1 (June 2013) (1)	Loan Loss reserves (June 2013) (2)	CLPs for Greek risk (3)	CLPs for foreign (1) (4)	Internal Capital Generation (5)	Stress test Core Tier 1 ratio (December 2016) (6)	Capital needs (7) = (6) - (1) - (2) - (3) - (4) - (5)
NBG (2)	4 821	8 134	- 8 745	- 3 100	1 451	4 743	2 183
Eurobank (3)	2 228	7 000	- 9 519	- 1 628	2 106	3 133	2 945
Alpha	7 380	10 416	- 14 720	- 2 936	4 047	4 450	262
Piraeus	8 294	12 362	- 16 132	- 2 342	2 658	5 265	425
Attica	225	403	- 888	0	106	243	397
Panellinia	61	66	- 237	0	- 26	31	169

Source: Bank of Greece, 2013 *Stress Test of the Greek Banking Sector*, March 2014, p. 42.

(1) The impact of the foreign risk CLPs was calculated after foreign tax and taking into account the disposal commitments which had been provided to the Directorate-General for Competition Policy at that time.

(2) NBG loan loss reserves at 30 June 2013 pro-forma of the provisions of First Business Bank and Probank.

(3) Eurobank loan loss reserves at 30 June 2013 pro-forma of the provisions of New Hellenic Postbank and New Proton Bank, which were acquired in August 2013.

- (33) On 6 March 2014, the Bank of Greece announced the results of the stress test of 2013 and requested the banks to submit, by mid-April 2014, their capital raising plans to cover the capital needs under the baseline scenario.
- (34) Between the end of March 2013 and early May 2014, banks proceeded with capital increases.

⁽¹⁷⁾ Included the expected loss from the new loan production in Greece over the period from June 2013 to December 2016.

2.1.2. The beneficiary

- (35) The Bank provides universal banking services mainly in Greece and in South-Eastern Europe (Cyprus, Romania, Bulgaria, Serbia, Albania and the Former Yugoslav Republic of Macedonia ('FYROM')) as well as in the United Kingdom. It offers a full range of banking and financial products and services to households and businesses. It is active in retail, corporate and private banking, asset management, treasury and investment banking. The Bank is incorporated in Greece and its shares are listed on the Athens Stock Exchange. On 30 September 2012, the Bank employed a total of 17 119 people, of which around one-third were employed in South-Eastern Europe and in the United Kingdom, while the remaining two-thirds were employed in Greece ⁽¹⁸⁾.
- (36) The Bank participated in the PSI programme, exchanging GGBs and State-related loans with a face value of EUR 6 043 million. Its total PSI-related charge amounted to around EUR 4 786 million before tax and was entirely booked in its 2011 accounts ⁽¹⁹⁾. During the buy-back programme of December 2012, the Bank sold the new GGBs it had received in the framework of the PSI at a deep discount to nominal value. That sale crystallised its losses on the new GGBs.
- (37) The key figures of the Bank in December 2010, December 2011, December 2012 and December 2013 (consolidated data) are presented in Table 5.

Table 5

Alpha Bank key figures, 2010, 2011, 2012 and 2013

Profit and loss (EUR million)	2010	2011	2012	Pro forma 2012 (including Emporiki)	2013 (including Emporiki)
Net Interest Income	1 819	1 784	1 397	1 755	1 658
Total Operating Income	2 249	2 283	1 506	1 826	2 344
Total Operating Expenses	- 1 148	- 1 096	- 1 179	- 1 746	- 1 426
Pre Provision Income	1 101	1 187	327	80	918
Impairment Losses to cover credit risk	- 885	- 1 130	- 1 669	- 2 802	- 1 923
Impairment losses on GGBs and loans eligible to PSI	—	- 4 789	—	—	—
Negative goodwill					3 283
Net Profit/Loss	86	- 3 810	- 1 086	n/a	2 922
Selective Volume figures (EUR million)	2010	2011	2012	Pro forma 2012 (including Emporiki)	2013 (including Emporiki)
Total Loans and Advances to Customers (Net)	49 305	44 876	40 495	55 459	51 678
Deposits	38 293	29 399	28 451	41 348	42 485
Total Assets	66 798	59 148	58 357	76 518	73 697

⁽¹⁸⁾ http://www.alpha.gr/files/investorrelations/IFRS_Alphagroup_Q3_2013_en.pdf

⁽¹⁹⁾ See Table 2.

Selective Volume figures (EUR million)	2010	2011	2012	Pro forma 2012 (including Emporiki)	2013 (including Emporiki)
Total Equity ⁽¹⁾	5 784	1 966	773	3 423	8 312

Sources: 2013: http://www.alpha.gr/files/investorrelations/Deltio_Typou_20140310EN.pdf

Pro forma 2012: Restructuring Plan of Alpha Bank, June 2014, p. 24.

2012 and 2011: Financial results 2012 – Consolidated financial statements: http://www.alpha.gr/files/investorrelations/IFRS_Alphagroup_FY_2012_en.pdf

2010: Financial results 2011 – Consolidated financial statements: http://www.alpha.gr/files/investorrelations/IFRS_Alphagroup_FY_2011_en.pdf

⁽¹⁾ Those amounts of equity include, for 2010, 2011 and 2012, EUR 940 million of preference shares granted by Greece in 2009; for 2012 those amounts do not include the two bridge recapitalisations received by the Bank in 2012, for an amount of EUR 2 942 million. The amount of equity for 2013 includes the full 2012 and 2013 HFSF and private recapitalisation, which amounted to a total of EUR 4 571 million.

- (38) Table 5 illustrates that, apart from the huge losses it booked in 2011 due to the PSI programme (EUR 4 786 million ⁽²⁰⁾), the Bank suffered from declining income (due, among other reasons, to the higher costs of deposits) and from high and rising impairment losses on its loan portfolios in Greece and abroad. The liquidity position of the Bank was badly hit by deposit outflows and its loan-to-deposit ratio reached 152 % at 31 December 2011 ⁽²¹⁾, while 34 % of its balance sheet was funded by the Eurosystem at that date ⁽²²⁾.
- (39) Under the stress test of 2013, the Bank of Greece estimated the capital needs of the Bank at EUR 262 million for the baseline scenario.
- (40) In March 2014, the Bank proceeded with a capital increase of EUR 1,2 billion to cover the capital needs mentioned in recital 39 and to repay the preference shares held by Greece for EUR 940 million ⁽²³⁾. In contrast to Eurobank's capital increase of April 2014, the HFSF did not commit to inject capital in the Bank's capital increase in case of insufficient private demand. The latter's capital increase was achieved through a non-pre-emptive equity offering (that is to say a capital increase with cancellation of shareholders' pre-emption rights) to international investors and through a public offering in Greece. The subscription price was set at EUR 0,66 per share.
- (41) Following the capital increase, the Bank announced on 17 April 2014 that it had redeemed the preference shares to Greece, for a total amount of EUR 940 million.

2.2. THE BANK'S ACQUISITIONS OF GREEK BANKING ACTIVITIES

2.2.1. Acquisition of Emporiki Bank

- (42) Emporiki Bank was established in 1882.
- (43) In 2000, Crédit Agricole Group initially acquired a 6,7 % stake in Emporiki Bank. Emporiki Bank became a subsidiary of Crédit Agricole in 2006, when it acquired a controlling interest. Crédit Agricole increased its shareholding to 94,99 % in Emporiki Bank at that time.
- (44) Emporiki Bank operated in all banking activities (retail, corporate) as well as in investment banking, asset management, portfolio management and in general financial services. It offered its services in Greece through its network of 323 branches and abroad through its branch in Cyprus as well as through subsidiaries in Cyprus, Bulgaria, Albania and Romania ⁽²⁴⁾. It employed 4 230 employees at 31 December 2012.
- (45) The Bank participated in the PSI programme, exchanging GGBs and other eligible securities with a face value of EUR 766 million. As illustrated in Table 2, its total PSI-related charge amounted to around EUR 590 million before tax and was entirely booked in its 2011 accounts. As illustrated in Table 3, the capital needs of Emporiki Bank were estimated at EUR 2 475 million and were calculated on the basis of a stress test of 2012 performed by the Bank of Greece for the period starting 31 December 2011 and ending 31 December 2014, which relied on the loan losses forecast performed by Blackrock.

⁽²⁰⁾ See Table 2.

⁽²¹⁾ Alpha Bank submission of information to the Commission, 25 June 2013.

⁽²²⁾ 2011 Financial Statements, http://www.alpha.gr/files/investorrelations/GROUP_IAS_FY_2011_en1.pdf

⁽²³⁾ See section 2.3.1.2 State recapitalisation granted under the recapitalisation measure.

⁽²⁴⁾ Consolidated Financial Statements at 31 December 2011 of Emporiki Bank, p. 9.

- (46) On 12 October 2012, the HFSF gave its consent to the Bank for the acquisition of Emporiki Bank from Crédit Agricole.
- (47) On 16 October 2012, Crédit Agricole and the Bank signed the 'Share Purchase Agreement dated 16 October 2012 between Crédit Agricole S.A. and Alpha Bank S.A. for the sale and purchase of Emporiki Bank of Greece S.A.'. Following the completion of the financial due diligence, Crédit Agricole injected an aggregate capital amount of EUR 2 893 million, while it subscribed in full to a EUR 150 million convertible bond issued by the Bank ⁽²⁵⁾. The Bank was then to acquire the fully recapitalised Emporiki Bank for one euro. Under the share purchase agreement, the Bank did not acquire the foreign subsidiaries of Emporiki Bank, which remained within Crédit Agricole, except for the Cypriot branch of Emporiki Bank, which accounted for EUR 0,5 billion of assets and which was part of the perimeter acquired by the Bank.
- (48) At 31 December 2012, following the recapitalisation by Crédit Agricole, Emporiki Bank's capital adequacy ratio was 17,6 % while its Tier 1 ratio was 13,5 %.
- (49) On 1 February 2013, the Bank announced the completion of the transfer of Emporiki Bank's entire share capital to the Bank ⁽²⁶⁾.
- (50) The key figures of Emporiki Bank in December 2010, December 2011, December 2012 and January 2013 are presented in Table 6.

Table 6

Emporiki Bank key figures, 2010, 2011, 2012 and January 2013

In EUR billion	31 December 2010 (consolidated)	31 December 2011 (consolidated)	December 2012 (perimeter acquired by the Bank)	January 2013 (perimeter acquired by the Bank)
Total Assets	26,78	21,7	19,5	18,2
Total Gross Loans and advances to customers	24	23,48	19,85	19,8
Provisions	2,8	4,4	5	5
Due to Customers	12,2	11,3	12,68	12,9
Eurosystem funding	0,3	1,77	1,2	1,2
Total Equity	0,9	0,9	1,73	2,3
Loss after tax	- 0,87	- 1,76	- 1,5	
Net Loans/Deposits	173,8 %	169,1 %	117,2 %	114,1 %

Sources: January 2013: Alpha Bank FY 2012 Results, presentation of 27 March 2013 (available online at: http://www.alpha.gr/files/investorrelations/2012_FY_Financial_Report1.pdf)
 December 2012: Key indicators of Alpha Bank and Emporiki Bank, available online at: <http://www.alpha.gr/page/default.asp?id=9&la=2>
 2011 and 2010: Consolidated financial statements of Emporiki Bank at 31 December 2011

2.2.2. Acquisition of selected liabilities of the three Cooperative Banks

- (51) On 8 December 2013, the Bank of Greece decided to proceed with the resolution of the three Cooperative banks, Dodecanese Bank, Evia Bank and Western Macedonia Bank.

⁽²⁵⁾ HFSF Annual Financial report for the period from 1 January 2012 to 31 December 2012, p. 8, available online at: http://www.hfsf.gr/files/hfsf_annual_report_2012_en.pdf

⁽²⁶⁾ http://www.alpha.gr/files/deltia_typou/Deltio_Typou_20130201EN.pdf

- (52) The Bank of Greece proceeded with a Purchase & Assumption⁽²⁷⁾ where all deposits, including interbank deposits, and the claims and liabilities towards the Hellenic Deposit and Investment Guarantee Fund but no loans would be transferred to an acquirer. The Bank of Greece contacted the four systemic Greek banks as, according to the Bank of Greece, deposits should be transferred to fully recapitalised institutions. Only the Bank and Eurobank submitted binding offers, on 5 December 2013. The Bank of Greece considered the Bank's offer as the preferred one. The Bank offered an amount equal to 2,1 % of the transferred deposits as consideration.

2.2.2.1. *Dodecanese Bank*

- (53) Dodecanese Bank was established in 1994.
- (54) On 22 July 2013, the Bank of Greece requested Dodecanese Bank to restore its Core Tier 1 ratio. Dodecanese Bank proceeded with a capital increase through a public offering of cooperative shares. According to the offering circular, the Core Tier 1 ratio of Dodecanese Bank, calculated on the basis of the financial data of that bank on 30 June 2013, was estimated at 3,5 % and was therefore below the minimum capital adequacy requirements set by the Bank of Greece. However, the capital raising failed to attract sufficient demand from investors.
- (55) For that reason, on 8 December 2013, the Bank of Greece proceeded with the resolution of Dodecanese Bank. The license of Dodecanese Bank was withdrawn and it was put into liquidation⁽²⁸⁾. Selected liabilities of Dodecanese Bank were transferred to the Bank⁽²⁹⁾. According to the Bank of Greece⁽³⁰⁾, the fair value of the transferred assets amounted to around EUR 6 million while the fair value of the transferred liabilities amounted to EUR 255 million, the difference being the funding gap⁽³¹⁾ of EUR 249 million. The funding gap was covered by the HFSF pursuant to Article 63(D)(13) of law 3601/2007. In December 2013, the HFSF disbursed two-thirds of the total funding gap, meaning EUR 166 million, in EFSF Notes while it committed that the remaining amount of EUR 83 million would be paid upon the final determination of the funding gap. On 16 June 2014, the Bank of Greece determined that the final funding gap of Dodecanese Bank amounted to EUR 258,5 million. The HFSF will cover the undisbursed part of the funding gap.
- (56) At 30 September 2013, Dodecanese Bank employed 132 people and had 11 branches. In the framework of the resolution, the Bank took over no branches of Dodecanese Bank but it indicated that it would maintain a physical presence in areas where no network overlaps exist (namely, in four islands with no banking alternatives) by renting the four small branches managed by the liquidator. The employees of Dodecanese Bank were laid off and selectively re-hired by the Bank.

2.2.2.2. *Evia Bank*

- (57) Evia Bank was established in 1995.
- (58) On 22 July 2013, the Bank of Greece requested Evia Bank to restore its Core Tier 1 ratio. Evia Bank proceeded with a capital increase through a public offering of cooperative shares. According to the offering circular, the Core Tier 1 ratio of Evia Bank was estimated at 1,8 %, calculated on the basis of the financial data of the bank at 30 June 2013, and was therefore below the minimum capital adequacy requirements set by the Bank of Greece. However, the capital raising failed to attract sufficient demand from investors.
- (59) For that reason, on 8 December 2013, the Bank of Greece proceeded with the resolution of Evia Bank. The license of Evia Bank was withdrawn and Evia Bank was put into liquidation⁽³²⁾. Selected liabilities of Evia Bank were transferred to the Bank⁽³³⁾. According to the Bank of Greece⁽³⁴⁾, the fair value of the transferred assets amounted to EUR 2 million while the fair value of the transferred liabilities amounted to EUR 98 million, the difference being the funding gap of EUR 96 million. The funding gap was covered by the HFSF pursuant to Article 63(D)(13) of law 3601/2007. In December 2013 the HFSF disbursed two-thirds of the total funding gap, meaning EUR 64 million, in EFSF Notes, while it committed that the remaining amount of EUR 32 million would be paid upon the

⁽²⁷⁾ A Purchase & Assumption is a resolution procedure which consists of identifying, in a legal entity under liquidation, the assets and liabilities of high quality and auctioning them in order to transfer them to a viable company.

⁽²⁸⁾ See Decision 97/3/8.2.2013 of the Credit and Insurance Committee of the Bank of Greece.

⁽²⁹⁾ See Decision 14/4/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

⁽³⁰⁾ See Decision 14/5/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

⁽³¹⁾ The term 'funding gap' may therefore be misleading since it describes a capital support measure and not liquidity support.

⁽³²⁾ See Decision 97/2/8.2.2013 of the Credit and Insurance Committee of the Bank of Greece.

⁽³³⁾ See Decision 14/1/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

⁽³⁴⁾ See Decision 14/2/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

final determination of the funding gap. On 16 June 2014, the Bank of Greece determined that the final funding gap of Evia Bank amounted to EUR 105 million. The HFSF will cover the undisbursed part of the funding gap.

At 30 September 2013, Evia Bank employed 59 people and had 4 branches. The Bank took over no branches of Evia Bank. The employees of Evia Bank were laid off and selectively re-hired by the Bank.

2.2.2.3. Western Macedonia Bank

- (60) In 1995, the Development Credit Cooperative Society of Prefecture of Kozani was established. In 2008, the Cooperative operated under the new name 'Cooperative Bank of Western Macedonia'.
- (61) On 22 July 2013, the Bank of Greece requested Western Macedonia Bank to restore its Core Tier 1 ratio. Western Macedonia Bank proceeded with a capital increase through a public offering of cooperative shares. According to the offering circular, the Core Tier 1 ratio of Western Macedonia Bank was estimated at – 11 %, calculated on the basis of the financial data of the bank on 30 September 2013, and was therefore below the minimum capital adequacy requirements set by the Bank of Greece. However, the capital raising failed to attract sufficient demand from investors.
- (62) For that reason, on 8 December 2013, the Bank of Greece proceeded with the resolution of Western Macedonia Bank. The license of Western Macedonia Bank was withdrawn and the bank was put into liquidation⁽³⁵⁾. Selected liabilities of Western Macedonia Bank were transferred to the Bank⁽³⁶⁾. According to the Bank of Greece⁽³⁷⁾, the fair value of the transferred assets amounted to EUR 2 million while the fair value of the transferred liabilities amounted to EUR 84 million, the difference being the funding gap of EUR 82 million. The funding gap was covered by the HFSF pursuant to Article 63(D)(13) of law 3601/2007. In December 2013, the HFSF disbursed two-thirds of the total funding gap, meaning EUR 55 million, in EFSF Notes while it committed that the remaining amount of EUR 27 million would be paid upon the final determination of the funding gap.
- (63) At 30 September 2013, Western Macedonia Bank employed 36 people and had 3 branches. The Bank took over no branches of Western Macedonia Bank. The employees of Western Macedonia Bank were laid off and selectively re-hired by the Bank.
- (64) The key figures of the three Cooperative Banks are presented in Table 7.

Table 7

Key data of the three Cooperative Banks (EUR million)

	(A)	(B)	(C)	(D) = (B) - (A)	(E) = 2,1 % * (C)
	Fair Value of Transferred Assets	Fair Value of Transferred Liabilities	Of which Transferred deposits	Initial funding gap	Consideration (2,1 % of transf. deposits)
Dodecanese Bank	6	255	255	249	5
Evia Bank	2	98	95	96	2
Western Macedonia Bank	2	84	82	82	2
Total				427	9

Sources: Decisions 97/1/EC, 97/2/EC, 97/3 of 8.2.2013 of the Credit and Insurance Committee of the Bank of Greece.
Decisions 14/1/EC, 14/2/EC, 14/3, 14/4, 14/5 14/6, 14/7, 14/8 of 8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

⁽³⁵⁾ See Decision 97/1/8.2.2013 of the Credit and Insurance Committee of the Bank of Greece.

⁽³⁶⁾ See Decision 14/7/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

⁽³⁷⁾ See Decision 14/8/8.12.2013 of the Resolution Measures Committee of the Bank of Greece.

2.2.3. Acquisition of Citibank Greece

- (65) Citibank International was founded in 1812. Citibank was established in Greece in 1964 primarily to serve the needs of the maritime and corporate sectors. In 1980, Citibank Greece started to expand into retail banking. Citibank Greece is currently active in both the consumer and corporate business and runs a network of 20 branches across the country.
- (66) On 29 May 2014, the HFSF received a request from the Bank for consent for the acquisition of Citibank Greece, including Diners Club Greece ('Diners') ⁽³⁸⁾.
- (67) The Bank expressed its intention to purchase Citibank Greece's activities, including customers' loans (for a net total amount of EUR 442 million and EUR 1 115 million of non-performing loans ('NPL') fully written off), customers' deposits (a total of EUR 1 067 million), assets under management (EUR 1 186 million), the retail branches, the ATM network ⁽³⁹⁾ and the employees ⁽⁴⁰⁾. Furthermore, the Bank expressed its intention to purchase 100 % of the ordinary share capital of Diners.
- (68) The price has been set at EUR 2 million.
- (69) On 5 June 2014, the HFSF granted its consent regarding the acquisition of Citibank Greece by the Bank.

2.3. AID MEASURES

2.3.1. Aid measures granted to the Bank under the Greek Banks Support Scheme (measures L1 and A)

- (70) The Bank has obtained several forms of aid under the Greek Banks Support Scheme, under the recapitalisation measure, the guarantee measure and the government bond loan measure.

2.3.1.1. State liquidity support granted under the guarantee and the government bond loan measures (measure L1)

- (71) The Bank has benefited and continues to benefit from aid under the guarantee measure and the government bond loan measure. That aid will be described in this Decision as 'measure L1'. At 30 November 2011, the guarantees granted to the Bank amounted to around EUR 14,0 billion. At 30 September 2011, the Bank had received loans of government bonds amounting to EUR 1,6 billion ⁽⁴¹⁾.
- (72) In the restructuring plan for the Bank submitted by the Greek authorities to the Commission on 12 June 2014, the Greek authorities signalled their intention to continue granting guarantees and lending government bonds under the Greek Banks Support Scheme during the restructuring period.

2.3.1.2. State recapitalisation granted under the recapitalisation measure (measure A)

- (73) In May 2009, the Bank received a capital injection of EUR 940 million (measure A) under the recapitalisation measure of the Greek Bank Support Scheme. That capital injection was equivalent to around 2 % of the risk weighted assets ⁽⁴²⁾ ('RWA') of the Bank at that time.
- (74) The recapitalisation took the form of preference shares subscribed by Greece which had a coupon of 10 % and a maturity of five years.
- (75) The Bank redeemed the preference shares on 17 April 2014, as described in recital 41.

2.3.2. State-guaranteed ELA (measure L2)

- (76) ELA is an exceptional measure enabling a solvent financial institution, facing temporary liquidity problems, to receive Eurosystem funding without such an operation being part of the single monetary policy. The interest rate paid by a financial institution for ELA is [...] (*) basis points higher than the interest it pays for regular Central Bank refinancing.

⁽³⁸⁾ Diners Club International is a credit card company which was founded in 1950 and established in Greece in 1959. Diners Club Greece is held by Citibank International and Citibank Overseas Investment Corporation.

⁽³⁹⁾ An ATM (Automated Teller Machine) is an electronic banking outlet, which allows customers to complete basic transactions without the aid of a branch representative (or 'teller'), such as withdrawing cash.

⁽⁴⁰⁾ Submission of information of the Greek authorities dated 24 June 2014.

⁽⁴¹⁾ Restructuring plan of Alpha Bank, June 2014, p. 64.

⁽⁴²⁾ The term 'risk weighted assets' refers a regulatory aggregate which measures the risk exposure of a financial institution and is used by supervisors to monitor the capital adequacy of financial institutions.

(*) Business secret.

- (77) The Bank of Greece is responsible for the ELA programme, which means that any cost of, and the risks arising from, the provision of ELA are incurred by the Bank of Greece. Greece granted the Bank of Greece a State guarantee which applies to the total amount of ELA granted by the Bank of Greece ⁽⁴³⁾. The adoption of Article 50, paragraph 7 of law 3943/2011, which amended Article 65, paragraph 1 of law 2362/1995, allowed the Minister of Finance to grant guarantees on behalf of the State to the Bank of Greece in order to safeguard the Bank of Greece's claims against the credit institutions. The banks benefiting from ELA have to pay a guarantee fee to the State amounting to [...] basis points.
- (78) At 31 December 2011 the Bank had benefited from EUR 6,7 billion of State-guaranteed ELA ⁽⁴⁴⁾, while at 31 December 2012 the Bank had benefited from EUR 23,6 billion of State-guaranteed ELA ⁽⁴⁵⁾.

2.3.3. Aid measures granted to the Bank through the HFSF (measures B1, B2, B3 and B4)

- (79) Since 2012, the Bank has benefited from several capital support measures granted by the HFSF. Table 8 provides an overview of those aid measures.

Table 8

Aid measures granted to the Bank through the HFSF

	1st bridge recapitalisation — May 2012	2nd bridge recapitalisation — Dec 2012	Commitment letter — Dec 2012	HFSF's participation in the Spring 2013 recapitalisation — May 2013
Measure	B1	B2	B3	B4
Amount (EUR million)	1 900	1 042	1 629	4 021

2.3.3.1. The first bridge recapitalisation (measure B1)

- (80) Recitals 14 to 32 of the Alpha Opening Decision ⁽⁴⁶⁾ described in detail the first bridge recapitalisation of May 2012 (measure B1). The background and main features of that measure are set out in this section.
- (81) On 20 April 2012, the HFSF provided a letter to the Bank committing to participate in a planned share capital increase of the Bank for an amount of up to EUR 1,9 billion.
- (82) Under measure B1, the HFSF transferred EUR 1,9 billion of EFSF bonds to the Bank on 28 May 2012, in line with the provisions for bridge recapitalisations laid down in the law 3864/2010 establishing the HFSF ('HFSF Law'). The EFSF bonds transferred to the Bank were EFSF floating notes with maturities of six and 10 years and an issue date of 19 April 2012. The Commission established in recital 48 of the Alpha Opening Decision that *'The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid'*. Both the amounts provided in the commitment letter and in the first bridge recapitalisation were calculated by the Bank of Greece to ensure the Bank reached a total capital ratio of 8 % at 31 December 2011, the date of retroactive booking of the bridge recapitalisation in the Bank's records. As can be seen from Table 3, measure B1 only covered a limited part of the total capital needs identified by the stress test of 2012. The Bank was supposed to raise further capital through a future capital increase and the bridge recapitalisation was intended only to preserve the Bank's eligibility for ECB financing until that capital increase had taken place.

⁽⁴³⁾ According to the letter of the Bank of Greece of 7 November 2011, 'Guarantees apply on the total amount of Emergency Liquidity Assistance (ELA)'.

⁽⁴⁴⁾ Information provided by Bank of Greece on 7 April 2014.

⁽⁴⁵⁾ Financial projections attached to the Restructuring plan of Alpha Bank, June 2014.

⁽⁴⁶⁾ See footnote 4.

- (83) For the period between the date of the first bridge recapitalisation and the date of the conversion of the first bridge recapitalisation into ordinary shares and other convertible financial instruments, the pre-subscription agreement between the Bank and the HFSF provided that the Bank would pay the HFSF a 1 % annual fee on the nominal value of the EFSF notes and that any coupon payments and accrued interest to the EFSF notes for that period would count as an additional capital contribution by the HFSF to the Bank ⁽⁴⁷⁾.

2.3.3.2. The second bridge recapitalisation (measure B2)

- (84) The Bank booked further losses in the autumn of 2012. Its capital therefore fell again below the minimum capital requirements for it to remain eligible for ECB refinancing.
- (85) A second bridge recapitalisation became necessary as a result. On 21 December 2012, the HFSF implemented a second bridge recapitalisation of EUR 1 042 million (measure B2), which was again paid by transferring EFSF bonds to the Bank.

2.3.3.3. The commitment letter of 21 December 2012 (measure B3)

- (86) In addition to the second bridge recapitalisation, on 21 December 2012, the HFSF provided the Bank with a commitment letter for its participation in the share capital increase of the Bank and in the convertible instruments to be issued, for a total amount up to EUR 1 629 million (measure B3).
- (87) The total of the two bridge recapitalisations (measures B1 and B2) and of the additional amount committed in December 2012 (measure B3) meant that the HFSF had committed the total capital needs identified under the stress test of 2012 (EUR 4 571 million ⁽⁴⁸⁾).

2.3.3.4. HFSF's participation in the Spring 2013 recapitalisation (measure B4)

- (88) On 16 April 2013, the general meeting of shareholders of the Bank approved an increase in the share capital of the Bank. On 1 May 2013, the Bank announced the full underwriting of the EUR 457 million rights offering and the launch of a private placement for an amount of up to EUR 93 million, at a price of EUR 0,44 per new share ⁽⁴⁹⁾.
- (89) The Bank announced the completion of the rights issue as well as the full allocation of the private placement on 3 June 2013 ⁽⁵⁰⁾. The total private participation in the Bank's share capital increase therefore reached EUR 550 million.
- (90) On the same date, the Bank also announced that the HFSF would subscribe 9 138 636 364 shares at a price of EUR 0,44 per share. As a result, by the Spring 2013 recapitalisation, the HFSF injected into the Bank capital totalling EUR 4 021 million in the form of ordinary shares (measure B4). That amount is equal to the sum of measures B1, B2 and B3, after deduction of the amount of private participation. The shares held by the HFSF give it limited voting power as the total private participation had reached 12 % of the capital increase. The HFSF law provided that private investors would retain control of the Bank if they injected more than 10 % of the capital needed by the Bank. However the HFSF retain full voting rights for key corporate decisions.
- (91) By means of the Bank's share capital increase (measure B4), the first and second bridge recapitalisations (measures B1 and B2) were converted into a permanent recapitalisation and the commitment to grant additional capital aid (measure B3) was partially implemented.
- (92) The price of new shares was set at 50 % of the volume-weighted average stock price over the 50 trading days preceding the determination of the offer price. As a result of a reverse stock split ⁽⁵¹⁾ decided by the extraordinary general meeting of shareholders on 16 April 2012 ⁽⁵²⁾, the price of new shares was set at EUR 0,44 per share.

⁽⁴⁷⁾ The pre-subscription agreement provided that: 'The Effective Risk payable to the Bank shall include the EFSF bonds and any coupon payments and accrued interest to the EFSF bonds for the period from the issuance of the bonds until the conversion of the Advance into share capital and other convertible financial instruments as prescribed herein'.

⁽⁴⁸⁾ See Table 3.

⁽⁴⁹⁾ http://www.alpha.gr/files/investorrelations/deltio_typou_20130501EN.pdf

⁽⁵⁰⁾ http://www.alpha.gr/files/investorrelations/Deltio_Typou_20130603EN.pdf

⁽⁵¹⁾ A stock split is a corporate action in which a company divides its existing shares into multiple shares.

⁽⁵²⁾ <http://www.alpha.gr/files/investorrelations/EA20130416EN.pdf>

- (93) Immediately after the Spring 2013 recapitalisation, the HFSF became the major shareholder of the Bank with a stake of 83,66 % ⁽⁵³⁾. The HFSF issued 1 233 503 482 warrants and granted private investors one warrant for each share subscribed, for no consideration ⁽⁵⁴⁾. Each warrant gives the right to buy 7,40 shares of the HFSF, at selected intervals and strike prices. The first exercise date was 10 December 2013, and the warrants can then be exercised twice per year until 10 December 2017. The exercise price is equal to the subscription price of EUR 0,44 increased by an annual interest rate (4 % for year one, 5 % for year two, 6 % for year three, 7 % for year four and then 8 % annualised for the last six months) ⁽⁵⁵⁾.
- (94) The HFSF law as amended in 2014 provides that only the warrants' strike prices may be adjusted in the event of a rights issue. In addition, any such adjustment will take place *ex post* and only up to the amount of the realised proceeds from the sale of pre-emption rights of the HFSF. No adjustment is provided for in the event of a non-pre-emptive share capital increase.

2.3.4. State support measures to the three Cooperative Banks

- (95) As already mentioned in section 2.2.2, the funding gaps of Dodecanese Bank, Evia Bank and Western Macedonia Bank were estimated by the Bank of Greece at EUR 249 million, EUR 96 million and EUR 82 million respectively. Therefore, the total amount of the funding gaps was estimated at EUR 427 million. They were covered by the HFSF, which granted a corresponding amount of EFSF bonds to the Bank.

2.4. THE RESTRUCTURING PLAN

- (96) On 12 June 2014, Greece submitted the restructuring plan of the Bank, which explains how the Bank, as a combined entity resulting from the acquisition of Emporiki Bank and the deposits of the three Cooperative Banks, intends to restore its long-term viability.

2.4.1. Domestic operations

- (97) Through the restructuring plan, the Bank will focus on its core banking activities in Greece. While its international operations accounted for more than 20 % of total assets in December 2009 and for 15 % of total assets in June 2013 ⁽⁵⁶⁾, that proportion should decrease to around [...] at the end of 2018 ⁽⁵⁷⁾.
- (98) The key priority of the Bank is to bring its Greek banking operations back to profitability and viability. To that end, the restructuring plan includes a number of measures aimed at improving the Bank's operational efficiency and net interest margin, as well as measures enhancing its capital position and balance sheet structure.
- (99) As regards operational efficiency, the Bank had already started a vast programme of rationalisation well before the acquisitions of Emporiki Bank and the three Cooperative Banks. From 31 December 2010 to 30 September 2012, the Bank reduced its physical footprint in Greece. It reduced its branches from 458 in 2010 to 426 in 2012 ⁽⁵⁸⁾ and also reduced the workforce in Greek banking and non-banking activities by several hundred employees over the same period ⁽⁵⁹⁾.
- (100) From December 2012 to December 2017, the Bank plans to further decrease the number of branches in Greece from 739 to [...]. The number of employees in banking and non-banking activities in Greece will decrease from 11 435 to [...] ⁽⁶⁰⁾.

⁽⁵³⁾ http://www.hfsf.gr/files/HFSF_activities_Jan_2013_Jun_2013_en.pdf

⁽⁵⁴⁾ http://www.alpha.gr/files/investorrelations/1306010_Warrants_en.pdf

⁽⁵⁵⁾ See footnote 38. For instance, the exercise price on 10 December 2013 was EUR 0,4488, on 10 June 2014 it will be EUR 0,4576, on 10 December 2014, it will be 0,4686, on 10 June 2015, it will be EUR 0,4796 and so forth. See Alpha Bank's announcement of 10 June 2013 on 'Final Terms of Listing and Characteristics of the Titles representing shares ownership rights (Warrants) that resulted from the concluded share capital increase', available online at: http://www.alpha.gr/files/investorrelations/1306010_Warrants_en.pdf

⁽⁵⁶⁾ Restructuring plan of Alpha Bank, June 2014, p. 22.

⁽⁵⁷⁾ The Bank committed to limit the amount of foreign assets to EUR [...] billion, while the total assets of the Bank will amount to EUR [...] billion in 2018 according to the financial projections.

⁽⁵⁸⁾ Restructuring plan of Alpha Bank, June 2014, p. 132, prior to the acquisition of Emporiki Bank.

⁽⁵⁹⁾ Restructuring plan of Alpha Bank, June 2014, p. 129.

⁽⁶⁰⁾ Restructuring plan of Alpha Bank, June 2014, pp. 102-103. The increase in the number of branches and employees between September 2012 and December 2013 is due to the acquisition of Emporiki Bank.

- (101) Increased efficiency in terms of branches and personnel will help to bring down the total cost of the Bank's Greek activities by [...] % from EUR 1 345 million on a pro forma basis in 2012 to EUR [...] million in 2017 ⁽⁶¹⁾. As a result, the expected cost-to-income ratio of its Greek banking activities will fall below [...] % at the end of the restructuring period.
- (102) The restructuring plan also describes how the Bank will reduce its funding costs, which is key to the restoration of viability. The Bank expects to be able to pay lower interest rates on its deposits on the back of the more stable environment and in particular the foreseen stabilisation and recovery of the Greek economy, which is expected to grow again from 2014 onwards. Interest paid on deposits (average of time deposits, sight deposits and savings rates) are expected to decrease in Greece. That decrease would be mainly achieved by paying much lower rates on time deposits. Similarly, the Bank's reliance on State-guaranteed ELA and wider Eurosystem funding will decrease from 32 % of its total assets in 2012 to only [...] % in 2017 ⁽⁶²⁾.
- (103) The restructuring plan anticipates that the Bank will also strengthen its balance sheet. Its net loan-to-deposit ratio in Greece will decrease to [...] % in 2018 (down from 131 % in 2012 ⁽⁶³⁾), while its capital adequacy will continue to improve.
- (104) Another priority of the Bank is the management of non-performing loans. The Bank will enhance its credit processes regarding both the origination of loans (better collateral coverage, reduced limits) and the management of non-performing loans. The ratio of NPL will reach [...] % in 2014 and then start to decrease, with an expected rate of [...] % at the end of the restructuring period ⁽⁶⁴⁾. The cost of risk (impairments) will decrease from EUR 2 799 million in 2012 on a pro forma basis (that is to say including Emporiki Bank) to EUR [...] million in 2018 ⁽⁶⁵⁾, due to the recovery of the Greek economy.
- (105) The improvement of operational efficiency, the increase of the net interest margin, and the decreasing cost of risk will enable the Bank to be profitable in Greece from 2015 onwards. [...]. Its return on equity will reach [...] % in Greece in 2018 ⁽⁶⁶⁾.

2.4.2. International banking activities

- (106) The Bank has already started to deleverage and restructure its international network. It sold its Ukrainian subsidiary in August 2013. The number of branches in South-Eastern Europe was reduced from 622 in 2009 to 488 in 2012 ⁽⁶⁷⁾.
- (107) The Bank will continue to restructure and deleverage its international network. The Bank intends to limit the size of its international assets to EUR [...] billion. To comply with that target, the Bank will consider any combination of divestments or deleverage of its portfolio. That intended size of the Bank's international assets represents a reduction by [...] % of its foreign assets at 31 December 2012 [...].
- (108) The restructuring plan highlights the need to reduce the reliance of the foreign subsidiaries on their Greek mother company as regards the liquidity position. Intra-group funding to the foreign subsidiaries will decrease from EUR 4 172 million to EUR [...] million from 2013 to 2017 ⁽⁶⁸⁾.
- (109) To improve the profitability of its foreign activities, the Bank is planning to implement a significant cost reduction programme in the international network, with a reduction in the number of branches and employees. For example, in [...], [...] branches out of [...] will be closed while the workforce will decrease by [...] employees (-[...]) between 2012 and 2018 ⁽⁶⁹⁾.
- (110) As a result the return on equity will reach [...] ⁽⁷⁰⁾.

⁽⁶¹⁾ Restructuring plan of Alpha Bank, June 2014, p. 103.

⁽⁶²⁾ Financial projections attached to the Restructuring plan of Alpha Bank, June 2014, figure for Alpha Bank Greece.

⁽⁶³⁾ Restructuring plan of Alpha Bank, June 2014, p. 105.

⁽⁶⁴⁾ Restructuring plan of Alpha Bank, June 2014, p. 96.

⁽⁶⁵⁾ Restructuring plan of Alpha Bank, June 2014, p. 96.

⁽⁶⁶⁾ Financial projections attached to the Restructuring plan of Alpha Bank, June 2014, figures for Greek operations.

⁽⁶⁷⁾ Restructuring plan of Alpha Bank, June 2014, p. 132.

⁽⁶⁸⁾ Financial projections attached to the Restructuring plan of Alpha Bank, June 2014.

⁽⁶⁹⁾ Restructuring plan of Alpha Bank, June 2014, section 5.4.2.

⁽⁷⁰⁾ Restructuring plan of Alpha Bank, June 2014, section 5.4.2.

2.4.3. Private capital raising and contribution by existing shareholders and subordinated creditors

- (111) The Bank has succeeded in raising significant amounts of capital on the market and thereby reduced the amount of State aid which was needed by the Bank.
- (112) First, the Bank raised some private capital in 2009 with a rights issue of EUR 986 million ⁽⁷¹⁾. As mentioned in recital 89, the Bank also managed to raise capital from private investors through the Spring 2013 recapitalisation. The pre-existing shareholders were also heavily diluted by the Spring 2013 recapitalisation, since the HFSF received 83,66 % of the Bank's shares following the Spring 2013 recapitalisation, leaving them with only a 4,9 % shareholding. No dividend has been paid in cash since 2008.
- (113) The Bank raised EUR 1,2 billion of capital from the market in March 2014 to cover its additional capital needs and to repay the preference shares held by Greece. Those new shares were issued at a higher price per share than had been paid by the HFSF in the Spring 2013 recapitalisation.
- (114) On 20 April 2012, the Bank offered to buy back Tier 1 securities, upper Tier 2 securities and lower Tier 2 securities at purchase prices of 40 %, 60 % and 60 % of their respective nominal value in cash. That buy-back price was determined on the basis of the market value of the instruments and contained a premium of not more than ten percentage points, which was added to encourage investors to participate in the buy-back. On 7 May 2012, the Bank announced the results of the buy-back ⁽⁷²⁾. The aggregate participation reached 66 %, with an overall capital gain of EUR 333 million. On 19 April 2013, the Bank announced another liability management exercise for an outstanding nominal amount of EUR 316 million. The Bank offered to buy back Tier 1 securities, upper Tier 2 and lower Tier 2 securities at purchase prices of 35 %, 55 % and 55 % of their respective nominal value in cash. The buy-back price was determined on the basis of the market value of the instruments and contained a premium of not more than ten percentage points, which was added to encourage investors to participate in the buy-back. The acceptance rate was 58 % and the capital gain was EUR 103 million.
- (115) As a result of the two buy-backs, the outstanding amount of subordinated and hybrid debt decreased from EUR 985 million to EUR 134 million.

2.5. COMMITMENTS OF THE GREEK AUTHORITIES

- (116) On 12 June 2014, Greece gave a commitment that the Bank and its affiliates will implement the restructuring plan submitted on the same date and gave further commitments regarding the implementation of the restructuring plan. Those further commitments, which are listed in the Annex, are summarised in this section.
- (117) First, Greece gave a commitment that the Bank will restructure its commercial operations in Greece, setting a maximum number of branches and employees as well as a maximum amount of total costs to be complied with at 31 December 2017 ⁽⁷³⁾.
- (118) Greece also gave a commitment that the Bank will reduce the cost of deposits collected in Greece and will comply with a maximum ratio of net loans-to-deposits by 31 December 2017 ⁽⁷⁴⁾.
- (119) Regarding the Bank's foreign subsidiaries, Greece gave a commitment that the Bank will not provide additional capital support unless predefined conditions are met. Greece also gave a commitment that the Bank will significantly deleverage its international assets by 30 June 2018 ⁽⁷⁵⁾.
- (120) Greece gave a commitment that the Bank will divest a number of securities and will reduce the size of its private equity portfolio. In addition, the Bank will not purchase non-investment grade securities, with limited exceptions ⁽⁷⁶⁾.

⁽⁷¹⁾ <http://www.alpha.gr/files/investorrelations/EA20091130EN.pdf>

⁽⁷²⁾ <http://www.alpha.gr/files/investorrelations/EA20120507EN.pdf>

⁽⁷³⁾ See Annex, Chapter II.

⁽⁷⁴⁾ See Annex, Chapter II.

⁽⁷⁵⁾ See Annex, Chapter II.

⁽⁷⁶⁾ See Annex, Chapter II.

- (121) Greece gave a number of commitments related to the corporate governance of the Bank. It committed to limit the remuneration of the Bank's employees and managers, to make the Bank comply with Greek laws on corporate governance and set up an efficient and adequate organisational structure ⁽⁷⁷⁾.
- (122) Greece also gave a commitment that the Bank will enforce a high quality credit policy, in order to ensure decisions on granting and restructuring loans aim at maximising the viability and profitability of the Bank. Greece gave a commitment that the Bank will comply with high standards regarding the monitoring of credit risk as well as the restructuring of loans ⁽⁷⁸⁾.
- (123) A number of commitments deal with the operations of the Bank with connected borrowers. Those commitments aim at ensuring that the Bank does not deviate from prudent banking practices when granting or restructuring loans to its employees, managers and shareholders, as well as to public entities, political parties and media companies ⁽⁷⁹⁾.
- (124) Finally Greece gave a commitment that the Bank will comply with some behavioural limitations, such as a coupon and dividend ban, an acquisition ban and a State support advertising ban ⁽⁸⁰⁾.
- (125) Those commitments will be monitored until 31 December 2018 by a monitoring trustee.
- (126) Separately, Greece has indicated that it will seek the approval of the Commission prior to any buy-back of the warrants by the Bank or by any State entity including the HFSF ⁽⁸¹⁾.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

- (127) On 27 July 2012, the Commission opened the formal investigation procedure in order to verify whether the conditions of the 2008 Banking Communication ⁽⁸²⁾ were met regarding the appropriateness, necessity and proportionality of the first bridge recapitalisation provided by the HFSF in favour of the Bank (measure B1).
- (128) Regarding the appropriateness of the measure, given the fact that the aid came after prior recapitalisation and liquidity aid and given the protracted rescue period, the Commission expressed doubts as to whether all actions possible had been taken by the Bank to avoid a need for aid in the future ⁽⁸³⁾. In addition, the Commission was not clear who would control the Bank once the first bridge recapitalisation was replaced by a permanent recapitalisation ⁽⁸⁴⁾ as the Bank might come under the control of either the State or of minority private owners. The Commission noted that it would wish to ensure that the quality of the Bank's management and notably its lending process would not deteriorate in either case.
- (129) Regarding the necessity of the first bridge recapitalisation, in recital 66 of the Alpha Opening Decision the Commission questioned whether all the measures possible had been taken to avoid the Bank needing aid again in the future. Moreover, since the duration of the bridge recapitalisation period was uncertain, the Commission could not conclude whether it was sufficient and complied with the remuneration and burden-sharing principles under State aid rules. Furthermore, as the terms of the conversion of the first bridge recapitalisation into a permanent recapitalisation were not known at the time the Alpha Opening Decision was adopted, the Commission could not assess them.

⁽⁷⁷⁾ See Annex, Chapter III, section A.

⁽⁷⁸⁾ See Annex, Chapter III, section A.

⁽⁷⁹⁾ See Annex, Chapter III, section A.

⁽⁸⁰⁾ See Annex, Chapter III, section C.

⁽⁸¹⁾ 'Finally, as regards the warrants issued by the HFSF, it should be clarified that Hellenic Republic will seek the approval of the European Commission, prior to any buy-back to the warrants by Alpha Bank or by any State entity (including HFSF), so that the European Commission can verify that the envisaged buy-back of the warrants is not contrary to the State remuneration requirements under State aid rules.'

⁽⁸²⁾ Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 2).

⁽⁸³⁾ Recital 59 of the Alpha Bank Opening Decision.

⁽⁸⁴⁾ Recital 63 of the Alpha Bank Opening Decision.

- (130) Regarding the proportionality of the measure, the Commission expressed doubts as to whether the safeguards (State support advertisement ban, coupon and dividend ban, call option ban and buy-back ban as described in recital 71 of the Alpha Opening Decision) were sufficient in relation to the first bridge recapitalisation. Furthermore, in recital 72 of the Alpha Opening Decision the Commission stated that distortions of competition could be caused by the lack of rules preventing the HFSF from coordinating the four largest Greek banks (namely, the Bank, Eurobank, National Bank of Greece and Piraeus Bank) and the absence of adequate safeguards to avoid them sharing commercially sensitive information. The Commission, therefore, proposed the appointment of a monitoring trustee, physically present in the Bank.

4. COMMENTS FROM INTERESTED PARTIES ON THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

4.1. COMMENTS FROM THE BANK

- (131) On 30 August 2012, the Commission received comments from the Bank on the Alpha Opening Decision.
- (132) Regarding the appropriateness of the measure, the Bank noted that it is systemically important both in Greece and in the banking markets in which it operates. It also added that its business model is viable and this has been demonstrated over its long distinguished history.
- (133) The Bank also observed that both waves of recapitalisation were a by-product of a severely deteriorating economic environment and that the additional aid measures came as a result of the deepening of the financial crisis. It stated that it has been the lowest proportionate recipient of State aid to date among the large Greek banks. The Bank noted that in terms of whether all measures possible had been immediately taken to avoid further need of aid by the Bank in the future, the restructuring plan would provide extensive details on the burden-sharing measures already implemented, underway and planned. The Bank also observed that those measures ensured that no stakeholder was left untouched. They would contribute, together with the existing strong business base and the robustness of the capital assessment process, to ensuring that the Bank is adequately capitalised, leading to a return to viability and an ultimate exit from State support.
- (134) Moreover, the Bank welcomed clarity on the terms of the permanent recapitalisation, which in its view should fully reflect the reasons why it required State support. It also noted that the recapitalisation addresses the capital loss resulting from its participation in the PSI programme, a highly extraordinary and unpredictable event. It supported the view that it had not taken excessive risks in acquiring sovereign debt by Greek and European standards. It stated that without the PSI it would have avoided the need for recapitalisation in 2012 and would have been well positioned to repay the preference shares in accordance with their contractual terms. Moreover, it commented that even after recording significant capital losses as a result of the participation of the Bank in the PSI, it still had a positive net asset value.
- (135) The Bank added that it is operating on a very strong base and has been extremely proactive in implementing measures to successfully work through a period of extreme stress. It commented that since the beginning of the crisis it had not engaged in any aggressive commercial policies or inappropriate risk taking while it focused on managing credit risk, it addressed imbalances in its funding profile by orderly deleveraging and it actively managed its cost base by rationalising the operating platform and optimising procurement spending.
- (136) Moreover, it stressed the considerable burden-sharing among stakeholders. It also pointed to the significant safeguards available to the official sector to prevent excessive risk-taking by recapitalised banks and to closely monitor the proper implementation of the restructuring plans, such as the appointment of representatives of the Ministry of Finance and the HFSF in the Bank's board of directors and respective committees. It also underlined that the HFSF would monitor implementation of the restructuring plan, and that the suspension of the HFSF's voting rights would be lifted in case of material failure.
- (137) For those reasons, the Bank believed that the architecture and terms of the permanent recapitalisation should provide strong incentives to existing and new shareholders to participate in forthcoming capital increases.

- (138) Regarding the necessity of the measure, the Bank noted that the aid measure addressed the capital deficit caused by PSI so that the bank complied with the minimum capital adequacy ratios imposed by the Bank of Greece, continued to have access to ECB refinancing operations and would be able to support its customers and the Greek economy during a difficult juncture.
- (139) Regarding the proportionality of the measure, the Bank declared its intention not to use its aid to distort competition. It also stressed that it had not engaged in any aggressive commercial policies since receiving the State aid. It also noted that since all large Greek banks were aid recipients and that since the appetite of foreign players in the Greek market for Greek risk was diminishing, the ability of any aid recipient to distort competition to the detriment of a non-aided recipient was minimised.

4.2. COMMENTS FROM ANOTHER GREEK BANK

- (140) On 3 January 2013, the Commission received comments submitted by a Greek bank on the Alpha Opening Decision. That Greek bank commented that the recapitalisation of Greek banks by the HFSF constituted, in principle, a welcome step towards a healthier and more viable banking system and expressed no objection to the recapitalisation of the Bank.
- (141) However, while expressing its entire support for the principle of the recapitalisation of Greek banks by the HFSF, that Greek bank explained that, in order to minimise distortions of competitions and to avoid discrimination, it expected that recapitalisation by the HFSF would be open to all banks operating in Greece under similar conditions.

5. COMMENTS FROM GREECE ON THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

- (142) On 5 September 2012, Greece submitted comments which had been prepared by the Bank of Greece and the HFSF on the Alpha Opening Decision.

5.1. COMMENTS FROM THE BANK OF GREECE

- (143) Regarding the appropriateness of the first bridge recapitalisation, the Bank of Greece noted that the first bridge recapitalisation was temporary, given that the recapitalisation process would be concluded with share capital increases by the four banks concerned.
- (144) The Bank of Greece also observed that the recapitalisation of the largest Greek banks is part of the longer-term restructuring of the Greek banking sector. It noted that where a bank was to remain in private hands, the management would most probably remain the same, while if a bank was to become State-owned (that is to say, owned by the HFSF), the HFSF could appoint new management which, in any case, would have to be assessed by the Bank of Greece. The Bank of Greece noted that it assesses the corporate governance framework, the adequacy of management and the risk profile of every bank on an ongoing basis in order to ensure that excessive risks are not taken. It also pointed out that the HFSF had already appointed representatives in the Boards of Directors of the recapitalised banks.
- (145) Regarding the necessity of the first bridge recapitalisation, the Bank of Greece observed that the Bank's recapitalisation was limited so as to ensure that the then applicable minimum capital requirements (8 %) were met. It also stated that the protracted period of time prior to the recapitalisations was due to the sharp deterioration of the operating environment in Greece and the impact of the PSI programme, to the complexity of the whole project and to the need to maximise private investors' participation in the share capital increases.
- (146) Regarding the proportionality of the first bridge recapitalisation, the Bank of Greece pointed out that the full implementation of the restructuring plan to be submitted to the Commission was safeguarded by the fact that the suspension of the voting rights of the HFSF would be lifted if the restructuring plan were substantively violated. The Bank of Greece also observed that the Bank's difficulties were not due either to an underestimation of risks by the Bank's management or to commercially aggressive actions.

5.2. COMMENTS FROM THE HFSF

- (147) Regarding the appropriateness of the first bridge recapitalisation, to address the issue of potential State interference in case the State provides high amounts of State aid through the HFSF and the HFSF has full voting rights, the HFSF stated that the HFSF-funded banks are not considered to be public entities or under State control and that

they will not be controlled by the State after they have been permanently recapitalised by the HFSF. The HFSF pointed out that it is a fully independent private-law legal entity with autonomy of decision. It is not subject to government control, pursuant to Article 16(C)(2) of the HFSF law, according to which the credit institutions to which the HFSF has provided capital support are not part of the broader public sector. It also pointed to the governing structure of the HFSF.

- (148) As regards the intervention of the HFSF in the Bank's management, the HFSF noted that it would respect the Bank's autonomy and not interfere with its day-to-day management given that its role is limited to that laid down in the HFSF Law. It stated that there would not be any State interference or coordination and that the decisions of the Bank regarding the lending process (inter alia on collateral, pricing and solvency of borrowers) would be taken on the basis of commercial criteria.
- (149) The HFSF pointed out that the HFSF Law and the pre-subscription agreement contained appropriate safeguards in order to prevent existing private shareholders from excessive risk-taking. It pointed to elements such as: (i) the appointment of HFSF representatives as independent non-executive members of the Board of Directors of the Bank and their presence at committees; (ii) the HFSF carrying out due diligence in the Bank; and (iii) the fact that after the final recapitalisation its voting rights would be restricted only for as long as the Bank complied with the terms of the restructuring plan.
- (150) The HFSF stated that there are appropriate measures in place in order to ensure that banks in which the HFSF participates do not share commercially sensitive information between them. They include the appointment of different HFSF representatives to those banks, the mandates addressed to those representatives which specifically safeguard against the flow of information from one representative to another and clear internal instructions to those representatives not to transmit commercially sensitive information of the banks. Moreover, the HFSF stated that it does not exercise its rights in relation to the banks in a manner which may prevent, restrict, distort or significantly lessen or impede effective competition. Lastly, the HFSF pointed out that the members of its Board of Directors and its employees are subject to strict confidentiality rules and fiduciary duties and are bound by provisions concerning professional secrecy with regards to its affairs.

6. ASSESSMENT OF THE STATE SUPPORT RELATED TO THE ACQUISITION OF SELECTED LIABILITIES OF THE THREE COOPERATIVE BANKS

- (151) The Commission first has to assess whether the State support related to the resolution of the three Cooperative Banks (meaning the financing of the funding gaps which enabled the transfer of the deposits, including interbank liabilities, and the claims and liabilities against the HDIGF) constitutes State aid within the meaning of Article 107(1) of the Treaty. According to that provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States.
- (152) The Commission will start by assessing whether or not the following potential beneficiaries benefited from an advantage: (i) the Cooperative Banks and the potentially transferred 'activities' to the Bank; and (ii) the Bank.
- (i) Existence of aid to the Cooperative Banks and the potentially transferred 'activities' to the Bank
- (153) With regards to the Cooperative Banks, the Commission notes that Dodecanese Bank, Evia Bank and Western Macedonia Bank have been put in liquidation and their banking licenses withdrawn. Therefore, they will no longer carry out economic activities on the banking market.
- (154) The State support, that is to say the financing of the funding gaps, would constitute aid to the transferred claims and liabilities within the meaning of Article 107(1) of the Treaty only if they together constituted an undertaking. The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of legal status and the way in which it is financed. Any activity consisting in offering goods or services on a given market is regarded as an economic activity. Therefore, in order to conclude whether there is aid to an undertaking, it should be assessed whether the transfer of the claims and liabilities entails the transfer of an economic activity.

(155) As mentioned in section 2.2.2, following the resolution of the Cooperative Banks, only the deposits, the interbank liabilities and the claims and liabilities towards the HDIGF were transferred to the Bank. The three Cooperative Banks employed 227 employees and had 18 branches in total. It should be noted that there was no automatic transfer of branches or employment contracts or loans between the three Cooperative Banks and the Bank. Therefore, the fact that loans are not transferred to the Bank but remain with the three Cooperative Banks into liquidation, the fact that no branch is transferred and the lack of automatic transfer of labour contracts contribute⁽⁸⁵⁾ to the conclusion that there is no transfer of economic activity. The transferred liabilities (that is to say deposits) cannot be considered to be the beneficiary of State support, as they do not constitute an 'undertaking'.

(156) In summary, the three existing legal entities have been put into liquidation and no longer carry out any banking activities. At the same time, the transferred assets and liabilities do not constitute an economic activity.

(157) It is therefore concluded that the grant of EFSF bonds by the HFSF to the Bank to cover the funding gap of the acquired assets and liabilities of the three Cooperative Banks does not allow the continuation of the latter's economic activities. Therefore, the HFSF support constitutes neither aid to the liquidated entities nor aid to the transferred assets and liabilities.

(ii) Existence of aid to the Bank

(158) With regards to whether the sale of the three Cooperative Banks' assets and liabilities entails State aid to the Bank, the Commission must assess whether certain requirements are met and in particular whether: (i) the sale process is open, unconditional and non-discriminatory; (ii) the sale takes place on market terms; and (iii) the State maximises the sale price for the assets and liabilities involved⁽⁸⁶⁾.

(159) As mentioned in recital 52 the Bank of Greece only contacted the four systemic Greek banks in order to auction the selected assets and liabilities of the three Cooperative Banks, as it considered that deposits should be transferred to fully recapitalised institutions. Only the Bank and Eurobank submitted binding offers. Alpha Bank was selected as best bidder in a competitive tender organised by the resolution authority, which took into account the price proposed and the ability to take over and integrate the purchased deposits in a seamless and rapid manner.

(160) The package for sale comprised only deposits without any infrastructure. The Buyer could therefore only be a bank with infrastructure and a branch network in Greece, to serve the depositors.

(161) As the Commission has no reason to believe that the sale did not take place on market terms, it concludes that aid to the Bank can be excluded, in line with point 80 of the 2013 Banking Communication, point 20 of the Restructuring Communication and the Commission's decisional practice⁽⁸⁷⁾.

(iii) Conclusion on the existence of aid

(162) The State support involved in the sale of the three Cooperative Banks does not favour any economic activity or any undertaking. Therefore, the measure does not constitute aid within the meaning of Article 107(1) of the Treaty.

7. ASSESSMENT OF AID GRANTED TO THE BANK

7.1. EXISTENCE AND THE AMOUNT OF AID

(163) The Commission has to establish the existence of State aid to the Bank within the meaning of Article 107(1) of the Treaty.

⁽⁸⁵⁾ See recital 146 of the Commission Decision of 12 November 2008 in State aid Case SA. 510/2008 – Italia 'Vendita dei beni della compagnia aerea ALITALIA' (OJ C 46, 25.2.2009, p. 6).

⁽⁸⁶⁾ See point 80 of the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

⁽⁸⁷⁾ See Commission Decision of 25 January 2010 in the State aid case NN 19/2009 – Restructuring aid to Dunfermline Building Society, recital 47; Commission Decision of 25 October 2010 in State aid case N 560/2009 – Aid for the liquidation of Fionia bank, recital 55; Commission Decision of 8 November 2010 in State aid case N 392/2010 – Restructuring of CajaSur, recital 52.

7.1.1. Existence of aid in the measures granted under the Greek Bank Support Scheme (measures L1 and A)

7.1.1.1. State liquidity support granted under the guarantee and the government bond loan measures (measure L1)

- (164) The Commission has already established in the decisions approving and prolonging the Greek Banks Support Scheme ⁽⁸⁸⁾ that liquidity support granted under that scheme constitutes aid. Future liquidity support granted under that scheme would also constitute aid.

7.1.1.2. State recapitalisation granted under the recapitalisation measure (measure A)

- (165) The Commission has already established in the decision of 19 November 2008 on the Greek Banks Support Scheme that recapitalisations to be granted under its recapitalisation measure would constitute aid. The Bank received EUR 940 million by means of preference shares, which represented 2 % of the Bank's RWA at that date.

7.1.2. Existence of aid in the State-guaranteed ELA (measure L2)

- (166) The Commission clarified in point 51 of the 2008 Banking Communication that the provision of central banks' funds to financial institutions does not constitute aid if four cumulative conditions are met regarding the solvency of the financial institution, the collateralisation of the facility, the interest rate charged to the financial institution, and the absence of a counter-guarantee from the State. Since the State-guaranteed ELA to the Bank does not comply with those four cumulative conditions, in particular because it is State guaranteed and it is granted in conjunction with other support measures, it constitutes aid.
- (167) The State-guaranteed ELA is in line with the requirements laid down in Article 107(1) of the Treaty. First, because that measure includes a State guarantee in favour of the Bank of Greece, any loss will be borne by the State. The measure therefore involves State resources. ELA enables banks to get funding at a time when they have no access to the wholesale funding market and to the regular Eurosystem refinancing operations. The State-guaranteed ELA therefore grants an advantage to the Bank. Since ELA is limited to the banking sector the measure is selective. Because the State-guaranteed ELA allows the Bank to continue operating on the market and avoids it defaulting and having to exit the market, it distorts competition. Since the Bank is active in other Member States and since financial institutions from other Member States operate or would potentially be interested in operating in Greece, the advantage granted to the Bank affects trade between Member States.
- (168) The State-guaranteed ELA (measure L2) constitutes State aid. The amount of State-guaranteed ELA has varied over time. At 31 December 2012 it amounted to around EUR 23,6 billion.

7.1.3. Existence of aid in the measures granted through the HFSF (measures B1, B2, B3 and B4)

7.1.3.1. First bridge recapitalisation (measure B1)

- (169) In section 5.1 of the Alpha Opening Decision, the Commission has already concluded that the first bridge recapitalisation constitutes State aid. The capital received amounted to EUR 1,9 billion.

7.1.3.2. Second bridge recapitalisation (measure B2)

- (170) Measure B2 was implemented with HFSF resources, which, as explained in recital 47 of the Alpha Opening Decision, involve State resources.
- (171) As regards the existence of an advantage, measure B2 increased the Bank's capital ratio to a level that allowed it to continue to function on the market and to access Eurosystem funding. Furthermore, the remuneration of measure B2 consisted of the accrued interest on EFSF notes and an additional 1 % fee. Because that remuneration is manifestly lower than the remuneration of similar capital instruments in the market, the Bank would have certainly been unable to raise that capital on such terms in the market. Therefore, measure B2 granted an advantage to the Bank from State resources. As the measure was made available only to the Bank, it was selective in nature.

⁽⁸⁸⁾ See footnotes 1 and 2.

(172) As a result of measure B2, the position of the Bank was strengthened since the Bank was provided with the financial resources to continue complying with the capital requirements, thus leading to competition distortions. Since the Bank is active in other European Union banking markets and since financial institutions from other Member States operate in Greece, measure B2 is also likely to affect trade between Member States.

(173) The Commission considers that measure B2 constitutes State aid. It was notified as aid by the national authorities. The capital received amounted to EUR 1 042 million.

7.1.3.3. *Commitment letter (measure B3)*

(174) By measure B3, the HFSF committed to provide the additional capital necessary to complete the recapitalisation of the Bank up to the amount requested by the Bank of Greece in the framework of the stress test of 2012. The HFSF receives its resources from the State. The Commission therefore concludes that the letter commits State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by law. Accordingly the use of those State resources is imputable to the State. The HFSF committed to provide up to EUR 1 629 million of additional capital.

(175) The commitment letter granted an advantage to the Bank because it reassured depositors that the Bank would be able to raise the entire amount of capital it had to raise, that is to say the HFSF would provide the capital should the Bank fail to raise it on the market. That commitment also facilitated the raising of private capital from the market, since investors were reassured that, if the bank could not find part of the capital from the market, the HFSF would provide it. No private investor would have accepted to commit to inject capital before the terms of the recapitalisation were known, and at that time the Bank had no access to the capital market. That advantage is selective since it was not granted to all banks operating in Greece.

(176) Since the Bank is active in other European Union banking markets and since financial institutions from other Member States operate in Greece, measure B3 is also likely to affect trade between Member States and to distort competition.

(177) Measure B3 therefore constitutes aid and was notified as State aid by the Greek authorities on 27 December 2012.

7.1.3.4. *HFSF's participation in the Spring 2013 recapitalisation (measure B4)*

(178) HFSF's participation in the Spring 2013 recapitalisation (measure B4) is the conversion of the first and second bridge recapitalisations (measures B1 and B2) and the partial implementation of the commitment letter (measure B3) into a permanent recapitalisation of EUR 4 021 million in ordinary shares. The fact that not the entire amount of capital committed through measure B3 had to actually be injected is due to the raising of EUR 550 million of capital from private investors. Since measure B4 is the conversion of aid already granted, it still involves State resources but it does not increase the nominal amount of aid. However, it increases the advantage to the Bank (and therefore the distortions of competition) since it is a permanent recapitalisation and not a temporary recapitalisation as in the case of measures B1 and B2. Compared to measure B3, which is only a commitment and not an actual recapitalisation, measure B4 increased the capital adequacy of the Bank and is therefore more advantageous.

(179) The Commission notes that such support was not granted to all banks operating in Greece. Therefore the advantage granted to the Bank is selective. As regards distortion of competition and effect on trade, the Commission notes for instance that the aid enabled the Bank to pursue its operations in other Member States. A liquidation of the Bank would have led to the termination of its activities abroad, through the liquidation of those activities or their sale. Therefore, the measure distorts competition and affects trade between Member States. The measure constitutes State aid.

7.1.3.5. *Conclusion on measure B1, B2, B3 and B4*

(180) Measures B1, B2, B3 and B4 constitute State aid within the meaning of Article 107(1) of the Treaty. The amount of State aid included in measures B1, B2, B3 and B4 is EUR 4 571 million. As indicated in section 7.1.3.4, only part of the amount committed in December 2012 (measure B3) was converted into an actual capital injection (measure B4). The amount of State support actually paid out was therefore only EUR 4 021 million.

- (181) Point 31 of the Restructuring Communication indicates that, besides the absolute amount of aid, the Commission has to take into account the aid '*in relation to the bank's risk-weighted assets*'. Measures B1, B2, B3 and B4 were granted over the course of a one-year period, from April 2012 until May 2013. During that period, the RWA of the Bank changed, rising after the acquisition of Emporiki Bank. The question therefore arises as to which level of RWA should be used, and more particularly whether the State aid should be assessed by reference to the RWA that existed at the beginning of the period or at the end of the period. Measures B1, B2, B3 and B4 aim at covering a capital need identified by the Bank of Greece in March 2012 (the stress test of 2012). In other words, the capital needs that those State support measures aim to address already existed in March 2012. The Commission therefore considers that the aid amount included in measures B1, B2, B3 and B4 should be compared to the RWA of the Bank at 31 March 2012. The fact that the Bank acquired Emporiki Bank, well after March 2012, should not lead to a reduction of the ratio 'aid to RWA'. Indeed, the aid is not less distortive because the Bank made an acquisition which increases its RWA. It is also recalled that after March 2012 and until the Spring 2013 recapitalisation, the Bank of Greece did not take into account acquisition made by the Greek banks to adjust their capital needs – upwards or downwards. That element further demonstrates that measures B1, B2, B3 and B4 were aid measures related to the perimeter of the Bank such as it existed at 31 March 2012.
- (182) The first and second bridge recapitalisations and the commitment letter altogether amounted to EUR 4 571 million. That amount represents 10,3 % of the RWA of the Bank at 31 March 2012 ⁽⁸⁹⁾.
- (183) Since the Bank managed to attract private capital, the actual amount injected by the HFSF into the Bank only amounted to EUR 4 021 million, which represents 9,1 % of the RWA of the Bank at 31 March 2012.

7.1.4. Conclusion on the existence and total amount of aid received

- (184) Measures A, B1, B2, B3, and B4 constitute State aid within the meaning of Article 107(1) of the Treaty.

Ref.	Measure	Type of measure	Amount of aid	Recapitalisation aid/RWA
A	Preference Shares	Capital support	EUR 940 million	2 %
B1 B2 B3 B4	First bridge recapitalisation Second bridge recapitalisation Commitment letter HFSF's participation in the Spring 2013 recapitalisation	Capital support	EUR 4 571 million (amount paid-out by the HFSF: EUR 4 021 million)	10,3 % (amount paid out by the HFSF: 9,1 %)
Total capital aid granted to the Bank			EUR 5 511 million (amount paid-out by the HFSF: EUR 4 961 million)	12,3 % (amount paid out by the HFSF: 11,1 %)
Ref.	Measure	Type of measure	Nominal amount of aid	
L1	Liquidity support	Guarantee Bond Loan	Guarantees: EUR 14 billion at 30 November 2011 Bond Loan: EUR 1,6 billion at 30 September 2011	
L2	State-guaranteed ELA	Funding and Guarantee	EUR 23,6 billion at 31 December 2012	
Total liquidity aid granted to the Bank			EUR 39,2 billion	

7.2. LEGAL BASIS FOR THE COMPATIBILITY ASSESSMENT

- (185) Article 107(3)(b) of the Treaty empowers the Commission to find that aid is compatible with the internal market if it is intended 'to remedy a serious disturbance in the economy of a Member State'.

⁽⁸⁹⁾ The RWA of the Bank at 31 March 2012 stood at EUR 44,2 billion.

- (186) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks may remedy that disturbance. This has been confirmed in the 2008 Banking Communication, the Recapitalisation Communication, and the Restructuring Communication. The Commission still considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication ⁽⁹⁰⁾ and the 2013 Banking Communication.
- (187) In respect to the Greek economy, in its decisions approving and prolonging the Greek Banks Support Scheme as well as in its approvals of State aid measures granted by Greece to individual banks ⁽⁹¹⁾, the Commission has acknowledged that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Therefore, the legal basis for the assessment of the aid measures should be Article 107(3)(b) of the Treaty.
- (188) During the financial crisis, the Commission has developed compatibility criteria for different types of aid measures. Principles for assessing aid measures were first laid down in the 2008 Banking Communication.
- (189) In line with point 15 of the 2008 Banking Communication, in order for aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility:
- (a) Appropriateness: The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.
 - (b) Necessity: The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to achieve the objective, and take the form most appropriate to remedy the disturbance.
 - (c) Proportionality: The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to achieve the measure's objectives.
- (190) Guidance for recapitalisation measures can be found in the Recapitalisation Communication and the 2011 Prolongation Communication.
- (191) The Restructuring Communication defines the approach adopted by the Commission as regards the assessment of restructuring plans, in particular the need to return to viability, to ensure proper contribution from the beneficiary and to limit distortions of competition.
- (192) That framework was complemented by the 2013 Banking Communication, which applies to aid measures notified after 31 July 2013.

7.2.1. Legal basis for the assessment of the compatibility of the liquidity support to the Bank (measure L1)

- (193) The liquidity support already received by the Bank has been definitively approved through the successive decisions authorising the measures under the Greek Banks Support Scheme and its amendments and prolongations ⁽⁹²⁾. Any future liquidity support for the Bank will have to be granted under a scheme duly approved by the Commission. The terms of such aid will have to be authorised by the Commission before it is granted and therefore do not have to be further assessed in this decision.

7.2.2. Legal basis for the assessment of the compatibility of the preference shares (measure A)

- (194) The recapitalisation granted in 2009 in the form of preference shares (measure A) was granted under the recapitalisation measure approved in 2008 as part of the Greek Banks Support Scheme under the 2008 Banking Communication. It therefore does not have to be reassessed under the 2008 Banking Communication and has to be assessed only under the Restructuring Communication.

⁽⁹⁰⁾ Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ('2011 Prolongation Communication') (OJ C 356, 6.12.2011, p. 7).

⁽⁹¹⁾ See footnote 6.

⁽⁹²⁾ See footnote 6.

7.2.3. Legal basis for the assessment of the compatibility of the State-guaranteed ELA (measure L2)

- (195) The compatibility of the State-guaranteed ELA (measure L2) should be first assessed on the basis of the 2008 Banking Communication and the 2011 Prolongation Communication. Any State-guaranteed ELA granted after 1 August 2013 falls under the 2013 Banking Communication.

7.2.4. Legal basis for the assessment of the compatibility of the HFSF recapitalisations (measures B1, B2, B3, and B4)

- (196) The compatibility of the HFSF recapitalisations (measures B1, B2, B3 and B4), in particular as regards remuneration, should first be assessed on the basis of the 2008 Banking Communication, the Recapitalisation Communication and the 2011 Prolongation Communication. In the Alpha Opening Decision the Commission expressed doubts as to the compatibility of measure B1 with those Communications. Since they were implemented before 31 July 2013, those measures do not fall under the 2013 Banking Communication. The compatibility of the HFSF recapitalisations (measures B1, B2, B3 and B4) should also be assessed on the basis of the Restructuring Communication.

7.3. COMPLIANCE OF MEASURE L2 WITH THE 2008 BANKING COMMUNICATION, THE 2011 PROLONGATION COMMUNICATION AND THE 2013 BANKING COMMUNICATION

- (197) In order for aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility: appropriateness, necessity and proportionality.
- (198) Because Greek banks were shut out from wholesale markets and became entirely dependent on central bank financing, as indicated in recital 26, and since the Bank could not borrow a sufficient amount of funds through the regular refinancing operations, the Bank needed State-guaranteed ELA to obtain sufficient liquidity to prevent it from defaulting. The Commission considers measure L2 to be an appropriate mechanism to remedy a serious disturbance, which would have been caused by the default of the Bank.
- (199) Since the State-guaranteed ELA entails a relatively high cost of funding for the Bank, the Bank has a sufficient incentive to avoid relying on that source of funding for developing its activities. The Bank had to pay an interest rate of [...] bps higher than regular refinancing operations with the Eurosystem. In addition, the Bank had to pay a guarantee fee of [...] bps to the State. As a result, the total cost of State-guaranteed ELA for the Bank is much higher than the normal costs of ECB refinancing. In particular, the difference between the former and the latter is higher than the level of the guarantee fee requested by the 2011 Prolongation Communication. As a result, the total remuneration charged by the State can be considered as sufficient. As regards the amount of the State-guaranteed ELA, it is regularly reviewed by the Bank of Greece and the ECB based on the actual needs of the Bank. They closely monitor its use and ensure it is limited to the minimum necessary. Therefore measure L2 does not provide the Bank with excess liquidity which could be used to finance activities distorting competition. It is limited to the minimum amount necessary.
- (200) Such close scrutiny of the use of the State-guaranteed ELA and regular verification that its use is limited to the minimum also ensures that that liquidity is proportional and does not lead to undue distortion of competition. The Commission also notes that Greece has committed that the Bank will implement restructuring measures reducing its reliance on central bank funding and that the Bank will comply with behavioural limitations, as analysed in section 7.6. Those factors ensure that the reliance on liquidity support will end as soon as possible and that such aid is proportional.
- (201) Measure L2 therefore complies with the 2008 Banking Communication and the 2011 Prolongation Communication. As the 2013 Banking Communication has not introduced further requirements as regards guarantees, measure L2 also complies with the 2013 Banking Communication.

7.4. COMPLIANCE OF MEASURES B1, B2, B3 AND B4 WITH THE 2008 BANKING COMMUNICATION, THE RECAPITALISATION COMMUNICATION AND THE 2011 PROLONGATION COMMUNICATION

- (202) As indicated in recital 189, and in line with point 15 of the 2008 Banking Communication, in order for aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility⁽⁹³⁾: appropriateness, necessity and proportionality.

⁽⁹³⁾ See recital 41 of Commission Decision in Case NN 51/2008 Guarantee scheme for banks in Denmark (OJ C 273, 28.10.2008, p. 2).

- (203) The Recapitalisation Communication and the 2011 Prolongation Communication elaborate further on the level of remuneration required for State capital injections.

7.4.1. Appropriateness of the measures

- (204) As regards the appropriateness of the HFSF recapitalisations (measures B1, B2, B3, and B4), the Commission considers them appropriate because they enable the Bank to comply with capital requirements. Without the HFSF recapitalisations, the Bank would have been unable to pursue its activities and would have lost access to ECB refinancing operations.
- (205) In that respect, the Commission noted in the Alpha Opening Decision that the Bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, the Bank is a systemically important bank for Greece. Consequently, default by the Bank would have created a serious disturbance in the Greek economy. Under the then prevailing circumstances, financial institutions in Greece had difficulties in accessing funding. That lack of funding limited their ability to provide loans to the Greek economy. In that context, the disturbance to the economy would have been aggravated by the default of the Bank. Moreover, measures B1, B2, B3 and B4 came about mainly because of the PSI programme, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the Bank. The measures therefore mainly aim at dealing with the results of the PSI programme and contribute to maintaining financial stability in Greece.
- (206) In the Alpha Opening Decision, the Commission expressed doubts as to whether all the measures possible had been taken immediately to avoid the Bank needing aid again in the future. As indicated in recitals 121 and 122 of this Decision, Greece has committed to implement a number of actions related to the corporate governance and commercial operations of the Bank. As described in recitals 99 and 106, the Bank has also significantly restructured its activities, with many cost reductions already implemented. Therefore the Commission's doubts have been allayed.
- (207) In the Alpha Opening Decision, the Commission also expressed doubts as to whether sufficient safeguards existed in case the Bank came under State control, or in case private shareholders retained control while the majority of the ownership would be held by the State. The commitments described in recitals 121 and 122 of this Decision ensure that the credit operations of the Bank will be run on a commercial basis and daily business will be protected from State interference. The relationship framework agreed between the HFSF and the Bank also ensures that interests of the State as main shareholder are protected against excessive risk-taking by the management of the Bank.
- (208) Measures B1, B2, B3 and B4 therefore ensure that financial stability in Greece is maintained. Significant actions are taken to minimise future losses and to ensure that the activities of the Bank are not jeopardised by inappropriate governance. On that basis, the Commission finds that measures B1, B2, B3 and B4 are appropriate.

7.4.2. Necessity – limitation of the aid to the minimum

- (209) According to the 2008 Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. It implies that the capital injection must be of the minimum amount necessary to achieve the objective.
- (210) The amount of capital support was calculated by the Bank of Greece in the framework of a stress test so as to ensure that Core Tier 1 capital remained above a certain level over the period 2012-14, as reflected in Table 3. It therefore does not provide the Bank with any excess capital. As explained in recital 206, actions have been taken to reduce the risk that the Bank will need additional aid in the future.
- (211) As regards the remuneration of the first and second bridge recapitalisations (measures B1 and B2), the Commission recalls that they were granted in May 2012 and December 2012 respectively and paid in kind in the form of EFSF notes. The HFSF has received as remuneration, from the date of disbursement of the EFSF notes to the date of the

Spring 2013 recapitalisation, the accrued interest on the EFSF notes plus a 1 % fee ⁽⁹⁴⁾. As underlined in the Alpha Opening Decision, that remuneration is lower than the 7 % to 9 % range as defined in the Recapitalisation Communication. However, the period of low remuneration was limited to one year for measure B1 and five months for measure B2 (that is to say, until the conversion of the bridge recapitalisation into a standard recapitalisation in ordinary shares, namely measure B4). While the first and second bridge recapitalisations did not trigger the dilution of existing shareholders, the Spring 2013 recapitalisation, which was the conversion of the first and second bridge recapitalisations, heavily diluted the pre-existing shareholders, as their stake in the Bank's equity fell to 4,9 %. The abnormal situation which prevailed from the date of the first bridge recapitalisation was then terminated. The doubts raised in the Alpha Opening Decision have therefore been allayed.

- (212) Second, given the atypical source of the Bank's difficulties, where losses came mainly from a debt waiver in favour of the State (the PSI programme and the debt buy-back, which provide a significant advantage to the State, that is to say, a debt reduction) and from the consequences of a protracted recession in its domestic economy, the Commission can accept such a temporary deviation from the standard remuneration requirements set out in the Recapitalisation Communication ⁽⁹⁵⁾.
- (213) As regards measure B3, it was a commitment to provide capital. That commitment made in December 2012 was implemented in an actual injection of capital in May-June 2013, a mere five months later. For that reason and for the reasons set out in recital 212, it is acceptable that no remuneration was paid for that commitment.
- (214) As regards measure B4, according to point 8 of the 2011 Prolongation Communication, capital injections should be subscribed at a sufficient discount to the share price adjusted for the dilution effect to give a reasonable assurance of an adequate remuneration for the State. While that recapitalisation did not provide for a significant discount to the share price as adjusted for the dilution effect, it was, in fact, impossible to achieve a significant discount to the theoretical ex-right price ⁽⁹⁶⁾. Prior to the Spring 2013 recapitalisation, the Bank's market capitalisation was only a few hundred million euros. In such circumstances, the question arises whether the existing shareholders should have been fully wiped out. The Commission notes that the issue price was set at a 50 % discount to the average market price over the fifty days preceding the determination of the issue price. The Commission also notes that the dilution of the existing shareholders has been huge, since after the recapitalisation they held only 4,9 % of the shareholding of the Bank. Therefore, applying a further discount on the market price would have had a small impact on the remuneration of the HFSF. In view of the specific situation of the Greek banks explained in recital 212, and given the fact that the need for aid stems from a waiver of debt in favour of the State, the Commission considers that the issue price of the shares subscribed by the State was sufficiently low.
- (215) The HFSF also issued warrants and granted one warrant for each new share subscribed by a private investor participating in the Spring 2013 recapitalisation. The HFSF granted those warrants for no consideration. As explained in recital 93, each warrant incorporates the right to purchase 7,40 shares of the HFSF at selected intervals and strike prices. The exercise price is equal to the subscription price of the HFSF increased by an annual and cumulative margin (4 % for year one, 5 % for year two, 6 % for year three, 7 % for year four then 8 % annualised for the last six months). The remuneration received by the HFSF on the shares it owns is de facto capped at those levels. That remuneration is lower than the 7 % to 9 % range as defined in the Recapitalisation Communication. However, because those warrants were a key factor in the success of the right issue and private placement launched by the Bank before the Spring 2013 recapitalisation, the Commission considers that they enabled the Bank to reduce the amount of aid by EUR 550 million. Indeed due to the low capital ratio of the Bank prior to the recapitalisation and the high uncertainty prevailing at the time, the simulations which were then available showed that without the warrants private investors would not achieve a sufficient return and would not participate. For the reasons explained in recitals 205 and 212, because the HFSF would receive a minimal positive remuneration if the warrants were exercised and because it was an objective of the MEFP to attract private investors to keep some banks under private management and avoid situations where the whole banking sector would be controlled by the HFSF, the Commission can accept such a deviation from the standard remuneration requirements set out in the Recapitalisation Communication. That acceptance is also based on the fact that the HFSF law, as amended in March 2014, does not provide for any adjustment of the warrants in the event of a non-pre-emptive share capital increase, and that in the case of a rights issue only the warrant strike price may be

⁽⁹⁴⁾ See recital 83: the accrued interests count as additional contribution by the HFSF and therefore reduced the payment which HFSF had to make to the Bank to pay the Spring 2013 recapitalisation.

⁽⁹⁵⁾ See also section 7.5.1.

⁽⁹⁶⁾ The theoretical ex-right price ("TERP") is a generally accepted market methodology for quantifying the dilution effect of share capital increase.

adjusted and the adjustment may take place only *ex post* and only up to the amount of the realised proceeds from the sale of pre-emption rights of the HFSF. Moreover, the commitment given by Greece that it would seek the approval of the Commission prior to any buy-back of the warrants issued by the HFSF will allow the Commission to ensure that any future buy-back does not further reduce the remuneration of HFSF and increase the remuneration of the warrant holders.

- (216) As regards the fact that the HFSF shares are non-voting, the Commission recalls that the need for aid does not come mainly from excessive risk taking. In addition, it was an objective of the MEFP to keep some banks under private management. Moreover, the relationship framework and automatic reintroduction of voting rights in the event of non-implementation of the restructuring plan provide safeguards against future excessive risk taking by private managers. Finally, the PSI and the December 2012 buy-back are a kind of remuneration to the State, as the latter's debt towards the Bank was reduced by several billions of euros. For all those reasons, the Commission can accept that the HFSF receives non-voting shares. The Commission therefore concludes that measure B4 was necessary.

In conclusion, measures B1, B2, B3 and B4 are necessary as rescue aid in both their amount and form.

7.4.3. Proportionality – measures limiting negative spill-over effects

- (217) The Commission notes that the Bank received a very large amount of State aid. That situation may therefore lead to serious distortions of competition. However, Greece has committed to implement a number of measures aiming at reducing negative spill-over effects. In particular, the commitments provide that the Bank's operations will continue to be run on a commercial basis, as explained in recitals 121 and 122. Greece has also committed to an acquisition ban, and to a number of divestments, as described in recitals 123 to 124. Limits to distortions of competition will be further assessed in section 7.6.
- (218) A monitoring trustee has also been appointed in the Bank to monitor the correct implementation of commitments on corporate governance and commercial operations. It will avoid any detrimental change in the Bank's commercial practice and thereby reduce the potential negative spill-over effects.
- (219) Finally a new comprehensive restructuring plan was submitted on 12 June 2014 to the Commission. That restructuring plan will be assessed in section 7.6.
- (220) To conclude, the doubts raised in the Alpha Opening Decision have been allayed. Measures B1, B2, B3 and B4 are proportionate in the light of point 15 of the 2008 Banking Communication.

7.4.4. Conclusion on the compliance of the HFSF recapitalisations with the 2008 Banking Communication, the Recapitalisation Communication and the 2011 Prolongation Communication

- (221) It is therefore concluded that the HFSF recapitalisations (measures B1, B2, B3 and B4) are appropriate, necessary and proportionate, in the light of point 15 of the 2008 Banking Communication, of the Recapitalisation Communication and of the 2011 Prolongation Communication.

7.5. COMPLIANCE OF THE ACQUISITIONS WITH THE RESTRUCTURING COMMUNICATION

- (222) Point 23 of the Restructuring Communication explains that acquisitions of undertakings by aided banks cannot be financed through State aid unless this is essential for restoring an undertaking's viability. Furthermore, points 40 and 41 of the Restructuring Communication state that banks should not use State aid for the acquisition of competing businesses, unless the acquisition is part of a consolidation process necessary to restore financial stability or to ensure effective competition. In addition, acquisitions may endanger or complicate the restoration of viability. The Commission must therefore assess whether the acquisitions made by the Bank can be reconciled with the Restructuring Communication.

7.5.1. Compliance of the acquisition of Emporiki Bank with the Restructuring Communication

7.5.1.1. *Effect of the acquisition of Emporiki Bank on the long-term viability of the Bank*

- (223) In terms of operating profitability, the acquisition of Emporiki Bank enhances the Bank's return to long-term viability as merging two banks in the same geographical market allows the Bank to realise meaningful synergies, for instance in the form of personnel reduction, branch closures and reduced overhead costs. The Bank acquires customers and deposits, while significantly reducing distribution costs. It is closing a significant number of branches of the combined entity, in addition to rationalising headquarters functions.
- (224) In terms of liquidity positions, the acquisition has a positive effect on the Bank. Indeed, the loan-to-deposit ratio of the acquired entity was around 115 %, well below the Bank's very high loan-to-deposit ratio ⁽⁹⁷⁾. It therefore contributes to significantly improving the loan-to-deposit ratio of the Bank.
- (225) From a static point of view, the transaction also has a positive impact on the Bank's capital ratio, since the Bank acquires a highly capitalised bank for one euro consideration. At 31 March 2012, the pro forma capital adequacy ratio of the combined entity was 11,8 % whereas the Bank's capital adequacy ratio was only 8,8 %. Similarly, the pro forma Core Tier 1 ratio of the combined entity stood at 11,1 % while the Bank's Core Tier 1 ratio was 7,9 %. The high capital of Emporiki Bank provides protection against future losses which could materialise in the stress test, as shown in Table 3. The static observation of the increase in the capital ratio of the Bank overestimated the positive effect on its long term capital position. The acquisition is therefore positive for the restoration of the long-term viability of the Bank.

7.5.1.2. *Effect of the acquisitions on the amount of aid needed by the Bank*

- (226) According to point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank. In this case, although the acquisition has positive implications for the Bank's viability, it is not essential for its viability within the meaning of point 23 of the Restructuring Communication.
- (227) The Bank only paid one euro consideration to purchase Emporiki Bank. The purchase price was therefore not financed through State aid. That fact also implies that the payment of the purchase price did not create any capital need for the Bank. In addition, Emporiki Bank was adequately capitalised (that is to say up to the level required under the 2012 stress test illustrated in Table 3). As such, the acquisition is unlikely to create any future capital need for the Bank.
- (228) In conclusion, due to the atypical terms (purchase at EUR 1 of a fully capitalised bank to meet stress test requirements), the acquisition of Emporiki Bank exceptionally does not go against the requirement to minimise the aid.

7.5.1.3. *Distortive effect of the acquisitions on competition*

- (229) In line with points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses. Point 41 of the Restructuring Communication also states that acquisitions may be authorised if they are part of a consolidation process necessary to restore financial stability or to ensure effective competition. In such circumstances the acquisition process should be fair and the acquisition should ensure the conditions of effective competition in the relevant market.
- (230) Emporiki Bank was not deemed viable on a stand-alone basis by the Bank of Greece, according to a viability review carried by an external consultant at the beginning of 2012. It was creating large losses for Crédit Agricole which therefore wanted to sell it. If no sale was possible, Crédit Agricole could have considered how to let it fail. The transaction can therefore be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.

⁽⁹⁷⁾ See Table 5.

- (231) No non-aided bidder submitted any valid bid to acquire Emporiki Bank, and the sale process was open, transparent and non-discriminatory. There was therefore no crowding out of a non-aided bidder by the Bank. Since that acquisition was authorised by the Hellenic Competition Authority, the outcome of the sale process does not endanger the conditions of effective competition in Greece.
- (232) Furthermore, the Bank's need for aid does not stem from mismanagement or inappropriate risk taking. Finally, as concluded in recital 227, no State aid was used to fund this acquisition (purchase at EUR 1 of a bank capitalised up to the level required to pass the stress test of the Bank of Greece).
- (233) In view of those elements, it can be concluded that the acquisition of Emporiki Bank is in line with section 4 of the Restructuring Communication.

7.5.1.4. Conclusion on the acquisition of Emporiki Bank

- (234) In the light of the unique situation of Greek banks and the specificities of the acquisition of Emporiki Bank, it is concluded that that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.5.2. Compliance of the acquisition of the selected assets and liabilities of the three Cooperative Banks with the Restructuring Communication

7.5.2.1. Effect of the acquisitions on the long-term viability of the Bank

- (235) The acquisition of the selected assets and liabilities of the three Cooperative Banks will enhance the long-term viability of the Bank.
- (236) More precisely, the integration of the deposits of the three Cooperative Banks into the Bank's balance sheet improved its liquidity profile. The net loan-to-deposit ratio of Alpha Bank S.A. decreased by around 1,5 % and the reliance of Alpha Bank S.A. on the Eurosystem decreased.
- (237) Furthermore, the acquisitions gave the Bank the opportunity to enhance its revenues by broadening its client base in several geographic areas. The Bank did not take over any costly infrastructure or costly branch network. Nor did the Bank take over any loans. It therefore did not increase its risk or capital requirements.

7.5.2.2. Effect of the acquisition on the amount of aid needed by the Bank

- (238) In line with point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank. In this case, although the acquisition has positive implications for the Bank's viability, it is not essential for its viability within the meaning of point 23 of the Restructuring Communication.
- (239) The consideration paid by the Bank for the acquisition of the transferred assets and liabilities of all three Cooperative Banks was determined at 2,1 % of the value of the transferred deposits and amounted to approximately EUR 9 million, equivalent to 0,01 % of the total balance sheet of the Bank at the time of the acquisition. That consideration can therefore be considered as very small. In addition, the Bank had already raised EUR 550 million of private capital during the Spring 2013 recapitalisation.

- (240) It is concluded that the acquisition price of the transferred assets and liabilities (mainly deposits) of the three Cooperative Banks was so low that it did not prevent the aid from being limited to the minimum necessary.

7.5.2.3. Distortive effect of the acquisitions on competition

- (241) As stated in recital 229, according to points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses, except under specific circumstances.
- (242) The Bank of Greece considered the three Cooperative Banks not to be viable and the adoption of the resolution measures to be necessary in order to maintain financial stability. The acquisitions can therefore be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.

- (243) In addition, no non-aided bidder submitted any valid bid to acquire the assets and liabilities of the three Cooperative Banks, and the only other bid came from a bank which had received even more aid. Moreover, the size of the acquired assets and liabilities was small, and did not change the market structure⁽⁹⁸⁾.
- (244) In conclusion, the Commission considers these exceptional circumstances justify the authorisation of the acquisitions, in accordance with point 41 of the Restructuring Communication

7.5.2.4. Conclusion on the acquisition of the selected assets and liabilities of the three Cooperative Banks.

- (245) It is concluded that, in the light of the specificities of the acquisitions of the selected assets and liabilities of the three Cooperative Banks, those acquisitions are in line with the requirements laid down in the Restructuring Communication.

7.5.3. Compliance of the acquisition of Citibank Greece with the Restructuring Communication

7.5.3.1. Effect of the acquisition on the long-term viability of the Bank

- (246) The acquisition of Citibank Greece, including Diners, will enhance the long-term viability of the Bank. The Bank acquired a highly provisioned loan bank. In addition the net loan book is much smaller than the acquired deposits.
- (247) The integration of the deposits of Citibank Greece into the Bank's balance sheet will improve the Bank's medium- and long-term funding profile, while, at the same time, increasing the Bank's profitability.
- (248) Furthermore, through the acquisition, the Bank will enhance its deposit gathering franchise and capabilities, thereby achieving a balanced and sustainable business model.
- (249) Finally, the expected significant synergies – in terms of central functions, IT services and operating expenses – will contribute to the Bank's long-term viability.
- (250) The acquisition is therefore positive for the restoration of the long-term viability of the Bank.

7.5.3.2. Effect of the acquisition on the aid amount needed by the Bank

- (251) According to point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank. In this case, although the acquisition has positive implications for the Bank's viability, it is not essential for its viability within the meaning of point 23 of the Restructuring Communication.
- (252) The Bank only paid EUR 2 million consideration⁽⁹⁹⁾ to purchase Citibank Greece and Diners.
- (253) The acquired portfolio includes a large number of loans which are totally written-off. Indeed, the valuation of that new portfolio of loans could offset the limited capital need stemming from their integration in the balance sheet of the Bank.
- (254) In addition, the Bank has raised EUR 1,2 billion of private capital at a price per share higher than the price per share at which the HFSF subscribed in the Spring 2013 recapitalisation.
- (255) In those specific circumstances, it cannot be claimed that the acquisition was financed through State aid. The acquisition will not increase the need for aid or reduce the remuneration of the existing aid.

7.5.3.3. Distortive effect of the acquisition on competition

- (256) As indicated in recital 241, State aid should not be used to the detriment of non-aided companies in particular for acquiring competing businesses.

⁽⁹⁸⁾ The acquisition of the transferred assets and liabilities of the Western Macedonia Bank and Evia Bank was not notified to the Hellenic Competition Commission since the turnover of the transferred part of each Cooperative Bank did not exceed the threshold of EUR 15 million, as set by the article 6(1) of law 3959/2011 in combination with article 10(3)(a) of the same law.

⁽⁹⁹⁾ The consideration was calculated assuming a deposit attrition of 30 % between the signing and the closing of the transaction. The consideration will be adjusted *ex-post* depending on the actual attrition observed before the closing.

- (257) The purchase price paid for Citibank Greece was extremely low and the Bank raised a large amount of private capital at a high price per share. It can therefore not be considered that aid was used to fund that acquisition.
- (258) In addition, since no non-aided bidder submitted any bid to acquire the perimeter of activities acquired by the Bank, there is no crowding out of non-aided investors.
- (259) In conclusion, in view of the elements in recitals 257 and 258, the acquisition does not fall under the prohibition in points 39 and 40 of the Restructuring Communication. In addition, the Commission recalls that the Bank's need for aid does not stem from mismanagement or inappropriate risk taking.

7.5.3.4. Conclusion on the acquisition of Citibank Greece

- (260) It is concluded that, in the light of the unique situation of the Bank ⁽¹⁰⁰⁾ and the specificities of the acquisition of Citibank Greece, that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.6. COMPLIANCE OF MEASURES A, B1, B2, B3, AND B4 WITH THE RESTRUCTURING COMMUNICATION

7.6.1. Sources of difficulties and consequences on the assessment under the Restructuring Communication

- (261) As indicated in sections 2.1.1 and 2.1.2, the difficulties faced by the Bank come mainly from the Greek sovereign crisis and the deep recession in Greece and southern Europe. As regards the former factor, the Greek government lost access to financial markets and finally had to negotiate an agreement with its domestic and international creditors, the PSI programme, which resulted in a haircut of the claims held against the State by 53,3 %. In addition, 31,5 % of the claims was exchanged for new GGBs with lower interest rates and longer maturities. Those new GGBs were bought back by the State from the Greek banks in December 2012 at a price between 30,2 % and 40,1 % of their nominal value, thereby crystallising a further loss for the Greek banks. Beside the impact of the PSI programme and the debt buy-back on its capital position, the Bank also observed huge deposit outflows between 2010 and mid-2012, due to the risk that Greece might exit the euro area as a consequence of an unsustainable public debt and due to the economic recession.
- (262) Measures B1, B2, B3 and B4 amount to EUR 4 571 million, which is less than the amount of the loss booked following the PSI programme (EUR 4 786 million). In such a case, and if the difficulties do not result primarily from excessive risk-taking behaviour, point 14 of the 2011 Prolongation Communication provides that the Commission will lighten its requirements.
- (263) The largest part of the capital needs stem from regular exposure of a financial institution to the sovereign risk of its domestic country. That fact was also pointed out in recitals 58 and 69 of the Alpha Opening Decision. The Commission also observes that the Bank's exposure to the Greek sovereign risk was smaller than that of the other main Greek banks, so it cannot be considered to have accumulated an excessive exposure to sovereign debt. As a consequence there is less need for the Bank to address moral hazard issues in its restructuring plan than for other aided financial institutions which accumulated excessive risks. As the aid measures are less distortive, the measures taken to limit distortions of competition should therefore be proportionately softened. Since the PSI programme and the debt buy-back constitute a debt waiver in favour of the State, the remuneration of the State when recapitalising banks can be lower.
- (264) However since the Greek economy has contracted by about 25 % since 2008 and since the Bank has acquired a less viable bank in the form of Emporiki Bank, the Bank has to adapt its organisation, its cost structure and its commercial network to that new environment, in order to restore profitability. Therefore, notwithstanding the absence of moral hazard issue, the Bank must rationalise its operations in Greece to secure its long-term viability.

⁽¹⁰⁰⁾ See also sections 7.5.1 and 7.5.2.

- (265) An important second source of losses for the Bank was its loans to Greek households and corporations. The Commission considers that those losses are mainly due to the exceptionally deep and protracted recession GDP contraction of approximately 25 % over five years, and are not due to risky lending practices by the Bank. As a result, the aid granted to cover those losses does not create moral hazard, which is the case when the aid shelters a bank from the consequences of past risky behaviours. The aid is therefore less distortive ⁽¹⁰¹⁾.
- (266) However, part of the capital needs and loan losses of the Bank comes from some international subsidiaries. In 2012, for instance, activities in Cyprus, Romania, Serbia, FYROM and Bulgaria were loss-making, while activities in Albania only broke even. The stress tests performed in 2012 to determine the capital needs of the Bank indicated that credit loss projections on foreign loans amounted to EUR 921 million in the base scenario and EUR 1 201 million in the adverse scenario. The foreign assets also constituted a drain on liquidity since the intra-group funding amounted to several billion euros.
- (267) In conclusion, since, among the four largest Greek banks, the Bank had the lowest holding of GGBs at the time of the PSI and since the loss resulting from the PSI was larger than the aid received through measures B, B2, B3 and B4, it can be concluded that most of the losses and the need for aid fall under point 14 of the 2011 Prolongation Communication, which allows the Commission to lighten its requirements. Part of the need for aid stems from Greek loan losses due to the exceptionally deep and long recession and not from risky lending. Such aid does not create moral hazard and is therefore less distortive.
- (268) Finally, a limited part of the need for aid comes from the Bank's own risk taking as regards its foreign subsidiaries.

7.6.2. Viability

- (269) A restructuring plan must ensure that the financial institution is able to restore its long-term viability by the end of the restructuring period (section 2 of the Restructuring Communication). In the case at hand, the restructuring period is defined as the period between the date of adoption of this Decision and 31 December 2018.
- (270) In line with points 9, 10 and 11 of the Restructuring Communication, Greece submitted a comprehensive and detailed restructuring plan which provides complete information on the Bank's business model. The plan also identifies the causes of the difficulties faced by the Bank, as well as the measures taken to tackle all viability issues which it faced. In particular, the restructuring plan describes the strategy chosen to preserve the Bank's operational efficiency and to tackle the high level of NPL, its vulnerable liquidity and capital positions, and its foreign businesses, which, during the recent years, have relied on their parent company for their funding and capital.

7.6.2.1. Greek banking activities

- (271) As regards liquidity and the Bank's reliance on Eurosystem funding, the restructuring plan foresees a limited growth of the balance sheet in Greece while the deposit base should grow again. The reliance on State-guaranteed ELA, which has already fallen, will continue to decrease which will also help the Bank to reduce its cost of funding.
- (272) The loan-to-deposit ratio commitment mentioned in recital 118 ensures that the Bank's balance sheet structure will be sustainable by the end of the restructuring period. The sale of securities and of other non-core activities will also strengthen the liquidity position of the Bank. Due to the still stressed liquidity position of the Bank, the Commission can accept the request of the Greek authorities to be authorised to provide liquidity to the Bank under the guarantee and government bond loan measures of the Greek Banks Support Scheme and under the State-guaranteed ELA.
- (273) To decrease its funding costs, Greece has also given a commitment that the Bank will continue reducing the interest rates it pays on deposits in Greece, as described in recital 118. The achievement of such a decrease in the cost of deposits will be a key contribution to improving the pre-provisioning profitability of the Bank.

⁽¹⁰¹⁾ See point (28) of the Restructuring Communication and see recital 320 of Commission Decision 2011/823/EU of 5 April 2011 on the measures C 11/09 (ex NN 53b/08, NN 2/10 and N 19/10) implemented by the Dutch State for ABN AMRO Group NV (created following the merger between Fortis Bank Nederland and ABN AMRO N) (OJ L 333, 15.12.2011, p. 1).

- (274) Since the start of the crisis the Bank has started rationalising its commercial network in Greece, through a reduction in the number of branches and employees⁽¹⁰²⁾. By 2017, the total costs of the Bank will have decreased by a further [...] % compared to 2013. To achieve that target Greece has committed that the Bank will reduce its branches and employees in Greece to [...] and [...] respectively at 31 December 2017, with maximum total costs⁽¹⁰³⁾ in Greece of EUR [...] million. The expected cost-to-income ratio will be less than [...] % at the end of the restructuring period. The Commission considers that the restructuring plan preserves the efficiency of the Bank in the new market environment.
- (275) One other key area is the handling of NPL, since they amounted to 32,4 % of the portfolio at 31 December 2013⁽¹⁰⁴⁾. The Bank plans to enhance its credit policy (limits, collateral coverage) and to focus on the core activity in order to minimise its losses. Greece has also given a commitment that the Bank will comply with high standards as regards its credit policy in order to manage risks and to maximise the value for the Bank at each stage of the credit process, as described in recital 122.

7.6.2.2. Corporate governance

- (276) Another point of attention is the governance of the Bank given that the HFSF owns 69,9 %⁽¹⁰⁵⁾ of the Bank's shares following the 2014 share capital increase, but with restricted voting power. Additionally, some of the private investors which control the Bank also own warrants and thus would gain the full benefit should the share price soar during the restructuring period. Because that situation could create moral hazard, a specific relationship framework was agreed between the Bank and the HFSF in 2013. That agreement protects the day-to-day business of the Bank from any interference from its main shareholders, while ensuring that the HFSF can monitor the implementation of the restructuring plan and prevent excessive risk-taking by the Bank's management through appropriate consultation procedures. The Bank has also committed to monitor closely its exposure to connected borrowers. The Commission notes positively the fact that the HFSF automatically regains voting rights if the Bank does not implement its restructuring plan.

7.6.2.3. International activities

- (277) Some of the Bank's international activities have drained the Bank's capital, liquidity and profitability in the past, as explained in recital 266.
- (278) The restructuring plan anticipates that the Bank will continue to re-focus on its domestic market. The Bank has already sold its unprofitable subsidiary in Ukraine. It has also started to rationalise the other subsidiaries, to strengthen the loan underwriting process and to reduce the subsidiaries' funding gap. It is planning further rationalisation of its network in retained subsidiaries, as described in recital 109.
- (279) The total amount of foreign assets will shrink by at least a further [...] % by 31 December 2017 (compared to 31 December 2012).
- (280) The overall profitability of international activities will be restored from [...] onwards.
- (281) Therefore the Commission believes that the Bank will have sufficiently restructured and reduced those foreign businesses in size to avoid it being exposed to additional capital needs and liquidity shortages in the future. The commitment described in recital 119 to refrain from injecting large amounts of capital in the Bank's international subsidiaries also ensures that foreign subsidiaries will not represent a threat for capital or liquidity.

7.6.2.4. Conclusion on viability

- (282) The base case scenario as described in section 2.4 shows that at the end of the restructuring period the Bank will be able to realise a return which allows it to cover all its costs and provide an appropriate return on equity taking into account its risk profile. At the same time, the Bank's capital position is projected to remain at a satisfactory level.

⁽¹⁰²⁾ See recital 99.

⁽¹⁰³⁾ Including contributions to the Deposit and Investment Guarantee Fund ('TEKE').

⁽¹⁰⁴⁾ Financial projections attached to the Restructuring plan of Alpha Bank, June 2014, figures for Alpha Bank S.A.

⁽¹⁰⁵⁾ HFSF, *Annual financial report for the year ended 31 December 2013*, p 68, available at: http://www.hfsf.gr/files/hfsf_annual_report_2013_en.pdf

- (283) Finally, the Commission takes note of the adverse scenario described in the restructuring plan of the Bank as submitted by the Greek authorities. That adverse scenario is based on a set of assumptions agreed with the HFSF. It takes into account a longer and deeper recession, as well as a more severe deflation of real estate prices⁽¹⁰⁶⁾. The restructuring plan shows that the Bank is able to withstand a reasonable amount of stress as, in the adverse scenario, the Bank remains profitable and well capitalised at the end of the restructuring period.
- (284) The amount of additional capital which was raised in 2014, namely EUR 1,2 billion, is sufficient to cope with the baseline scenario of the 2013 stress test in the restructuring period and to repay the preference shares, which the Bank did in April 2014⁽¹⁰⁷⁾. The Bank will also submit a contingent capital plan to the Bank of Greece with measures to be implemented if the economic environment deteriorates further. The Commission recalls that in the assessment of the capital needs under the baseline scenario, the Bank of Greece already introduced several adjustments which resulted in an increase of the estimated capital needs compared to the capital needs estimated by the Bank in its own baseline scenario. The Commission therefore considers that the baseline capital needs estimated by the Bank of Greece assume a certain degree of stress. To conclude that the Bank is viable, the Commission does not require that the Bank has enough capital upfront to cover the stressed scenario capital needs estimated by the Bank of Greece, as the latter estimated level represents a high level of stress and as the March 2014 capital raising shows that the Bank has regained access to capital markets.
- (285) In addition, it is positive that the Bank will not make additional investments in non-investment grade paper, which will help to preserve its capital and liquidity position.
- (286) It is therefore concluded that the Bank has taken sufficient measures to restore its long-term viability.

7.6.3. Own contribution and burden-sharing

- (287) As stated in the Restructuring Communication, banks and their stakeholders need to contribute to the restructuring as much as possible in order to ensure that aid is limited to the minimum necessary. Thus banks should use their own resources to finance the restructuring, for instance by selling assets, while the stakeholders should absorb the losses of the bank where possible.

7.6.3.1. Own contribution by the Bank: divestments and cost cutting

- (288) The Bank has already divested some small foreign businesses (Ukraine) and deleveraged part of its portfolio in order to enhance both its capital adequacy and its liquidity position. For instance the Bank has deleveraged EUR 1,9 billion of foreign assets from 2009 to 2013⁽¹⁰⁸⁾.
- (289) The restructuring plan foresees the sale of further assets in South-Eastern Europe, as described in recital 107. Considering the deleveraging and the divestments already implemented and following the implementation of those commitments, the Bank will have significantly reduced its geographical footprint in South-Eastern Europe. The downsizing of the Bank's international assets will also significantly reduce the contingent risk that aid will be needed in the future. It therefore helps to reduce the amount of aid to the minimum.
- (290) The Bank sold its insurance activities in 2007. It therefore has no significant activity in that market which could be sold to generate resources.
- (291) In order to limit its capital needs, the Bank will not use capital to support or grow its foreign subsidiaries, as described in recital 119. Additionally, the commitments made by Greece provide that the Bank will not make further acquisitions.
- (292) The Bank has also engaged in a far-reaching cost reduction programme, as indicated in section 2.4.2. Its costs will further decrease until 2017. Its workforce is being reduced and salaries adjusted downwards. Greece has also committed to limit the remuneration of the Bank's managers, [...].

⁽¹⁰⁶⁾ The financial projections reported in the restructuring plan differ from the outcome of the stress test performed by the Bank of Greece, since the latter was not based on the same set of assumptions and factored in additional adjustments made by the Bank of Greece.

⁽¹⁰⁷⁾ http://www.alpha.gr/files/deltia_typou/deltia_typou_170414EN.pdf

⁽¹⁰⁸⁾ Restructuring plan of Alpha Bank, June 2014, p. 107.

7.6.3.2. *Burden-sharing by historical shareholders and new capital raised on the market*

- (293) The historical shareholders of the Bank were diluted by the rights issue completed in 2009⁽¹⁰⁹⁾ and then again by the HFSF recapitalisation (measure B4) and private capital raising of 2013 and March 2014. For instance, the stake held by the shareholders of the Bank, which at the time included the investors that injected money in 2009, was reduced from 100 % prior to the Spring 2013 recapitalisation to only 4,9 % after that recapitalisation. In addition, the Bank has not paid any dividend in cash since 2008. In addition to that burden-sharing by historical shareholders, the Bank has raised a significant amount of private capital since the crisis started in 2008, that is to say EUR 986 million in 2009, EUR 550 million in 2013 and EUR 1 200 million in 2014.

7.6.3.3. *Burden-sharing by subordinated debt holders*

- (294) The Bank's subordinated debt holders have contributed to the restructuring costs of the Bank. The Bank performed several liability management exercises in order to generate capital. The total amount of liabilities exchanged reached EUR 828 million, with a capital gain of EUR 436 million, as described in recital 114.
- (295) The still outstanding instruments are subject to the coupon ban mentioned in recital 124. Therefore, the Commission considers that an adequate burden-sharing from the bank's private hybrid investors is ensured and the requirements of the Restructuring Communication in that respect are met.

7.6.3.4. *Conclusion on own contribution and burden-sharing*

- (296) In comparison with the total State recapitalisation received, the own contribution and burden-sharing, especially in the form of sale of assets and downsizing of the loan book, is much lower than what the Commission would usually consider sufficient. The downsizing only concerns the foreign activities⁽¹¹⁰⁾, which account for a limited part of the Bank⁽¹¹¹⁾ and the restructuring does not envisage any reduction of the size of the loan and deposit books in Greece. However, in view of the elements discussed in section 7.6.1 and in particular the facts that Alpha Bank is the least aided bank among the large Greek banks and that the aid received fully qualifies for the exemption lay down in point 14 of the 2011 Prolongation Communication, under which the Commission can accept a lower own contribution and burden-sharing, the restructuring plan can be considered as providing for sufficient own contribution and burden-sharing measures.

7.6.4. **Measures to limit distortions of competition**

- (297) The Restructuring Communication requires a restructuring plan to propose measures limiting distortions of competition and ensuring a competitive banking sector. Moreover, those measures should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.
- (298) Point 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting competition distortions, the Commission has to take into account both the absolute and relative amount of the State aid received as well as the degree of burden-sharing and the position of the financial institution on the market after the restructuring. In that respect, the Commission recalls that the Bank has received capital support from the State equivalent to 12 % of its RWA⁽¹¹²⁾. In addition, the Bank has obtained liquidity guarantees amounting to EUR 14 billion at 30 November 2011 and government bond loans for an amount of EUR 1,6 billion at 30 September 2011, representing together 25 % of the Bank's balance sheet at that date. In addition, the Bank received State-guaranteed ELA. The measures to limit potential distortions of competition are thus justified in view of that large amount of aid. Additionally, the market share of the Bank in Greece is large, with market shares of 15 % for loans and 13 % for deposits at 31 December 2012. The acquisition of Emporiki Bank and, to a much smaller extent, of the three Cooperative Banks and of the Greek activities of Citibank increased the market shares of the Bank. After the acquisition of Emporiki Bank, the Bank's market shares in deposits in Greece amounted to

⁽¹⁰⁹⁾ See recital 116.

⁽¹¹⁰⁾ As indicated in the commitments (see Annex, Chapter 2, point (7)), that downsizing can be achieved through reduction of balance sheets of retained foreign entities and/or through the sale of foreign entities.

⁽¹¹¹⁾ The size of the proposed own contribution measure has to be compared with the size of the Bank before the acquisitions of Emporiki Bank, the deposits of the three Cooperative Banks and Citibank Greece for the reason explained in section 7.1.3.5.

⁽¹¹²⁾ When taking into account only the aid actually paid out, which is the most advantageous and therefore the most distortive of competition, the amount of aid is reduced to 11 % of the RWA of the Bank.

21 % as of 30 June 2013, while its market shares in residential mortgages, consumer loans and corporate loans were 23 %, 20 % and 21 % respectively⁽¹¹³⁾. Following the acquisition of the Greek activities of Citibank, the Bank's market share in deposits increased by less than 1 %.

- (299) The Commission recalls that the difficulties of the Bank resulted mainly from external shocks such as the Greek sovereign crisis and the protracted recession which has disrupted the Greek economy since 2008, as has already been noted in recital 69 of the Alpha Opening Decision. The need to address moral hazard issues is reduced as the Bank did not take excessive risks. As discussed in section 7.6.1 of this Decision, the distortive effect of the aid measures is lower in the light of those factors as is the need for measures to limit distortions of competition. For those reasons, the Commission can exceptionally accept that, in spite of the high aid amount and the high market share, the restructuring plan does not envisage any downsizing of the balance sheet and loans in Greece.
- (300) However, the Commission notes that the State recapitalisations enabled the Bank to continue its banking activities in foreign markets.
- (301) In that respect, the Commission notes, in addition to its deleveraging and restructuring already implemented, that the Bank will further restructure and deleverage its foreign assets by 30 June 2018⁽¹¹⁴⁾ in addition to the commitment not to use aid to fund the growth of those activities. The aid will therefore not be used to distort competition on those foreign markets.
- (302) Greece has also committed to an acquisition ban, ensuring that the Bank will not use the State aid received to acquire new business. That ban contributes to ensuring that the aid is strictly used to support the restoration of the viability of the Greek banking activities, and not, for instance, to grow in foreign markets.
- (303) The commitment to decrease the interest paid on Greek deposits from unsustainably high levels also ensures that the aid will not be used to finance unsustainable deposit collection strategies which distort competition on the Greek market. Similarly, the commitment to implement strict guidelines as regards the pricing of new loans, based on a proper credit risk assessment, will prevent the Bank from distorting competition on the Greek market with inappropriate pricing strategies on the loans to customers.
- (304) Taking into account the specific situation described in section 7.6.1 and the measures provided for in the restructuring plan, the Commission considers there are sufficient safeguards to limit distortions of competition.

7.7. MONITORING

- (305) In accordance with section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the restructuring plan is being implemented properly. As stated in the commitments given by Greece⁽¹¹⁵⁾, Greece will ensure that until the end of the restructuring period, namely, 31 December 2018, the Monitoring Trustee, which has been appointed by the Bank with the approval of the Commission, will monitor the commitments given by Greece on the restructuring of activities in Greece and abroad and on corporate governance and commercial operations. It can therefore be concluded that implementation of the restructuring plan will be properly monitored.

8. CONCLUSION

- (306) It is concluded that Greece unlawfully implemented aid measures B1, B2, B3 and B4 in breach of Article 108(3) of the Treaty, since they were implemented before their formal approval by the Commission. However the Commission finds that the restructuring plan, when taken together with the commitments in the Annex, ensures the restoration of long-term viability of the Bank, is sufficient with respect to burden-sharing and own contribution, and is appropriate and proportional to offset the competition distorting effects of the aid measures examined in this Decision. The restructuring plan and commitments submitted fulfil the criteria of the Restructuring Communication and the aid measures can therefore be considered compatible with the internal market,

⁽¹¹³⁾ Restructuring plan of Alpha Bank, June 2014, p. 36.

⁽¹¹⁴⁾ See Annex, Chapter II.

⁽¹¹⁵⁾ See recital 129.

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures implemented by Greece constitute State aid within the meaning of Article 107(1) of the Treaty:

- (a) the emergency liquidity assistance provided to Alpha Bank S.A. by the Bank of Greece and guaranteed by Greece (measure L2);
- (b) the second bridge recapitalisation of EUR 1 042 million granted by the Hellenic Financial Stability Fund ('HFSF') to Alpha Bank S.A. in December 2012 (measure B2);
- (c) the commitment letter of EUR 1 629 million granted by the HFSF to Alpha Bank S.A. on 21 December 2012 (measure B3);
- (d) the recapitalisation of EUR 4 021 million granted by the HFSF to Alpha Bank S.A. in Spring 2013 (measure B4).

2. The financing by the HFSF of the total funding gap of EUR 427 million, in the framework of the transfer of selected assets and liabilities of Cooperative Bank of Dodecanese, Evia Cooperative Bank and Cooperative Bank of Western Macedonia to Alpha Bank S.A. in December 2013, does not constitute State aid within the meaning of Article 107(1) of the Treaty.

3. In the light of the restructuring plan relating to the Alpha Bank Group (Alpha Bank and all its subsidiaries and branches) submitted on 12 June 2014 and of the commitments provided by Greece on that date, the following State aid is compatible with the internal market:

- (a) the capital injection of EUR 940 million granted by Greece to Alpha Bank S.A. in May 2009 under the recapitalisation measure (measure A);
- (b) the emergency liquidity assistance provided to Alpha Bank S.A. by the Bank of Greece and guaranteed by Greece since July 2011, for an amount of EUR 23,6 billion at 31 December 2012 (measure L2);
- (c) the first bridge recapitalisation of EUR 1 900 million granted by the HFSF to Alpha Bank S.A. in May 2012 (measure B1);
- (d) the second bridge recapitalisation of EUR 1 042 million granted by the HFSF to Alpha Bank S.A. in December 2012 (measure B2);
- (e) the commitment letter of EUR 1 629 million granted by the HFSF to Alpha Bank S.A. on 21 December 2012 (measure B3);
- (f) the recapitalisation of EUR 4 021 million granted by the HFSF to Alpha Bank S.A. in May 2013 (measure B4).

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 9 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

ALPHA BANK – COMMITMENTS BY THE HELLENIC REPUBLIC

The Hellenic Republic ('HR') shall ensure that Alpha Bank ('the Bank') is implementing the restructuring plan submitted on June 2014. The restructuring plan is based on macroeconomic assumptions as provided by the European Commission (the 'Commission') in the Appendix as well as regulatory assumptions.

The Hellenic Republic hereby provides the following Commitments (the 'Commitments') which are integral part of the restructuring plan. The Commitments include the commitments regarding to the implementation of the restructuring plan (the 'Restructuring Commitments') and the Commitments on Corporate Governance and Commercial Operations.

The Commitments shall take effect upon the date of adoption of the Commission's decision approving the restructuring plan (the 'Decision').

The restructuring period shall end on 31 December 2018. The Commitments apply throughout the restructuring period unless the individual Commitment states otherwise.

This text shall be interpreted in the light of the Decision in the general framework of Union law, and by reference to Council Regulation (EC) No 659/1999 ⁽¹⁾.

CHAPTER I. DEFINITIONS

For the purpose of the Commitments, the following terms shall mean:

- (1) **Bank:** Alpha Bank S.A. and all its subsidiaries. Therefore, it includes the entire Alpha Bank Group with all its Greek and non-Greek subsidiaries and branches, both banking and non-banking.
- (2) **Capital accretive bid in the banking sector:** a bid which results in an increase in the regulatory capital ratio of the Bank, taking into account all relevant elements, in particular the profit/loss booked on the transaction and the reduction of RWA resulting from the sale (if necessary corrected for the increase of RWA resulting from remaining financing links).
- (3) **Closing:** the date of transfer of the legal title of the Divestment Business to the Purchaser.
- (4) **Divestment Business:** all the businesses and assets that the Bank commits to sell.
- (5) **Effective Date:** the date of adoption of the Decision.
- (6) **End of restructuring period:** 31 December 2018.
- (7) **Foreign assets or non-Greek assets:** assets related to the activities of customers outside Greece, independently of the country where the assets are booked. For instance, assets booked in Luxembourg but related to the activities of customers in Greece are not included in the scope of this definition. Conversely, assets booked in Luxembourg or Greece but related to the activities of customers in other SEE countries are considered as foreign assets and are included in the scope of this definition.
- (8) **Foreign businesses:** foreign banking and non-banking subsidiaries and branches of the Bank.
- (9) **Foreign subsidiaries:** all banking and non-banking subsidiaries of the Bank outside Greece.
- (10) **Greek banking activities:** the Bank's Greek banking activities independently from where the assets are booked.
- (11) **Greek non-banking activities:** the Bank's Greek non-banking activities independently from where the assets are booked.
- (12) **Greek subsidiaries:** all Greek banking and non-banking subsidiaries of the Bank.
- (13) **Monitoring Trustee:** one or more natural or legal person(s), independent from the Bank, approved by the Commission and appointed by the Bank; the Monitoring Trustee has the duty to monitor the Bank's compliance with the Commitments.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

(14) **Purchaser:** one or more natural or legal person(s) to acquire, in whole or in part, the Divestment Business.

(15) **Sale:** the sale of 100 % of the shareholding held by the Bank, unless the individual Commitment states otherwise.

For the purpose of the Commitments, the singular of those terms shall include the plural (and vice versa), unless the Commitments provide otherwise.

CHAPTER II. RESTRUCTURING COMMITMENTS

(1) **Number of branches in Greece:** The number of branches in Greece shall amount to [...] at the maximum on 31 December 2017.

(2) **Number of employees in Greece:** The number of Full Time Equivalents (the 'FTEs') in Greece (Greek banking and non-banking activities) shall amount to [...] at the maximum on 31 December 2017.

(3) **Total costs in Greece:** The total costs in Greece (Greek banking and non-banking activities) shall amount to EUR [...] million at the maximum on 31 December 2017.

(4) **Costs of deposits in Greece:** In order to restore its pre-provisioning profitability on the Greek market, the Bank shall decrease the cost of funding through the decrease of cost of deposits collected in Greece (including savings, sight and term deposits, and other similar products offered to customers and which costs are borne by the Bank) [...].

(5) **Ratio net loans to deposits in Greece:** For the Greek banking activities, the ratio net loans to deposits shall amount at the maximum to 119 % on 31 December 2017. [...]

(6) **Support to foreign subsidiaries:** For each foreign subsidiary, cumulatively from the Effective Date until 30 June 2018, the Bank shall not provide additional equity or subordinated capital for an amount larger than the higher of: (i) [...] % of the RWA of that subsidiary on 31 December 2012; or (ii) EUR [...] million. If the Bank intends to inject equity or subordinated debt to the foreign subsidiary for an amount higher than the defined threshold, it must request the Greek Authorities to seek a Commission decision to amend the restructuring plan.

[...]:

a. [...].

b. [...].

c. [...].

d. [...].

e. [...].

f. [...].

[...]

(7) **Deleverage of non-Greek assets by 30 June 2018:** The total size of the portfolio of foreign assets shall be reduced to a maximum amount of EUR [...] billion by 30 June 2018 (foreign assets cap).

(7.1) [...]

(7.2) [...]

(8) **Sale of securities:** The portfolio of listed securities, defined as follows, shall be divested by [...], while the portfolio of unlisted securities shall be divested by [...]: this portfolio includes all equity investments larger than EUR [...] million, as well as all investments in subordinated bonds and hybrid bonds. That Commitment shall not apply to the [...] shares (EUR [...] million). For non-core subsidiaries and associates ([...]), if, by [...], the Bank has actively searched for potential buyers and no capital neutral or capital accretive transaction can take place, then the deadline for divesting those participations shall be postponed to [...].

(9) **Size of the private equity portfolio:** The size of the private equity portfolio shall be reduced to EUR [...] million by 31 December 2017.

(10) For any sale, the Hellenic Republic commits that:

- a. The Purchaser shall be independent of and unconnected to the Bank;
- b. For the purpose of acquiring the Divestment Business, the Purchaser shall not be financed directly or indirectly by the Bank. This does not apply to sale of real estate, in which case the Bank can provide financing to the purchaser, if this new lending is performed in line with prudent lending practice. For the purpose of verifying the compliance with the commitment on deleveraging of non-Greek assets, any new lending falling in the definition of non-Greek assets will be taken into account;
- c. The Bank shall, for a period of 5 years after the closing of the sale, not acquire direct or indirect influence over the whole or part of the Divestment Business without a pre-approval from the Commission.

(11) **Investment policy:** Until 30 June 2017, the Bank shall not purchase non-investment grade securities.

This Commitment shall not apply to the following securities (the Exempted Securities):

- i. [...]
- ii. [...];
- iii. [...];
- iv. [...];
- v. [...];
- vi. [...].

(12) **Salary cap:** Until [...], the Bank will not pay to any employee or manager a total annual remuneration (wage, pension contribution, bonus) higher than [...]. In case of a capital injection from HFSF, the remuneration cap will be re-evaluated according to the European Banking Communication of 1 August 2013.

CHAPTER III. COMMITMENTS ON CORPORATE GOVERNANCE AND COMMERCIAL OPERATIONS – PROLONGATION AND AMENDMENTS

- (1) The Bank shall continue to implement the Commitments on Corporate Governance and Commercial Operations, as submitted by the Hellenic Republic on 20 November 2012, with the subsequent amendments provided in Chapter III of the Commitments, until 30 June 2018.
- (2) In case an individual Commitment does not apply at the Bank's level, the Bank shall not use the subsidiaries or activities not covered by that individual Commitment to circumvent the Commitment.

Section A. Setting up an efficient and adequate internal organisation

- (3) The Bank, excluding its foreign subsidiaries, shall abide at all times with the totality of the provisions of law 3016/2002 on Corporate Governance and law 2190/1920 on the Sociétés Anonymes and especially the provisions in connection to the functions of corporate bodies such as the shareholders' meeting and Board of Directors in order to secure a clear distribution of responsibilities and transparency. The powers of the shareholders' meeting shall be restricted to the tasks of a general meeting in line with company law, in particular as regards rights related to information. More extensive powers, which would allow improper influence on management, shall be rescinded. Responsibility for day-to-day operational management shall clearly rest with the executive Directors of the Bank.
- (4) The Bank, excluding its foreign subsidiaries, shall comply at all times with the Hellenic Financial Stability Fund (the 'HFSF') Relationship Framework.

- (5) The Bank shall abide by the provisions of Governor's Act 2577/9.3.2006, as in force, in order to maintain, on an individual and a group basis, an effective organisational structure and an adequate Internal Control System including the three key pillars, namely the Internal Audit, Risk Management and Compliance functions and best international corporate governance practices.
- (6) The Bank shall have an efficient organisational structure, so as to ensure that the Internal Audit and the Risk Management departments are fully independent from commercial networks and report directly to the Board of Directors. An Audit Committee and a Risk Committee — created within the Board of Directors — shall assess all issues raised by those respective departments. An adequate Internal Audit Charter and Risk Management Charter shall specify the roles, responsibilities and resources of those departments. Those charters shall comply with international standards and secure a full independence to the departments. A Credit Policy shall provide guidance and instructions regarding the granting of loans, including the pricing of loans and the restructuring of loans.
- (7) The Bank shall make public to the competent authorities the list of shareholders holding at least 1 % of ordinary shares.

Section B. Commercial practices and risk monitoring

General principles

- (8) The Credit Policy shall specify that all customers shall be treated fairly through non-discriminatory procedures other than those related to credit risk and ability to pay. The Credit Policy defines the thresholds above which the granting of loans must be approved by higher levels of management. Similar thresholds shall be defined regarding the restructuring of loans and the handling of claims and litigations. The Credit Policy shall centralise in selected centres the decision-making process at national level, and provide clear safeguards to ensure a consistent implementation of its instructions within all the Greek banking activities.
- (9) For all the Greek banking activities, the Bank shall fully incorporate the Credit Policy rules in their loan origination and loan refinancing workflow and disbursement systems.

Specific provisions

- (10) The specific provisions listed in paragraphs (11) to (18) of Chapter III of the Commitments shall apply to the Greek banking activities, unless explicitly stated otherwise.
- (11) The Credit Policy shall require that the pricing of loans and mortgages to comply with strict guidelines. Those guidelines shall include the obligation to respect strictly the credit policy's standard tables of interest rate bands (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with the Bank (e.g. level and stability of deposits, fee structure and other cross-sales activities) and the funding cost of the Bank. Specific loan asset classes are generated (e.g. commercial loan, mortgage, secured/unsecured, etc.) and their pricing framework is tabulated to an appropriate Credit Policy table that shall be updated on a regular basis by the Credit Committee. Any exception must be duly authorised by the Credit Committee, or at lower level of authority when allowed by the Credit Policy. Tailor-made transactions such as syndicated loans or project finance shall respect the same principles, with due account being taken of the fact that they may not fit in standardised credit policy tables. Infringements of that pricing policy shall be reported to the Monitoring Trustee.
- (12) The Risk Management Department shall be responsible for the assessment of credit risk and the valuation of collateral. When assessing the loan quality, the Risk Management Department shall act independently, providing its written opinion so as to ensure that criteria used in the assessment are applied consistently over time and among customers and in respect of the Bank's credit policy.
- (13) Regarding loans to individuals and legal entities, for all the Greek banking activities, on the basis of the best international practices, the Bank shall apply strict individual and aggregated limits governing the maximum loan amount that can be granted to a single credit risk (if at all allowed under Greek and EU law). Those limits shall take into account the maturity of the loan and the quality of any collateral/security provided and shall be set against key benchmarks including against capital.

- (14) Granting loans ⁽¹⁾ to enable borrowers to purchase shares or hybrid instruments of the Bank and other banks ⁽²⁾ shall be prohibited, whoever are those borrowers ⁽³⁾. This provision shall apply and shall be monitored at the Bank's level.
- (15) All loan requests by non-connected borrowers greater than [...] % of the Bank's RWA] or any loan which keeps the exposure to one group (defined as a group of connected borrowers that represent a single credit risk) higher than [...] % of the Bank's RWA] shall be reported to the Monitoring Trustee, which may, if the conditions do not appear to be set at arm's-length or if no sufficient information has been provided to the Monitoring Trustee, postpone the granting of the credit line or the loan by [...] working days. In emergency cases, that period may be reduced to [...] working days provided sufficient information has been provided to the Monitoring Trustee. That period will enable the Monitoring Trustee to report the case to the Commission and the HFSF before any definitive decision is taken by the Bank.
- (16) The Credit Policy shall give clear instructions on the restructuring of loans. It clearly defines which loans are eligible, under which circumstances, and indicates the terms and conditions that can be proposed to eligible customers. For all the Greek banking activities, the Bank shall ensure that all restructurings aim at enhancing the future recoveries by the Bank, thus safeguarding the interest of the Bank. In no case the restructuring policy will jeopardise the future profitability of the Bank. For that purpose, the Bank's Risk Management Department shall be responsible for developing and deploying adequate restructuring effectiveness reporting mechanisms, for performing in-depth analyses of internal and/or external best practices, reporting its findings at least on a quarterly basis to the Credit Committee and the Board Risk Committee, suggesting actionable improvements to the processes and policies involved and oversee and reporting on their implementation to the Credit Committee and the Board Risk Committee.
- (17) For all the Greek banking activities, the Bank shall enact a claim and litigation policy aiming at maximising recovery and preventing any discrimination or preferential treatment in the management of litigations. The Bank shall ensure that all necessary actions are taken to maximise the recoveries for the Bank and protect its financial position in the long-term. Any breach in the implementation of that policy shall be reported to the Monitoring Trustee.
- (18) The Bank shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the Bank on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.

Provisions applying to connected borrowers

- (19) All the provisions applying on connected borrowers shall apply at the Bank's level.
- (20) Within the Credit Policy, a specific section shall be devoted to the rules governing relations with connected borrowers. Connected borrowers include employees, shareholders, directors, managers, as well as their spouses, children and siblings and any legal entity directly or indirectly controlled by key-employees (i.e. employees involved in the decision-making process of the Credit Policy), shareholders, directors or managers or their spouses, children and siblings. By extension, any public institution or government-controlled organisation, any public company or government agency shall be considered as a connected borrower. Political parties shall also be treated as connected borrowers in the Credit Policy. Particular focus shall be on decisions regarding any restructuring and write downs of loans to current or former employees, directors, shareholders, managers and their relatives as well as policies followed in the appropriateness, valuation, registration of liens and foreclosure of loan collateral. The definition of connected borrowers has been further specified in a separate document.
- (21) The Risk Management Department shall be responsible for the mapping of all connected groups of borrowers that represent a single credit risk with a view to properly monitoring credit risk concentration.

⁽¹⁾ For the purpose of that Commitment, the term 'loans' shall be interpreted *largo sensu*, as any kind of financing, e.g. credit facility, guarantee, etc.

⁽²⁾ For clarification, 'other banks' refer to any bank – financial institution in the world.

⁽³⁾ For clarification, all borrowers, including the Bank's private banking clients are covered by that Commitment.

- (22) Regarding loans to individuals and legal entities, the Bank, on the basis of the best international practices, applies strict individual and aggregated limits governing the maximum loan amount that can be granted to a single credit risk which relates to connected borrowers (if at all allowed under Greek and EU law).
- (23) The Bank shall monitor separately its exposure to connected borrowers including the public sector entities and political parties. The new production of loans ⁽¹⁾ to connected borrowers (annual % of Y-1 stock ⁽²⁾) shall be no higher than the new production of the total loan portfolio in Greece (annual % of Y-1 stock). That Commitment shall be complied with separately for each type of connected borrower (employees, shareholder, managers, public entities, political party). The credit assessment of the connected borrowers, as well as the pricing conditions and possible restructuring offered to them, shall not be more advantageous compared to conditions offered to similar but unconnected borrowers, in order to secure a level-playing field in the Greek economy. That obligation does not apply to existing general schemes benefiting employees, offering them subsidised loans. The Bank shall report every month about the evolution of that exposure, the amount of the new production and the recent requests greater than [...] % of the Bank's RWA] to be addressed at the Credit committee.
- (24) The credit criteria applied to employees/managers/shareholders shall be no less strict than those applied to other, non-connected borrowers. If the total credit exposure to a single employee/manager/shareholder exceeds an amount equal to a [...] fixed salary for secured loans and an amount equal to a [...] fixed salary for unsecured loans, the exposure shall be reported promptly to the Monitoring Trustee who may intervene and postpone the granting of the loan pursuant to the procedure described in paragraph (25) of Chapter III of the Commitments.
- (25) All loan requests by connected borrowers greater than [...] % of the Bank's RWA] or any loan which keeps the exposure to one group (defined as a group of connected borrowers that represent a single credit risk) higher than [...] % of the Bank's RWA] shall be reported to the Monitoring Trustee, which may, if the conditions do not appear to be set at arm's-length or if no sufficient information has been provided to the Monitoring Trustee, postpone the granting of the credit line or the loan by [...] working days. In emergency cases, that period may be reduced to [...] working days provided sufficient information has been provided to the Monitoring Trustee. That period will enable the Monitoring Trustee to report the case to the Commission and the HFSF before any definitive decision is taken by the Bank.
- (26) The restructuring of loans involving connected borrowers shall comply with the same requirements as for non-connected borrowers. Furthermore, established frameworks and policies to deal with troubled assets shall be assessed and improved, if necessary. However, it is expected that restructured loans of connected borrowers shall be reported separately, at least per loan asset class and connected borrower type.

Section C: Other restrictions

- (27) **Dividend, Coupon, Repurchase, Call and Buy Back ban:** Unless the Commission otherwise agrees to an exemption, the Hellenic Republic commits that:
- (a) The Bank shall not pay any coupons on hybrid capital instruments (or any other instruments for which the coupon payment is discretionary) or dividends on own funds instruments and subordinated debt instruments other than where there is a legal obligation to do so. The Bank shall not release reserves to put itself in such a position. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, the Bank shall submit the proposed coupon or dividend payment to the Commission for approval;
- (b) The Bank shall not repurchase any of its own shares or exercise a call option in respect of those own funds instruments and subordinated debt instruments;
- (c) The Bank shall not buy back hybrid capital instruments.

⁽¹⁾ For clarification, the new production of loans covers also the rolling over of loans and the restructuring of existing loans.

⁽²⁾ For clarification, 'annual % of Y-1 stock' refers to the new production as a percentage of the stock at the end of the previous year. The amount of RWA is the one at the end of the year.

- (28) **Acquisition ban:** The Hellenic Republic commits that the Bank shall not acquire any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertaking which have the legal form of a company and any package of assets which forms a business ⁽¹⁾.
- (a) **Exemption requiring Commission's prior approval:** Notwithstanding that prohibition, the Bank may, after obtaining the Commission's approval, and, where appropriate, on a proposal of the HFSF, acquire businesses and undertakings if it is in exceptional circumstances necessary to restore financial stability or to ensure effective competition.
- (b) **Exemption not requiring Commission's prior approval:** The Bank may acquire stakes in undertakings provided that:
- (1) The purchase price paid by the Bank for any acquisition is less than [...] % of the balance sheet size ⁽²⁾ of the Bank at the Effective Date of the Commitments ⁽³⁾; and
 - (2) The cumulative purchase prices paid by the Bank for all such acquisitions starting with the Effective Date of the Commitments until the end of the restructuring period, is less than [...] % of the balance sheet size of the Bank at the Effective Date of the Commitments.
- (c) **Activities not falling under the acquisition ban:** The acquisition ban shall not cover acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms, including the conversion of existing debt to equity instruments.
- (29) **Advertising ban:** The Hellenic Republic commits that the Bank shall refrain from advertising referring to state support and from employing any aggressive commercial strategies which would not take place without the support of the Hellenic Republic.

CHAPTER IV. MONITORING TRUSTEE

- (1) The Hellenic Republic commits that the Bank shall amend and extend the mandate of the Monitoring Trustee approved by the Commission and appointed by the Bank on 16 January 2013 until the end of the restructuring period. The Bank shall also broaden the scope of that mandate to incorporate the monitoring of: (i) the restructuring plan; and (ii) all Commitments set out in this catalogue.
- (2) Four weeks after the Effective Date of the Commitments, the Hellenic Republic shall submit to the Commission the full terms of the amended mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under those Commitments.
- (3) Additional provisions on the Monitoring Trustee are specified in a separate document.

The Secretary-General

Christina PAPAKONSTANTINO

⁽¹⁾ For clarification, for the purpose of that Commitment, the Bank's Private Equity/Venture Capital business shall be excluded from the scope of that Commitment. In that respect, the Bank shall make a formal request to the Commission, which shall include a business plan for that entity.

⁽²⁾ For clarification, for the purpose of that Commitment, the size of the balance sheet is equal to the Bank's total assets.

⁽³⁾ For clarification, in case the Commission's approval to lift the acquisition ban is obtained according to point a, paragraph (28), Chapter III of the Commitments, the balance sheet of the Bank at the Effective Date of the Commitments shall be calculated to include also the assets of the acquired entities or the acquired assets at the date of acquisition.

Appendix

Macroeconomic projections for Greek domestic operations

% annual growth (unless otherwise stated)	2012	2013	2014	2015	2016	2017	Cumulative growth rate 2013-2017
Real GDP	– 6,4	– 4,2	0,6	2,9	3,7	3,5	6,4
Nominal Loan growth Greece	– 6,4	– 4,2	0,6	2,9	3,7	3,5	6,4
GDP deflator	– 0,8	– 1,1	– 0,4	0,4	1,1	1,3	1,3
Property prices	– 11,7	– 10	– 5	0	2	3,5	
Nominal household disposable income	– 8,8	– 9,5	– 0,3	– 0,4	2,6	3,6	– 4,5
Private Sector deposits	– 7	1,3	1	3,4	5	5	16,6
Unemployment (%)	24,2	27	26	24	21	18,6	
ECB refinancing rate (%)	0,75	0,5	0,5	1	1,5	1,75	
NPL formation peak			2H2014				
Euribor 3 months (average, %)		0,24	0,43	0,75	1,25	1,80	
Access to capital markets – repos		YES-No Cap					
Access to capital market – covered/senior unse- cured		YES – up to EUR 500 million each	YES — up to EUR 1 billion each	YES-No Cap			

COMMISSION DECISION (EU) 2015/455**of 23 July 2014****on the State aid SA.34826 (2012/C), SA.36005 (2013/NN) implemented by Greece for Piraeus Bank Group relating to the recapitalisation and restructuring of Piraeus Bank SA***(notified under document C(2014) 5217)***(Only the English text is authentic)****(Text with EEA relevance)**

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 Member States and other interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Whereas:

1. PROCEDURE**1.1. PROCEDURE RELATED TO PIRAEUS BANK**

- (1) By decision of 19 November 2008 the Commission approved a scheme entitled 'Support Measures for the Credit Institutions in Greece' (the 'Greek Banks Support Scheme') designed to ensure the stability of the Greek financial system. The Greek Banks Support Scheme allows for aid to be granted under its three constituent measures, a recapitalisation measure, a guarantee measure and a government bond loan measure ⁽²⁾. In May 2009, Piraeus Bank ('the Bank' ⁽³⁾) was recapitalised by Greece under the recapitalisation measure.
- (2) Recital 14 of the Decision of 19 November 2008 recorded that a restructuring plan would be notified to the Commission in respect of the beneficiaries of the recapitalisation measure.
- (3) On 23 July 2010, the Greek authorities submitted a restructuring plan to the Commission. The Commission registered that plan and its subsequent updates as well as additional information submitted by the Greek authorities as Case SA.30342 (PN 26/2010) and then Case SA.32787 (2011/PN).

⁽¹⁾ See Commission Decision of 27 July 2012 in State aid SA. 34826 (2012/C, ex 2012/NN), 'Recapitalisation of Piraeus Bank by the Hellenic Financial Stability Fund' (OJ C 359, 21.11.2012, p. 43).

⁽²⁾ Commission Decision of 19 November 2008 in State aid N 560/2008 'Support Measures for the Credit Institutions in Greece' (OJ C 125, 5.6.2009, p. 6). It was registered under the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended as described in footnote 4.

⁽³⁾ 'The Bank' refers to the Piraeus Bank Group.

- (4) The Bank has repeatedly benefited from State guarantees and government bond loans under the Greek Banks Support Scheme ⁽⁴⁾. It also benefited from State-guaranteed emergency liquidity assistance ('State-guaranteed ELA').
- (5) On 20 April 2012, the Hellenic Financial Stability Fund ('HFSF') provided the Bank with a letter committing to participate in a planned share capital increase of the Bank. On 28 May 2012, the HFSF granted a bridge recapitalisation of EUR 4 700 million to the Bank ('the first bridge recapitalisation').
- (6) On 10 May 2012, the Greek authorities formally notified to the Commission the commitment letter that had been provided by the HFSF to the Bank. The Commission registered it as a non-notified aid (Case SA.34826 (2012/NN)) as the measure had already been implemented.
- (7) By decision of 27 July 2012, the Commission opened a formal investigation procedure on the first bridge recapitalisation ('the Piraeus Opening Decision') ⁽⁵⁾.
- (8) In December 2012, the HFSF granted a second bridge recapitalisation of EUR 1 553 million to the Bank ('the second bridge recapitalisation'). On 21 December 2012, the HFSF also provided the Bank with a commitment letter for its participation in a share capital increase of the Bank and in convertible capital instruments to be issued, for a total amount of up to EUR 1 082 million ⁽⁶⁾. The Greek authorities notified those measures to the Commission on 20 December 2012 ⁽⁷⁾.
- (9) In September 2012, the Bank announced its intention to acquire Geniki from Société Générale S.A. ('Société Générale'). During September and October, the Commission had numerous teleconferences and electronic mail exchanges with representatives of the Greek authorities and the Bank with respect to the acquisition of Geniki.
- (10) On 19 October 2012, the Bank signed a share purchase agreement with Société Générale regarding the acquisition of Société Générale's total stake (99.08 %) in Geniki.
- (11) On 12 December 2012, the Commission services sent a letter to Greece including their preliminary assessment of the acquisition of Geniki.
- (12) On 26 February 2013, the Bank informed the Commission of its intentions to acquire Millennium Bank Greece S.A. ('MBG'). The Commission had several teleconferences and electronic mail exchanges with the Greek authorities and the Bank with respect to the acquisition of MBG.
- (13) On 25 March 2013, the Commission services sent a letter to Greece including their preliminary assessment of the acquisition of MBG.

⁽⁴⁾ On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (See Commission Decision of 18 September 2009 in State Aid N 504/2009 'Prolongation and amendment of the Support Measures for the Credit Institutions in Greece' (OJ C 264, 6.11.2009, p. 5)). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (See Commission Decision of 25 January 2010 in State Aid N 690/2009 'Prolongation of the Support Measures for the Credit Institutions in Greece' (OJ C 57, 9.3.2010, p. 6)). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (See Commission Decision of 30 June 2010 in State Aid N 260/2010 'Extension of the Support Measures for the Credit Institutions in Greece' (OJ C 238, 3.9.2010, p. 3)). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2011 (See Commission Decision of 21 December 2010 in State aid SA 31998 (2010/N) 'Fourth extension of the Support measures for the credit Institutions in Greece' (OJ C 53, 19.2.2011, p. 2)). On 4 April 2011 the Commission approved an amendment (See Commission Decision of 4 April 2011 in State Aid SA.32767 (2011/N) 'Amendment to the Support Measures for the Credit Institutions in Greece' (OJ C 164, 2.6.2011, p. 8)). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (See Commission Decision of 27 June 2011 in State aid SA.33153 (2011/N) 'Fifth prolongation of the Support measures for the credit Institutions in Greece' (OJ C 274, 17.9.2011, p. 6)). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (See Commission Decision of 6 February 2012 in State aid SA.34149 (2011/N) 'Sixth prolongation of the Support Measures for the Credit Institutions in Greece' (OJ C 101, 4.4.2012, p. 2)). On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (See Commission Decision of 6 July 2012 in State Aid case SA.35002 (2012/N) - Greece 'Prolongation of the Support Scheme for Credit Institutions in Greece' (OJ C 77, 15.3.2013, p. 14)). On 22 January 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2013 (See Commission Decision of 22 January 2013 in State Aid case SA.35999 (2012/N) - Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece' (OJ C 162, 7.6.2013, p. 6)). On 25 July 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 31 December 2013 (See Commission Decision of 25 July 2013 in State Aid case SA.36956 (2013/N) - Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece', not yet published. On 14 January 2014, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2014 (See Commission Decision of 14 January 2014 in State Aid case SA. 37958 (2013/N) - Greece 'Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece', not yet published.

⁽⁵⁾ See footnote 1.

⁽⁶⁾ HFSF press release, 24 December 2012, available online at: http://www.hfsf.gr/files/press_release_20121224_en.pdf.

⁽⁷⁾ Those measures were registered by the Commission as Case SA.36005 (2013/NN).

- (14) On 22 April 2013, the Bank announced that it had entered into an agreement with Millennium Banco Comercial Portugues ('BCP') regarding the acquisition of the entire share capital of MBG and the participation of BCP in the forthcoming capital increase of Piraeus.
- (15) On 3 June 2013, the HFSF partially converted the first and second bridge recapitalisations into equity for a total of EUR 5 891 million. The HFSF also injected an additional amount of EUR 1 094 million into the Bank, as committed at the time of the acquisitions by the Bank of the good part of Agricultural Bank of Greece ('ATE') and of the Greek branches of three Cypriot Banks (see section 1.2). In addition private investors injected EUR 1 444 million. The total recapitalisation amounted to EUR 8 429 million and is referred to as 'the Spring 2013 recapitalisation'.
- (16) On 19 December 2013, the Greek authorities submitted information to the Commission regarding the terms of the Spring 2013 recapitalisation.
- (17) The Greek authorities submitted a final restructuring plan for the Bank ('the restructuring plan') to the Commission on 25 June 2014. On the same date they provided information on the State-guaranteed ELA. They indicated that they intend to continue providing the Bank with such liquidity support, as well as State guarantees on debt instruments and government bond loans under the Greek Banks Support Scheme.
- (18) During the administrative process, the Commission has had numerous meetings, teleconferences and electronic mail exchanges with representatives of the Greek authorities and the Bank.
- (19) Greece accepts that exceptionally the present decision is adopted in the English language only.

1.2. PROCEDURE RELATED TO THE ACQUIRED BUSINESSES

1.2.1. Procedure related to ATE

- (20) In April 2011 Greece injected EUR 1 445 million into ATE (an amount which included the EUR 675 million originally granted under the Greek Recapitalisation scheme). Furthermore ATE received liquidity support amounting to EUR 6 103 million. By decision of 23 May 2011, the Commission approved those measures based on the basis of a restructuring plan for ATE ('the ATE Restructuring Decision') ⁽⁸⁾.
- (21) On 29 December 2011, Greece participated in a capital rights issue of ATE for an amount of EUR 290 million.
- (22) On 22 March 2012, Greece submitted a report by the Bank of Greece that proposed a resolution of ATE through a Purchase & Assumption procedure ⁽⁹⁾ of selected assets and liabilities of ATE ('ATE Transferred Activities'), while the remaining assets and liabilities would be resolved via a bad bank.
- (23) In July 2012, the Bank announced the acquisition by absorption of the good part of ATE which had been placed under liquidation.
- (24) At that time, the HFSF committed to cover the capital needs of the Bank stemming from the acquired assets. On 27 January 2013, the Bank of Greece concluded that the capital needed for regulatory purposes as a result of the acquisition of the ATE Transferred Activities amounted to EUR 570 million, which would be covered by the HFSF.
- (25) By decision of 3 May 2013 ⁽¹⁰⁾ ('the ATE Liquidation Decision'), the Commission concluded that the support measures granted at the time of transfer of the ATE Transferred Activities do not constitute State aid to the Bank but to the ATE Transferred Activities. Moreover, the Commission concluded that that aid would be compatible with the internal market if the restructuring plan of the Bank, which now includes the ATE Transferred Activities, enables its long-term viability to be restored.
- (26) In June 2013, the HFSF injected EUR 570 million in the Bank in the framework of the Spring 2013 recapitalisation ⁽¹¹⁾.

⁽⁸⁾ Commission Decision of 23 May 2011 in State Aid SA.31154 'Restructuring of Agricultural Bank of Greece', (OJ C 317, 29.10.2011, p. 4).

⁽⁹⁾ A Purchase & Assumption is a resolution procedure which consists of identifying, in a legal entity under liquidation, the assets and liabilities of high quality and auctioning them in order to transfer them to a viable company.

⁽¹⁰⁾ Commission Decision of 3 May 2013 in State Aid SA.35460 'Liquidation aid for ATE Bank resolution', (OJ C 261, 10.9.2013, p. 1).

⁽¹¹⁾ See section 2.3.3.3.

1.2.2. Procedure related to the Greek operations of the Bank of Cyprus, Cyprus Popular Bank and Hellenic Bank ('the three Cypriot Banks')

- (27) Following the extraordinary Eurogroup meeting ⁽¹²⁾ on 15 March 2013, the Cypriot authorities and the European Union, the International Monetary Fund ('IMF') and the European Central Bank ('ECB') reached a political agreement on the policy underlying a future macroeconomic adjustment programme. In particular, it was agreed, among other things, that the operations of the three Cypriot Banks in Greece would be transferred to a Greek bank.
- (28) The Bank and other Greek banks expressed interest in acquiring the operations of the three Cypriot Banks in Greece.
- (29) On 22 March 2013, the HFSF consented to the Bank making an offer for the acquisition of the Greek branches, deposits and loans of the three Cypriot Banks. The Bank's offer was conditional on the HFSF providing equity to the Bank in an amount equal to the price paid for the equity of the acquired business.
- (30) The Greek authorities and the HFSF kept the Commission services closely informed about the evolution of the process and the terms of the acquisition as well.
- (31) On 26 March 2013, the Bank signed a sale and transfer agreement with each of the three Cypriot Banks concerning their Greek activities (deposits, loans and branch network).
- (32) As agreed in March 2013, the HFSF injected EUR 524 million of capital in the Bank ⁽¹³⁾ to meet the capital needs that arose from the acquisition of those assets.

2. DESCRIPTION

2.1. THE BANK AND ITS DIFFICULTIES

2.1.1. General context of the Greek banking sector

- (33) Greece's real gross domestic product ('GDP') fell by 20 % from 2008 to 2012, as shown in Table 1. As a result, Greek banks faced a rapidly increasing default rate on loans to Greek households and companies ⁽¹⁴⁾. Those developments have adversely affected the performance of the assets of Greek banks and given rise to capital needs.

Table 1

Real GDP Growth in Greece, 2008-2013

Greece	2008	2009	2010	2011	2012	2013
Real GDP growth, %	- 0,2	- 3,1	- 4,9	- 7,1	- 7,0	- 3,9

Source: Eurostat, available online at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00115>

- (34) In addition, in February 2012, Greece implemented a private sector bond exchange known as Private Sector Involvement ('the PSI programme'). Greek banks were involved in the PSI programme, in the course of which the Greek government offered existing private bondholders new securities (including new Greek Government Bonds ('GGBs'), GDP-linked securities and PSI payment notes issued by the European Financial Stability Fund ('EFSF')) in exchange for existing GGBs, with a nominal discount of 53,5 % and longer maturities ⁽¹⁵⁾. The Greek authorities announced the results of that exchange of bonds on 9 March 2012 ⁽¹⁶⁾. The exchange resulted in significant losses for the bondholders (estimated by the Bank of Greece at 78 % of the face amount of old GGBs on average for the Greek banks) and capital needs which were retroactively booked in the Greek banks' 2011 financial statements. Total losses due to the PSI for the main Greek banks are summarised in Table 2.

⁽¹²⁾ Eurogroup meeting is the meeting of the finance ministers of the Eurozone, that is to say the Member States that have adopted the Euro as their official currency.

⁽¹³⁾ See section 2.3.3.3.

⁽¹⁴⁾ European Commission – Directorate-General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece* — March 2012, p. 17, available online at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp94_en.pdf.

⁽¹⁵⁾ See section II 'The restructuring of the Greek Sovereign Debt' of the *Report on the Recapitalisation and Restructuring of the Greek Banking Sector*, Bank of Greece, December 2012, available online at: http://www.bankofgreece.gr/BogEkdoseis/Report_on_the_recapitalisation_and_restructuring.pdf.

⁽¹⁶⁾ Press release of Ministry of Finance of 9 March 2012, available online at: <http://www.pdma.gr/attachments/article/80/9%20MARCH%202012%20-%20RESULTS.pdf>.

Table 2

Total PSI losses of the main Greek banks (EUR million)

Banks	Face amount of GGBs	Face amount of state related loans	Total face amount	PSI loss of GGBs	PSI loss of state-related loans	Total gross PSI loss	Total gross PSI loss/ Core Tier 1 (%)	Total gross PSI loss/ Total assets (%)
NBG	13 748	1 001	14 749	10 985	751	11 735	161,0	11,0
Eurobank	7 001	335	7 336	5 517	264	5 781	164,5	7,5
Alpha	3 898	2 145	6 043	3 087	1 699	4 786	105,7	8,1
Piraeus	7 063	280	7 343	5 686	225	5 911	226,0	12,0
ATEbank	5 164	608	5 772	3 873	456	4 329	1 144	17,1
Geniki	384	7	391	287	5	292	78,1	8,9
MBG	185	0	185	137	0	137	29	2,2

Source: Bank of Greece, *Report on the Recapitalisation and the Restructuring of the Greek Banking Sector*, December 2012, p. 14

- (35) Since the Greek banks faced substantial capital shortfalls as a result of the PSI programme and the continuing recession, the Memorandum of Economic and Financial Policies (MEFP) of the Second Adjustment Programme for Greece between the Greek government, the European Union, the IMF and the ECB dated 11 March 2012 made funds available for the recapitalisation of those banks. The Greek authorities estimated the total bank recapitalisation needs and resolution costs to be financed under that programme at EUR 50 billion⁽¹⁷⁾. That amount was calculated on the basis of a stress test performed by the Bank of Greece for the period starting December 2011 and ending December 2014 ('the stress test of 2012'), which relied on the loan losses forecast performed by Blackrock⁽¹⁸⁾. The funds for the recapitalisation of the Greek banks are available through the HFSF. Table 3 summarises the calculation of capital needs for the main Greek banks as they result from the stress test of 2012.

Table 3

Stress test of 2012: Capital needs of the main Greek banks (EUR million)

Banks	Reference Core Tier 1 (Dec 2011)	Total gross PSI loss (Dec 2011)	Provisions related to PSI (June 2011)	Gross Cumulative Loss Projections for credit risk	Loan loss reserves (Dec 2011)	Internal capital generation	Target Core Tier 1 (Dec 2014)	Capital needs
NBG	7 287	- 11 735	1 646	- 8 366	5 390	4 681	8 657	9 756
Eurobank	3 515	- 5 781	830	- 8 226	3 514	2 904	2 595	5 839
Alpha	4 526	- 4 786	673	- 8 493	3 115	2 428	2 033	4 571

⁽¹⁷⁾ See footnote 14, p. 106.

⁽¹⁸⁾ See footnote 15.

Banks	Reference Core Tier 1 (Dec 2011)	Total gross PSI loss (Dec 2011)	Provisions related to PSI (June 2011)	Gross Cumulative Loss Projections for credit risk	Loan loss reserves (Dec 2011)	Internal capital generation	Target Core Tier 1 (Dec 2014)	Capital needs
Piraeus	2 615	– 5 911	1 005	– 6 281	2 565	1 080	2 408	7 335
ATEbank	378	– 4 329	836	– 3 383	2 344	468	1 234	4 920
Geniki	374	– 292	70	– 1 552	1 309	– 40	150	281
MBG	473	– 137	0	– 638	213	– 79	230	399

Source: Bank of Greece, *Report on the Recapitalisation and the Restructuring of the Greek Banking Sector*, December 2012, p. 8

- (36) In line with the MEFP of March 2012, 'banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimises the burden for taxpayers' ⁽¹⁹⁾. The Bank of Greece found that only the four largest banks (Eurobank, National Bank of Greece, the Bank and Alpha Bank) submitted viable capital raising plans ⁽²⁰⁾. They received a first recapitalisation from the HFSF in May 2012.
- (37) Domestic deposits in the banks in Greece decreased by 37 % in total between the end of 2009 and June 2012 due to the recession and political uncertainty. Those banks had to pay higher interest rates to try to retain deposits. The costs of deposits increased, reducing the net interest margin of the banks. As Greek banks were shut down from wholesale funding markets, they became entirely dependent on Eurosystem financing ⁽²¹⁾, a growing portion of which was in the form of State-guaranteed ELA granted by the Bank of Greece.
- (38) On 3 December 2012, Greece launched a buy-back programme on the new GGBs received by the investors in the framework of the PSI programme, at prices ranging from 30,2 % to 40,1 % of their nominal value ⁽²²⁾. The Greek banks participated in that buy-back programme which crystallised further losses on their balance sheets, since most of the accounting loss (that is, the difference between market value and nominal value) booked on those new GGBs at the time of the PSI programme became definitive and irreversible ⁽²³⁾.
- (39) In December 2012, the four largest Greek banks received a second bridge recapitalisation from the HFSF.
- (40) In spring 2013 the bridge recapitalisation of the four banks was converted into permanent recapitalisation in ordinary shares, with the HFSF holding more than 80 % of the shareholding of each of the four banks. For the banks which managed to attract a pre-determined amount of private capital (the Bank, Alpha Bank and National Bank of Greece), the HFSF received non-voting shares and private investors were granted warrants on the shares of the HFSF.
- (41) In July 2013, the Bank of Greece commissioned an advisor to carry out a diagnostic study on the loan portfolios of all Greek banks. That advisor carried out credit loss projections ('CLPs') on all domestic loan books of the Greek banks as well as on loans carrying Greek risk in foreign branches and subsidiaries over a three-and-a-half-year and a loan-lifetime horizon. The analysis provided CLPs under two macroeconomic scenarios, a baseline scenario and an adverse scenario. The CLPs for foreign loan portfolios were estimated by the Bank of Greece using some input from the advisor.

⁽¹⁹⁾ See footnote 14, p. 104.

⁽²⁰⁾ See footnote 15.

⁽²¹⁾ The European Central Bank and the national central banks together constitute the Eurosystem, the system of central banks of the euro area.

⁽²²⁾ Press release of Ministry of Finance of 3 December 2012, available online at: <http://www.pdma.gr/attachments/article/248/Press%20Release%20-%20December%2003.pdf>.

That buy-back of its own debt at a price deeply below face value generated a significant debt reduction for Greece.

⁽²³⁾ In the absence of such a buy-back, the market value of those new GGBs could have increased depending on the evolution of market parameters such as interest rates and the probability of default of Greece.

- (42) Based on the advisor's assessment of the CLPs, in autumn 2013 the Bank of Greece launched a new stress test exercise ('the stress test of 2013') to assess the robustness of the Greek banks' capital position under both a baseline and an adverse scenario. The Bank of Greece conducted the capital needs assessment with the technical support of a second advisor.
- (43) The key components of the capital needs assessment under the stress test of 2013 were (i) the CLPs ⁽²⁴⁾ on banks' loan portfolios on a consolidated basis for Greek risk and foreign risk, net of existing loan reserves, and (ii) the estimated operating profitability of banks for the period from June 2013 to December 2016, based on a conservative adjustment of the restructuring plans which had been submitted to the Bank of Greece during the fourth quarter of 2013. Table 4 summarises the calculation of capital needs for the main Greek banks on a consolidated basis under the baseline scenario for that stress test of 2013.

Table 4

Stress test of 2013: Capital needs of the Greek banks on a consolidated basis in the baseline scenario (EUR million)

Banks	Reference Core Tier 1 (June 2013) (1)	Loan Loss reserves (June 2013) (2)	CLPs for Greek risk (3)	CLPs for foreign risk ⁽¹⁾ (4)	Internal Capital Generation (5)	Stress test Core Tier 1 ratio (December 2016) (6)	Capital needs ⁽⁷⁾ =(6)-(1)-(2)-(3)-(4)-(5)
NBG ⁽²⁾	4 821	8 134	- 8 745	- 3 100	1 451	4 743	2 183
Eurobank ⁽³⁾	2 228	7 000	- 9 519	- 1 628	2 106	3 133	2 945
Alpha	7 380	10 416	- 14 720	- 2 936	4 047	4 450	262
Piraeus	8 294	12 362	- 16 132	- 2 342	2 658	5 265	425

⁽¹⁾ The impact of the foreign risk CLPs was calculated after foreign tax and taking into account the disposal commitments which had been provided to the Directorate-General for Competition Policy at that time.

⁽²⁾ NBG loan loss reserves at 30 June 2013 pro-forma of the provisions of First Business Bank and Probank.

⁽³⁾ Eurobank loan loss reserves at 30 June 2013 pro-forma of the provisions of New Hellenic Postbank and New Proton Bank, which were acquired in August 2013.

Source: Bank of Greece, 2013 *Stress Test of the Greek Banking Sector*, March 2014, p. 42.

- (44) On 6 March 2014, the Bank of Greece announced the results of the stress test of 2013 and requested the banks to submit, by mid-April 2014, their capital raising plans to cover the capital needs under the baseline scenario.
- (45) Between late March 2014 and early May 2014, the banks proceeded with capital increases.

2.1.2. The beneficiary

- (46) The Bank provides universal banking services mainly in Greece and in Central, Eastern and South-Eastern Europe (Romania, Bulgaria, Serbia, Albania, Ukraine and Cyprus) as well as in Egypt. It offers a full range of banking and financial products and services to households and businesses. It is active in retail, corporate and private banking, asset management, treasury and investment banking. The Bank is incorporated in Greece and its shares are listed on the Athens Stock Exchange. On 30 December 2012, the Bank employed a total of 18 597 people ⁽²⁵⁾.

⁽²⁴⁾ Included the expected loss from the new loan production in Greece over the period from June 2013 to December 2016.

⁽²⁵⁾ Annual report 2012, <http://www.piraeusbankgroup.com/en/investors/financials/annual-reports>.

- (47) The Bank participated in the PSI programme, exchanging GGBs and State-related loans with a face value of EUR 7,7 billion. Its total PSI-related charge amounted to around EUR 5 911 million before tax and was entirely booked in its 2011 accounts ⁽²⁶⁾. During the buy-back programme of December 2012, the Bank sold the new GGBs it had received in the framework of the PSI at a deep discount to nominal value. That sale crystallised its losses on the new GGBs.
- (48) The key figures of the Bank in December 2010, December 2011, December 2012 and December 2013 (consolidated data) are presented in Table 5.

Table 5

Piraeus Bank key figures, 2010, 2011, 2012 and 2013

Profit and loss (EUR million)	2010	2011	2012 (*)	2013 (**)
Net Interest Income	1 207	1 194	1 047	1 664
Total Operating Income	1 510	1 245	1 921	2 205
Total Operating Expenses	(884)	(840)	(931)	(1 680)
Pre Provision Income	625	405	989	525
Impairment Losses to cover credit risk	(611)	(1 973)	(2 519)	(2 536)
Impairment losses on GGBs and loans eligible to PSI		(5 911)		
Negative goodwill			351	3 810
Net Profit/Loss	(21)	(6 618)	(507)	2 546
Selective Volume figure (EUR million)	31 December 2010	31 December 2011	31 December 2012 (*)	31 December 2013 (**)
Total net Loans and Advances to Customers (Net)	40 150	35 634	44 613	62 366
Deposits	29 475	21 796	36 971	54 279
Total Assets	57 561	49 352	70 408	92 010
Total equity ⁽¹⁾	3 273	(1 940)	(2 316)	8 543

⁽¹⁾ For 2012, that amount does not include the two bridge recapitalisations received by the Bank. The amount for 2013 includes the full Spring 2013 recapitalisation

^(*) Including ATE and Geniki

^(**) Including ATE Geniki, Greek branches of the three Cypriot Banks, MBG

Source: Annual reports 2011, 2012, financial statements 2013

⁽²⁶⁾ See Table 2.

- (49) Table 5 illustrates that, apart from the huge losses it booked in 2011 due to the PSI programme (EUR 5 911 million ⁽²⁷⁾), the Bank suffered from declining income (due, among other reasons, to the higher costs of deposits) and from high and rising impairment losses on its loan portfolios in Greece and abroad until mid-2012. The liquidity position of the Bank was badly hit by deposit outflows. That situation somewhat improved after the Bank started to make acquisitions in July 2012.
- (50) Under the stress test of 2013, the Bank of Greece estimated the capital needs of the Bank at EUR 465 million for the baseline scenario.
- (51) In March 2014, the Bank proceeded with a capital increase of EUR 1 752 million to cover the capital needs mentioned in recital 50 and to repay the EUR 940 million in preference shares held by Greece ⁽²⁸⁾. In contrast to Eurobank's capital increase of April 2014, the HFSF did not give the Bank a commitment to inject capital in the framework of the capital increase in the event of insufficient private demand. The Bank's capital increase was achieved through a non-pre-emptive equity offering (that is to say a capital increase with cancellation of shareholders' pre-emption rights) to international investors and through a public offering in Greece. The subscription price was set at EUR 1,70 per share.
- (52) Following the capital increase, the Bank announced on 22 May 2014 that it had redeemed the preference shares to Greece, for a total amount of EUR 750 million ⁽²⁹⁾.

2.2. THE BANK'S ACQUISITIONS OF GREEK BANKING ACTIVITIES

2.2.1. Acquisition of ATE

- (53) ATE was founded in 1929 as a non-profit organisation by Greece. Until the early 1990s, ATE was a specialised financial institution which supported the development of the agricultural sector on behalf of the Greek State. In December 2000, the company was listed on the Athens Stock Exchange. On 14 November 2011, Greece was ATE's main shareholder with a stake of 89,9 %.
- (54) ATE operated in all banking activities, both retail and corporate, provided financial services such as insurance activities and leasing activities and acquired major participations in companies operating in non-financial sectors, including sugar production industry and dairy production industry.
- (55) In July 2012, ATE offered its services through its network of 468 branches and employed 5 024 people. In July 2012, its total deposits amounted to EUR 14,9 billion for total assets of EUR 21,8 billion ⁽³⁰⁾.
- (56) Since 2006, ATE has also offered its services outside Greece with a 74 % stake in ATE Bank Romania and a stake of 20,3 % of the common share capital and 25 % of the preference shares in AIKBanka Serbia.
- (57) The difficulties of ATE arose before the Greek sovereign crisis mainly as a result of poor asset quality and of traditionally low pre-impairment profitability. Furthermore, the Greece sovereign crisis affected all Greek banks, including ATE, in two ways: (i) the loss of access of Greece to international debt markets severely affected the liquidity position of Greek banks and (ii) asset quality deteriorated and increased impairments.
- (58) In April 2011 Greece injected EUR 1 445 million into ATE (including EUR 675 million originally granted under the Greek recapitalisation measure). Furthermore ATE received liquidity support amounting to EUR 6 103 million. The Commission approved those measures in the ATE Restructuring Decision.
- (59) Nevertheless, in the second half of 2011, the capital situation of ATE deteriorated mainly due to its participation in the PSI programme. As illustrated in Table 2, its total PSI-related charge amounted to around EUR 4 329 million before tax and was entirely booked in its 2011 accounts. As illustrated in Table 3, the capital needs of ATE Transferred Activities were estimated at EUR 4 920 million.
- (60) On 22 March 2012, Greece submitted a report by the Bank of Greece proposing the resolution of ATE via a Purchase & Assumption procedure in respect of the ATE Transferred Activities, while the remaining assets and liabilities would be resolved via a bad bank. The Bank and another large Greek submitted non-binding offers to the HFSF. On 26 July 2012, the Board of Directors of the HFSF approved the Bank's bid.

⁽²⁷⁾ See Table 2.

⁽²⁸⁾ See section 2.3.1.2 State recapitalisation granted under the recapitalisation measure.

⁽²⁹⁾ <http://www.piraeusbankgroup.com/en/press-office/press-release/2014/05/apopliromi-pronomiouxon-metoxon-ellinikou-dimosiou>.

⁽³⁰⁾ Restructuring plan submitted on 25 June 2014, p. 40.

- (61) On 27 July 2012, the Bank of Greece proceeded with the transfer of the ATE Transferred Activities to the Bank ⁽³¹⁾.
- (62) As the ATE Transferred Activities contained fewer assets at fair value than liabilities, the HFSF, in line with the decision of the Bank of Greece of 28 January 2013, had to make up for the difference between transferred assets and transferred liabilities, that is to say, the funding gap. The Bank of Greece concluded, based on audited figures, that the funding gap would be EUR 7 471 million and the HFSF granted the Bank European Financial Stability Facility bonds ('EFSF bonds') worth EUR 7 471 million.
- (63) Furthermore, the HFSF committed to provide capital to the Bank, in order for the ATE Transferred Activities to be capitalised up to 9 %. That amount was initially estimated at EUR 500 million, but the final amount was determined at EUR 570 million. The HFSF injected the final amount into the Bank against ordinary shares in the framework of the Spring 2013 recapitalisation.
- (64) The Bank acquired the ATE Transferred Activities for a purchase price of EUR 95 million.

2.2.2. Acquisition of Geniki

- (65) Geniki was established in 1937. Geniki provided financial services in the sectors of retail banking, corporate banking and capital market services. In 2004 Société Générale acquired the majority of Geniki's shares. Geniki operated 104 branches and employed 1 391 employees as at 31 December 2012 ⁽³²⁾. Total assets amounted to EUR 2,6 billion, total net loans to EUR 1,9 billion and deposits to around EUR 2 billion ⁽³³⁾.
- (66) The Greek sovereign crisis had a very negative impact on the banking sector performance. Furthermore, the participation of the Greek banks in the PSI programme led to a rapid deterioration of their capital situation. As illustrated in Table 2, Geniki's total PSI-related charge amounted to around EUR 292 million before tax and was entirely booked in its 2011 accounts. As illustrated in Table 3, the amount of the capital needs of Geniki were estimated at EUR 281 million and were calculated on the basis of a stress test performed by the Bank of Greece.
- (67) In June 2012, Société Générale approached all four of the large Greek banks, in an attempt to sell Geniki. The Bank was the only one interested in acquiring Geniki.
- (68) The negotiations between Société Générale and the Bank for the sale of Geniki led to an official agreement on 19 October 2012 that: (i) Société Générale would sell and the Bank would purchase the 99,08 % stake that Société Générale holds in Geniki, and that (ii) Société Générale would assign and transfer and the Bank would acquire 100 % of Geniki's share capital advances that Société Générale has concluded and will conclude in the future. Société Générale ultimately agreed to make an advance payment of approximately EUR 290 million to Geniki and to subscribe a bond issued by the Bank for an amount of approximately EUR 170 million. The Bank then acquired Geniki for EUR 1 million.
- (69) On 14 December 2012, the Bank announced that the acquisition of Société Générale's stake in Geniki was completed.

2.2.3. Acquisition of the Greek operations of the three Cypriot Banks

- (70) The Bank of Cyprus, the Cyprus Popular Bank and the Hellenic Bank were founded in 1899, 1901 and 1976 respectively.
- (71) Following the extraordinary Eurogroup meeting on 15 March 2013, an agreement was reached on the main parameters of a bailout plan for Cyprus by the European Union, the IMF and the ECB. The Hellenic Systemic Stability Board ('HSSB') unanimously proposed the transfer of the Greek assets and liabilities of the branches of the three Cypriot Banks in Greece to an existing Greek bank. In particular, the HSSB stated that 'the [...] (*) agreement fully secures the depositors of the Greek branches [of the three Cypriot Banks], safeguards the Greek public interest and the financial stability and does not burden the Greek public debt'.
- (72) The Bank of Greece was assigned to explore potential interest from Greek banks and, in this context, called for an expression of interest. Furthermore, the HFSF agreed to cover the capital needs (of the acquirer) that would result from the acquisition of the Greek branches of the three Cypriot Banks.

⁽³¹⁾ See recital 27 of the ATE Liquidation Decision.

⁽³²⁾ Hellenic Bank Association, data available online at: <http://62.1.43.74/4Statistika/UplPDFs/network2012engl.pdf>.

⁽³³⁾ http://www.geniki.gr/Portals/0/PDFs/140321_annual_results_en_2.pdf.

(*) Business secret

- (73) Table 6 summarises the assets and liabilities of the three Cypriot Banks which were ultimately transferred to the Bank ('Cypriot Transferred Activities').

Table 6

Transferred Activities of the three Cypriot Banks

	Transferred Activities
Assets	All Greek loans, including leasing and factoring
	Shipping loans and other loans originated from and managed in Greece and booked in the Cypriot loan book
	Fixed assets (excluding deferred tax assets)
Liabilities	All the deposits of the three Cypriot Banks collected in Greece

Source: Term Sheet, *Carve out and sale of the Greek assets of Cypriot banks*, 10 April 2013

- (74) The assets transferred to the Bank amounted to approximately EUR 18,9 billion and the liabilities amounted to approximately EUR 15 billion. However, the parties to the transaction agreed to take into account the amount of losses that was forecast in the PIMCO report for the banks in Cyprus, under an adverse scenario ⁽³⁴⁾. According to the PIMCO report, the value of the assets that would be transferred to the Bank amounted to approximately EUR 16,5 billion. The liabilities transferred amounted to approximately EUR 14,5 billion.
- (75) On 21 and 22 March 2013, only three banks, including the Bank, submitted non-binding offers.
- (76) On 22 March 2013, the HFSF granted its consent to the acquisition of the three Cypriot Banks' operations in Greece by the Bank. The total consideration paid by the Bank for the acquisition of the Cypriot Transferred Activities was EUR 524 million. In particular, it was agreed that the Bank would pay EUR 237 million for the acquisition of the transferred activities of the Bank of Cyprus, EUR 258 million for the acquisition of the transferred activities of the Cyprus Popular Bank and EUR 29 million for the acquisition of the transferred activities of the Hellenic Bank.
- (77) In June 2013, in the framework of the Spring 2013 recapitalisation ⁽³⁵⁾ the HFSF injected EUR 524 million of capital into the Bank to cover the purchase price paid by the Bank.

2.2.4. Acquisition of MBG

- (78) MBG was established in 2000. MBG operated 119 branches and employed 1 174 employees as at 31 December 2012 ⁽³⁶⁾.
- (79) On 22 April 2013, the Bank signed a definitive agreement with BCP regarding the acquisition of the entire share capital of MBG and the participation of BCP in a forthcoming capital increase of the Bank.
- (80) According to that agreement, BCP would contribute EUR 400 million to the regulatory recapitalisation of MBG (of which EUR 139 million had already been contributed by BCP in December 2012) through the conversion of subordinated and senior credits from BCP to MBG into equity. Furthermore, all the funding provided by BCP to MBG in the past would be reimbursed by the latter in two tranches: EUR 650 million would be paid on the date of closing of the transaction and the amount of approximately EUR 250 million would be paid within six months from closing. Last, BCP would contribute EUR 400 million to the recapitalisation of the Bank through a private placement with the exclusion of pre-emptive rights. The Bank would then acquire the fully recapitalised MBG for EUR 1 million.
- (81) On 19 June 2013, the Bank announced the completion of the acquisition of MBG.

⁽³⁴⁾ The report was prepared by PIMCO, dated 1 February 2013 and entitled 'Independent Due Diligence of the Banking System in Cyprus'. Capital estimates were generated under both a base and an adverse macroeconomic scenario. The applicable reference date for the exercise was 30 June 2012 and the forecast period extended from 30 June 2012 through 30 June 2015.

⁽³⁵⁾ See recital 101.

⁽³⁶⁾ Ibid.

2.2.5. Overview of the combined effect of the acquisitions

- (82) Table 7 provides an overview of the effect of the successive acquisitions on the size and shape of the Bank in Greece (none of the acquired entities included foreign assets, except ATE Transferred Activities that contain small Romanian assets). As a result of those acquisitions, the Bank now holds the largest market share on the Greek deposit and loan market.

Table 7

Effect of the successive acquisitions on Piraeus' size in Greece

31.12.2012 Greece only	Piraeus stand alone	ATE	Geniki	Cypriot Banks	MBG	NEW GROUP
Gross loans	27 727	12 200	3 308	24 194	4 710	72 138
part of new group	38 %	17 %	5 %	34 %	7 %	100 %
Net loans	24 811	11 527	1 909	19 481	4 236	61 964
part of new group	40 %	19 %	3 %	31 %	7 %	100 %
Deposits	15 412	14 986	2 014	14 427	2 912	49 752
part of new group	31 %	30 %	4 %	29 %	6 %	100 %
Employees	5 926	5 019	1 420	5 268	1 186	18 819
part of new group	31 %	27 %	8 %	28 %	6 %	100 %
Branches	325	460	104	307	120	1 316
part of new group	25 %	35 %	8 %	23 %	9 %	100 %

Source: data submitted on 10 June 2014 by Piraeus Bank

2.3. AID MEASURES

2.3.1. Aid measures granted to the Bank under the Greek Banks Support Scheme (measures L1 & A)

- (83) The Bank obtained several forms of aid under the Greek Banks Support Scheme, under the recapitalisation measure, the guarantee measure and the government bond loan measure.

2.3.1.1. State liquidity support granted under the guarantee measure and the government bond loan measure (measure L1)

- (84) The Bank has benefited and continues to benefit from aid under the guarantee measure and the government bond loan measure. That aid will be described in this Decision as 'measure L1'. In 2010, the Bank issued bonds guaranteed by the State amounting to a total of EUR 9,9 billion. Greece also lent the Bank EUR 1 289 million of government bonds. At the end of March 2014, the outstanding amount of government bonds was EUR 1 024 million ⁽³⁷⁾.
- (85) In the restructuring plan for the Bank submitted by the Greek authorities to the Commission on 25 June 2014 the Greek authorities requested authorisation to continue granting guarantees and lending government bonds to the Bank under the Greek Banks Support Scheme during the restructuring period, should the need for such liquidity support arise, although that is not expected to happen.

⁽³⁷⁾ Restructuring plan submitted on 25 June 2014, p. 51.

2.3.1.2. State recapitalisation granted under the recapitalisation measure (measure A)

- (86) In May 2009 and December 2011, the Bank received from Greece under the recapitalisation measure of the Greek Bank Support Scheme capital injections of EUR 370 million and EUR 380 million respectively, totalling EUR 750 million (measure A), equivalent to around 2,1 % of the risk weighted assets ('RWA') ⁽³⁸⁾ of the Bank at that time.
- (87) The recapitalisation took the form of preference shares subscribed by Greece which had a coupon of 10 % and a maturity of five years.
- (88) The Bank redeemed the preference shares on 22 May 2014, as described in recital 52.

2.3.2. State-guaranteed ELA (measure L2)

- (89) ELA is an exceptional measure enabling a solvent financial institution, facing temporary liquidity problems, to receive Eurosystem funding without such an operation being part of the single monetary policy. The interest rate paid by a financial institution for ELA is [...] basis points ('bps') higher than the interest it pays for regular Central Bank refinancing.
- (90) The Bank of Greece is responsible for the ELA programme, which means that any cost of, and the risks arising from, the provision of ELA are incurred by the Bank of Greece ⁽³⁹⁾. Greece granted the Bank of Greece a State guarantee which applies to the total amount of ELA granted by the Bank of Greece. The adoption of Article 50(7) of law 3943/2011, which amended Article 65(1) of law 2362/1995, allowed the Minister of Finance to grant guarantees on behalf of the State to the Bank of Greece in order to safeguard the Bank of Greece's claims against the credit institutions. The banks benefiting from ELA have to pay a guarantee fee to the State amounting to [...] bps.
- (91) At 31 December 2011, the Bank had benefited from EUR 11,64 billion of State-guaranteed ELA, while at 31 December 2012 the Bank had benefited from EUR 31,4 billion of State-guaranteed ELA ⁽⁴⁰⁾. After a sharp decrease in 2013, the Bank benefited at the end of that year from only EUR 750 million of State-guaranteed ELA.

2.3.3. Aid measures granted to the Bank through the HFSF (measures B1, B2, B3 & B4)

- (92) Since 2012, the Bank has benefited from several capital support measures granted by the HFSF. Table 8 provides an overview of those aid measures.

Table 8

Aid measures granted to the Bank through the HFSF

	1st bridge recapitalisation — May 2012 (EUR million)	2nd bridge recapitalisation — Dec 2012 (EUR million)	Commitment letter — Dec 2012 (EUR million)	Participation in the May 2013 recapitalisation (EUR million) ⁽¹⁾
Measure	B1	B2	B3	B4
Amount (EUR million)	4 700	1 553	1 082	5 891

⁽¹⁾ Excluding the part of the recapitalisation subscribed by the HFSF to meet the capital requirements that arose from the purchase of ATE Bank and Greek branches of the three Cypriot Banks. For further details, see recital 101.

2.3.3.1. The first bridge recapitalisation (measure B1)

- (93) Recitals 14 to 33 of the Piraeus Opening Decision give a detailed description of the first bridge recapitalisation of May 2012 (measure B1). The background and main features of that measure are set out in this section.

⁽³⁸⁾ The term 'risk weighted assets' refers a regulatory aggregate which measures the risk exposure of a financial institution and is used by supervisors to monitor the capital adequacy of financial institutions.

⁽³⁹⁾ According to the letter of the Bank of Greece of 7 November 2011, 'Guarantees apply on the total amount of Emergency Liquidity Assistance (ELA)'.

⁽⁴⁰⁾ Restructuring plan submitted on 25 June 2014, p. 133.

- (94) On 20 April 2012, the HFSF provided a letter to the Bank committing to participate in a planned share capital increase of the Bank for an amount of up to EUR 5 billion.
- (95) Under measure B1, the HFSF transferred EUR 4,7 billion of EFSF bonds to the Bank in May 2012, in line with the provisions for bridge recapitalisations laid down in the law 3864/2010 establishing the HFSF ('HFSF law'). The Commission established in recital 53 of the Piraeus Opening Decision that 'The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid'. Both the amounts provided in the commitment letter and in the first bridge recapitalisation were calculated by the Bank of Greece to ensure the Bank reached a total capital ratio of 8 % as of 31 December 2011, the date of retroactive booking of the bridge recapitalisation in the Bank's records. As can be seen from Table 3, measure B1 only covered a part of the total capital needs identified by the stress test of 2012. The Bank was supposed to raise capital through a future capital increase and the bridge recapitalisation was intended only to preserve the Bank's eligibility for ECB financing until that capital increase had taken place.
- (96) For the period between the date of the first bridge recapitalisation and the date of the conversion of the first bridge recapitalisation into ordinary shares and other convertible financial instruments, the pre-subscription agreement between the Bank and the HFSF stipulated that the Bank had to pay the HFSF a 1 % annual fee on the nominal value of the EFSF notes and that any coupon payments and accrued interest to the EFSF notes for that period would count as an additional capital contribution by the HFSF to the Bank ⁽⁴¹⁾.

2.3.3.2. *The second bridge recapitalisation (measure B2)*

- (97) The Bank booked further losses in the autumn of 2012. Its capital therefore fell again below the minimum capital requirements for it to remain eligible for ECB refinancing.
- (98) A second bridge recapitalisation became necessary as a result. On 20 December 2012, the HFSF implemented a second bridge recapitalisation of EUR 1 553 million (measure B2), which was again paid by transferring EFSF bonds to the Bank.

2.3.3.3. *The commitment letter of 20 December 2012 (measure B3)*

- (99) In addition to the second bridge recapitalisation, on 20 December 2012 the HFSF provided the Bank with a commitment letter for its participation in the share capital increase of the Bank and in the convertible instruments to be issued, for a total amount up to EUR 1 082 million (measure B3).
- (100) The total of the two bridge recapitalisations (measures B1 and B2) and of the additional amount committed in December 2012 (measure B3) meant that the HFSF had committed to cover the total capital needs identified under the stress test of 2012 (EUR 7 335 million ⁽⁴²⁾).

2.3.3.4. *HFSF's participation in the Spring 2013 recapitalisation (measure B4) and partial repayment of measures B1 and B2*

- (101) On 23 April 2013 the general meeting of shareholders of the Bank approved a share capital increase of EUR 8 429 million ⁽⁴³⁾. That amount was calculated as the sum of:
- (i) EUR 7 335 million to cover the capital needs identified by the stress test of 2012; out of that amount, the HFSF subscribed EUR 5 891 million (measure B4) and private investors subscribed EUR 1 444 million;
 - (ii) EUR 570 million injected by the HFSF to meet the regulatory capital requirements that arose from the acquired business of ATE Bank, as committed in July 2012; that measure was assessed by the Commission in the ATE Liquidation Decision, which found that it did not constitute aid to the Bank;
 - (iii) EUR 524 million injected by the HFSF to meet the capital needs that arose from the payment of the purchase price for the Greek operations of the three Cypriot Banks; that part of the capital increase constitutes measure C ⁽⁴⁴⁾.

⁽⁴¹⁾ The pre-subscription agreement provided that: 'The Effective Risk payable to the Bank shall include the EFSF bonds and any coupon payments and accrued interest to the EFSF bonds for the period from the issuance of the bonds until the conversion of the Advance into share capital and other convertible financial instruments as prescribed herein'.

⁽⁴²⁾ See Table 3.

⁽⁴³⁾ http://www.piraeusbankgroup.com/~media/Com/Piraeus-Bank-Documents/Press-Releases/2013/Apofaseis_BGM_23042013_en.pdf

⁽⁴⁴⁾ See recital 112.

- (102) The price of the new shares was set at EUR 1,70 per share, which corresponds to 50 % of the volume-weighted average stock price over the 50 trading days preceding its determination.
- (103) On 3 June 2013 the Board of Directors of the Bank announced the issuance of 3 888 268 914 new shares with a nominal value of EUR 0,30 at a price of EUR 1,70 per share ⁽⁴⁵⁾. The Bank announced on 28 June 2013 ⁽⁴⁶⁾ that the Board of Directors certified full payment of the total capital increase in share for a total amount of EUR 8 429 million, including premium amounts.
- (104) The total private participation in the Bank's share capital increase amounted to EUR 1 444 million ⁽⁴⁷⁾. That amount includes the participation of BCP as described in recital 80.
- (105) Therefore the participation of the HFSF in the share capital increase of the Bank amounted to EUR million 6 985.
- (106) Immediately after the Spring 2013 recapitalisation, the HFSF became the major shareholder of the Bank with a stake of 81 % ⁽⁴⁸⁾. The HFSF issued warrants and granted private investors one warrant for each share subscribed, for no consideration ⁽⁴⁹⁾. Each warrant incorporates the right to buy 4,48 shares of the HFSF, at specified intervals and strike prices. The first exercise date was 2 January 2014, and then the warrants are exercisable every six months until 2 January 2018. The exercise price is equal to the subscription price of EUR 1,70 increased by an annual interest rate (4 % for year one, 5 % for year two, 6 % for year three, 7 % for year four and then 8 % annualised for the last six months) ⁽⁵⁰⁾.
- (107) The HFSF law as amended in 2014 provides that only the strike prices of the warrants may be adjusted in the event of a rights issue. In addition, any such adjustment will take place *ex post* and only up to the amount of the realised proceeds from the sale of pre-emption rights of the HFSF. No adjustment is provided for in the event of a non-pre-emptive share capital increase.

2.3.4. Aid measures to the acquired businesses (measure C)

2.3.4.1. Aid measures to ATE

- (108) As mentioned in recital 58, at the time of the ATE Restructuring Decision ATE had already benefited from aid measures.
- (109) In December 2011, the Greek State injected EUR 290 million into ATE.
- (110) The resolution of 27 July 2012, as described in recitals 62 and 63, also involved additional support from the State. The HFSF granted the Bank EFSF bonds worth EUR 7 471 million to cover the funding gap. The HFSF also gave a commitment to recapitalise the Bank for an amount of EUR 570 million.
- (111) Overall, the aid related to the Purchase & Assumption procedure amounts to EUR 8 041 million.

2.3.4.2. Aid measures to the Greek operations of the three Cypriot Banks (measure C)

- (112) As already mentioned in recitals 77 and 101, at the time of the acquisition of the Greek operations of the three Cypriot Banks the HFSF gave a commitment to provide EUR 524 million of capital to the Bank (measure C). That commitment was implemented in June 2013 ⁽⁵¹⁾.

2.4. THE RESTRUCTURING PLAN

2.4.1. Domestic operations

- (113) Through the restructuring plan, the Bank will focus on its core banking activities in Greece.
- (114) The key focus is to bring its Greek banking operations back to profitability and viability. To that end, the restructuring plan includes a number of measures aimed at improving the Bank's operational efficiency and net interest margin, as well as measures enhancing its capital position and balance sheet structure.
- (115) As regards operational efficiency, the Bank has already started a vast programme of rationalisation.

⁽⁴⁵⁾ <http://www.piraeusbankgroup.com/~media/Com/Piraeus-Bank-Documents/Press-Releases/2013/Anakoinwsi-apokomis-DS-gia-AMK.pdf>

⁽⁴⁶⁾ <http://www.piraeusbankgroup.com/en/press-office/announcement/2013/06/anakoinosi-kalipsis>

⁽⁴⁷⁾ http://www.hfsf.gr/files/HFSF_activities_Jan_2013_Jun_2013_en.pdf

⁽⁴⁸⁾ http://www.hfsf.gr/files/HFSF_activities_Jan_2013_Jun_2013_en.pdf

⁽⁴⁹⁾ <http://www.piraeusbankgroup.com/~media/Com/Downloads/Investors/PIRAEUS-BANKS-ANNOUNCEMENTS-ON-THE-CHARACTERISTICS-OF-HFSF-WARRANTS.pdf>

⁽⁵⁰⁾ For instance, the exercise price on 2 January 2014 was EUR 1,7340, on 2 July 2014 it was EUR 1,7680, on 2 January 2015, it will be EUR 1,8105, on 2 July 2015, it will be EUR 1,8530 and so forth.

⁽⁵¹⁾ See section 2.3.3.4.

- (116) From 31 December 2011 to 31 December 2013, the Bank reduced its physical presence in Greece by a total of 322 branches taking into account the restructuring of the acquired entities after the acquisition date. The Bank has maintained a sustained rhythm in 2014, with [...] closures already completed in the first semester.

Table 9

Restructuring of the Greek branch network 2010-H1 2014

Period	2011	2012	2013	H1 2014
Total number of branches at the opening of the period or at the date of the acquisition	360	918	1 316	1 037
Of which Piraeus	[...]	[...]	[...]	[...]
ATE	[...]	[...]		
Geniki	[...]	[...]		
Cypriot branches	[...]	[...]		
MBG	[...]	[...]		
Total end of period	346	889	1 037	899
Total branch closures during the period	14	29	279	138

Source: restructuring plan submitted on 25 June 2014, pp. 40 and 125, 2011 and 2012 Annual reports

- (117) The Bank also reduced the total headcount of its banking and non-banking activities in Greece during the period 2011-2013 by 2 519 employees. In particular 2 114 departures were attributable to the voluntary exit scheme implemented by the Bank.

Table 10

Greek headcount reduction 2010-2013

Period	2011	2012	2013
Total headcount at the opening of the period or at the date of the acquisition	6 370	12 616	18 628
Of which Piraeus	[...]	[...]	[...]
ATE	[...]	[...]	
Geniki	[...]	[...]	
Cypriot branches	[...]	[...]	[...]
MBG	[...]	[...]	[...]
Total end of period	6 172	12 365	16 558
Headcount reduction	198	251	2 070

Source: restructuring plan submitted on 25 June 2014, pp. 40 and 125, 2011 and 2012 Annual reports

- (118) From December 2013 until the end of 2017, the Bank plans to further decrease, in Greece, its headcount (from 16 558 to [...] employees) and the size of its network (from 1 037 to [...] branches).⁽⁵²⁾[...]

⁽⁵²⁾ Restructuring plan submitted on 25 June 2014, p. 117.

- (119) The increased efficiency in terms of branches and personnel will help to bring down the total cost of the Bank's Greek activities by [...] % from EUR 1 394 million on a pro forma basis in 2013 to EUR [...] million⁽⁵³⁾ in 2017⁽⁵⁴⁾. As a result, the expected cost-to-income ratio of its Greek activities should fall below [...] % at the end of the restructuring period.
- (120) The restructuring plan also describes how the Bank will reduce its funding costs, which is key to the restoration of viability. The Bank expects to be able to pay lower interest rates on its deposits on the back of the more stable environment and in particular the anticipated stabilisation and recovery of the Greek economy, which is expected to grow again from 2014 onwards. Spreads paid on deposits are expected to decrease in Greece⁽⁵⁵⁾. That decrease in spreads would be mainly achieved by paying much lower rates on time deposits. Similarly, the Bank's reliance on ELA and wider Eurosystem funding will decrease from more than 45 % of its total assets in 2012 to less than [...] % in 2017⁽⁵⁶⁾.
- (121) The restructuring plan anticipates that the Bank will also strengthen its balance sheet. Its net loan-to-deposit ratio in Greece will decrease to [...] % in 2017 (down from 114 % in 2013⁽⁵⁷⁾), while its capital adequacy will further improve.
- (122) Another priority of the Bank is the management of non-performing loans ('NPL'). The Bank will enhance its credit processes regarding both the origination of loans (better collateral coverage and reduced limits) and the management of NPL. The rate of NPL will reach close to [...] % in [...] and then start to decrease, with an expected rate of around [...] % at the end of the restructuring period⁽⁵⁸⁾. The cost of risk (loan loss impairments) will decrease from close to EUR 2 billion in 2013 to less than EUR [...] million in 2018⁽⁵⁹⁾.
- (123) The improvement of operational efficiency, the increase of the net interest margin and the decreasing cost of risk will enable the Bank to be profitable in Greece from [...] onwards. The Bank anticipates its profits will exceed EUR [...] billion in 2018 for the domestic activities.

2.4.2. International banking activities

- (124) To improve the profitability of its foreign activities, the Bank has already begun to implement a significant cost reduction programme in the international network. Between the end of 2011 and March 2014 the number of employees declined by 10 % from 6 634 to 5 948 and the number of branches by 18 % from 499 to 410⁽⁶⁰⁾. The structure of its international portfolio has also been simplified to reduce the cost base⁽⁶¹⁾.
- (125) The restructuring plan highlights the need to reduce the reliance of the foreign subsidiaries on their Greek mother company as regards their funding needs and to continue safeguarding the capital position of the Bank.
- (126) The Bank sold its American subsidiary, which accounted for around EUR 0,7 billion of assets (13 branches and 158 employees), in September 2012.
- (127) The Bank will reduce its foreign assets exposure to EUR [...] billion at the end of June 2018. That figure represents a reduction of [...] %⁽⁶²⁾ compared to the end of 2012⁽⁶³⁾.
- (128) The reduction of the foreign assets will be slightly smaller — to EUR [...] billion — in the event [...] ⁽⁶⁴⁾. In that case the total reduction of foreign assets will amount to [...] % compared to the end of 2012.
- (129) However, instead of complying with the above-mentioned cap of total assets at the end of June 2018, the Bank may decide to divest [...] ⁽⁶⁵⁾. In that case, the activities retained will not represent more than [...] % of the total foreign activities of the Bank at the end of 2012.
- (130) The Bank will reduce its total funding to the foreign subsidiaries.

⁽⁵³⁾ Including contributions to the Deposit and Investment Guarantee Fund ('TEKE').

⁽⁵⁴⁾ Restructuring plan submitted on 25 June 2014, p. 128.

⁽⁵⁵⁾ Restructuring plan submitted on 25 June 2014, p. 117.

⁽⁵⁶⁾ Restructuring plan tables submitted on 25 June 2014, p. 133.

⁽⁵⁷⁾ Restructuring plan submitted on 25 June 2014, p. 117.

⁽⁵⁸⁾ Restructuring plan submitted on 25 June 2014, p. 136.

⁽⁵⁹⁾ Restructuring plan submitted on 25 June 2014, p. 128.

⁽⁶⁰⁾ Annual report 2012 for 2012 figures, <http://www.piraeusbankgroup.com/en/investors/financials/annual-reports>. Restructuring plan submitted on 25 June 2014, p. 96 for 2014 figures.

⁽⁶¹⁾ Restructuring plan submitted on 25 June 2014, p. 97.

⁽⁶²⁾ Restructuring plan submitted on 25 June 2014, p. 149.

⁽⁶³⁾ See Commitments in the Annex, chapter I.

⁽⁶⁴⁾ See Commitments in the Annex, chapter I.

⁽⁶⁵⁾ See Commitments in the Annex, chapter I.

2.4.3. Private capital raising and contribution by existing shareholders and subordinated creditors

- (131) The Bank raised significant amounts of capital on the market and thereby reduced the State aid which was needed by the Bank.
- (132) First, the Bank raised some private capital in 2011 with a rights issue of EUR 807 million ⁽⁶⁶⁾. As mentioned in recital 104, the Bank also managed to raise capital from private investors through the Spring 2013 recapitalisation. The pre-existing shareholders were also heavily diluted by the Spring 2013 recapitalisation, since the HFSF held 81 % of the Bank's shares following the Spring 2013 recapitalisation and new investors 17 %, leaving the pre-existing shareholders with only a 2 % shareholding. No dividend has been paid in cash since 2008.
- (133) The Bank raised EUR 1 750 million of capital from the market in April 2014 to cover its additional capital needs and to repay the preference shares held by Greece. The new shares were issued at EUR 1,70, namely the price paid by the HFSF in the framework of the Spring 2013 recapitalisation.
- (134) Moreover, the bank generated capital by buying back its own hybrid and subordinated debt instruments at a discount to nominal value. In March 2012 the Bank offered to buy back some hybrid and lower tier 2 instruments. The price, determined on the basis of the market value and including a premium of no more than ten percentage points, was fixed at 37 % of the nominal value for the hybrid instrument and 50 % of the nominal value for the lower tier 2 instrument. The respective participation rates were 52,8 % and 18,2 %. In May 2013 the Bank launched an additional liability management exercise to buy-back up to EUR 321 million of outstanding securities. The participation rate was 20 %. Those successive buy-backs resulted in a total capital gain of approximately EUR 120 million ⁽⁶⁷⁾.

2.5. COMMITMENTS OF THE GREEK AUTHORITIES

- (135) On 25 June 2014 Greece gave a commitment that the Bank and its affiliates will implement the restructuring plan submitted on the same day and gave further commitments regarding the implementation of the restructuring plan ('the Commitments'). The Commitments, which are in the Annex, are summarised in this section.
- (136) First Greece has given a commitment that the Bank will restructure its commercial operations in Greece, setting a maximum number of branches and employees at 31 December 2017 in Greece as well as a maximum amount of total costs for the Greek activities over the year 2017 ⁽⁶⁸⁾.
- (137) Greece has also given a commitment that the Bank will reduce the cost of deposits collected in Greece. It will comply with a maximum ratio of net loans-to-deposits on 31 December 2017 ⁽⁶⁹⁾. [...]
- (138) Regarding the Bank's foreign subsidiaries, Greece has given a commitment that the Bank will deleverage its foreign assets by 30 June 2018 ⁽⁷⁰⁾. Furthermore liquidity or capital support to those subsidiaries is strictly limited in terms of nominal amount and restricted to specific circumstances.
- (139) Greece has given a commitment that the Bank will divest a number of securities. In addition, the Bank will not purchase non-investment grade securities, with limited exceptions ⁽⁷¹⁾.
- (140) Greece gave a number of commitments related to the corporate governance of the Bank. It committed to limit the remuneration of the Bank's employees and managers ⁽⁷²⁾.
- (141) Greece has also given a commitment that the Bank will apply a prudent credit policy, in order to ensure decisions on granting and restructuring loans aim at maximising the viability and profitability of the Bank. The Bank will comply with high standards regarding the monitoring of credit risk as well as the restructuring of loans ⁽⁷³⁾.
- (142) A number of commitments deal with the operations of the Bank with connected borrowers. Those commitments aim at ensuring that the Bank does not deviate from prudent banking practices when for instance granting or restructuring loans to its employees, managers and shareholders, as well as to public entities, political parties and media companies ⁽⁷⁴⁾.

⁽⁶⁶⁾ Restructuring plan submitted on 25 June 2014, p. 44.

⁽⁶⁷⁾ Restructuring plan submitted on 25 June 2014, p. 147.

⁽⁶⁸⁾ See Commitments in the Annex, chapter II.

⁽⁶⁹⁾ See Commitment in the Annex, chapter II.

⁽⁷⁰⁾ See Annex, chapter II.

⁽⁷¹⁾ See Annex, chapter II.

⁽⁷²⁾ See Annex, chapter III, section A.

⁽⁷³⁾ See Annex, chapter III, section A.

⁽⁷⁴⁾ See Annex, chapter III, section A.

- (143) Finally, Greece has given a commitment that the Bank will comply with some behavioural limitations, such as a coupon and dividend ban, an acquisition ban and a ban on advertising State support ⁽⁷⁵⁾.
- (144) Those commitments will be monitored until 31 December 2018 by a monitoring trustee.
- (145) Separately, in its submission of 25 June 2014 Greece indicated that it would seek the approval of the Commission prior to any buy-back of the warrants by the Bank or by any State entity including the HFSF ⁽⁷⁶⁾.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

- (146) On 27 July 2012, the Commission opened the formal investigation procedure in order to verify whether the conditions of the 2008 Banking Communication ⁽⁷⁷⁾ were met regarding the appropriateness, necessity and proportionality of the first bridge recapitalisation provided by the HFSF in favour of the Bank (measure B1).
- (147) Regarding the appropriateness of the measure, the Commission, given the fact that the aid came after prior recapitalisation and liquidity aid and given the protracted rescue period, expressed doubts as to whether all actions possible had been taken by the Bank to avoid it again needing aid in the future ⁽⁷⁸⁾. In addition, the Commission was not clear who would control the Bank in the future once the first bridge recapitalisation was replaced by a permanent recapitalisation ⁽⁷⁹⁾ as the Bank might come either under the control of the State or under the control of the minority private owners who could enjoy control and high leverage. In either case the Commission indicated that the quality of the Bank's management and notably its lending process should be preserved in order for it to find the first bridge recapitalisation appropriate.
- (148) Regarding the necessity of the first bridge recapitalisation, in recital 70 of the Piraeus Opening Decision the Commission questioned whether all the measures possible had been taken to avoid the Bank needing aid again in the future. Moreover, since the duration of the bridge recapitalisation period was uncertain the Commission could not conclude whether it was sufficient and complied with the remuneration and burden-sharing principles under State aid rules. Furthermore, as the terms of the conversion of the first bridge recapitalisation into a permanent recapitalisation were not known at the time the Piraeus Opening Decision was adopted, the Commission could not assess them.
- (149) Regarding the proportionality of the measure, the Commission expressed doubts whether the safeguards (State support advertisement ban, coupon and dividend ban, call option ban and buy-back ban as described in recital 76 of the Piraeus Opening Decision) were sufficient in relation to the first bridge recapitalisation. Furthermore, in recital 77 of the Piraeus Opening Decision the Commission stated that the lack of rules preventing the HFSF from coordinating the four largest core banks (namely, the Bank, Eurobank, NBG and Alpha Bank), and the absence of adequate safeguards to prevent them from sharing commercially sensitive information could lead to distortions of competition. The Commission, therefore, proposed the appointment of a monitoring trustee, physically present in the Bank.

4. COMMENTS FROM INTERESTED PARTIES ON THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

4.1. COMMENTS FROM THE BANK

- (150) On 30 August 2012, the Commission received comments from the Bank on the Piraeus Opening Decision.
- (151) Regarding the appropriateness of the measures, the Bank noted that the debt crisis in Greece and the euro area has been an unprecedented situation. The capital injection in May 2009, equivalent to 1,0 % of its RWA, was a direct response to the exceptional turbulence in global financial markets. At the end of 2011, Greece's additional capital injection of EUR 380 million was equivalent to 1,1 % of the Bank's RWA at that time and was designed to address the capital shortfall that was expected to derive from the deepening recession. The EUR 4,7 billion recapitalisation of the Bank by the HFSF was the first part of the recapitalisation that would address the capital shortfall that resulted from the PSI and from the assessment of the loan portfolios carried out by Blackrock ⁽⁸⁰⁾ as well as from the deepening recession.

⁽⁷⁵⁾ See Annex, chapter III, section C.

⁽⁷⁶⁾ 'Finally, as regards the warrants issued by the HFSF, it should be clarified that Hellenic Republic will seek the approval of the European Commission, prior to any buy-back to the warrants by Alpha Bank or by any State entity (including HFSF), so that the European Commission can verify that the envisaged buy-back of the warrants is not contrary to the State remuneration requirements under State aid rules.'

⁽⁷⁷⁾ Communication from the Commission — The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8).

⁽⁷⁸⁾ Recital 64 of the Piraeus Opening Decision.

⁽⁷⁹⁾ Recital 68 of the Piraeus Opening Decision.

⁽⁸⁰⁾ See recital 35.

- (152) It also took the view that the appointment by Greece and the HFSF of one and two members respectively in the Bank's Board of Directors as their representatives and of one member of the HFSF as a member of the Bank's Board Risk Committee, along with others, ensured that it could not take excessive risks.
- (153) Regarding the necessity of the measures, the Bank commented that the form of the recapitalisation as bridge financing was decided by the Greek authorities and by the European Union, the IMF and the ECB and that the amount of bridge recapitalisation of EUR 4,7 billion almost offset the PSI effect. As regards the conversion of the bridge recapitalisation into permanent capital, after the protracted period without a government in Greece in the second quarter of 2012, once a final structure was approved, the dilution of existing shareholders would inevitably be triggered and an adequate remuneration agreed (depending on the terms and instruments used).
- (154) Regarding the proportionality of the measures, the Bank noted that since 2009 it had adjusted its lending practices by applying stricter credit criteria, accelerated repayment terms and reduced credit limits. As of the first quarter of 2009, all requests for disbursements over a specific amount had been reviewed and approved by the deputy Managing Director and the General Manager/Group Credit. It would not alter its current business practices as laid out in the business plan submitted to the Bank of Greece and not undermine current lending standards. Those standards were amongst the strictest in the industry as also indicated by the very good results the Bank had achieved in the Blackrock Solutions diagnostic exercise. Those intentions would be secured by the representation of Greece and HFSF in the Bank's Board of Directors.
- (155) Regarding the Commission's proposal for the appointment of a monitoring trustee, the Bank's view was that there was already close monitoring by several third parties, such as the Bank of Greece, external auditors, Greece's representative and HFSF representatives.

4.2. COMMENTS FROM ANOTHER GREEK BANK

- (156) On 3 January 2013, the Commission received comments from a Greek bank on the Piraeus Opening Decision. That Greek bank commented that the recapitalisation of Greek banks by the HFSF constituted, in principle, a welcome step towards a healthier and more viable banking system and expressed no objection to the recapitalisation of the Bank.
- (157) However, while expressing its entire support for the principle of the recapitalisation of Greek banks by the HFSF, that Greek bank explained that, in order to minimise distortions of competitions and to avoid discrimination, it expected recapitalisation by the HFSF to be open to all banks operating in Greece under similar conditions.

5. COMMENTS FROM GREECE ON THE FORMAL INVESTIGATION PROCEDURE ON THE FIRST BRIDGE RECAPITALISATION

- (158) On 5 September 2012, Greece submitted comments, which had been prepared by the Bank of Greece and the HFSF.

5.1. COMMENTS FROM THE BANK OF GREECE

- (159) Regarding the appropriateness of the first bridge recapitalisation, the Bank of Greece noted that the amount of EUR 18 billion of capital with which the HFSF recapitalised the four largest Greek banks in May 2012 was less than the final amount which was needed for those banks to gradually reach and maintain a Core Tier 1 capital ratio set at 10 % by June 2012 and a Core Tier 1 capital ratio set at 7 % under a three-year adverse stress scenario. It also noted that the first bridge recapitalisation was temporary, given that the recapitalisation process would be concluded with share capital increases by those four banks.
- (160) The Bank of Greece also observed that the recapitalisation of the largest Greek banks was part of the longer-term restructuring of the Greek banking sector. It noted that where a bank remains in private hands, the management will most probably remain the same, while if a bank becomes State-owned (that is to say, owned by the HFSF), the HFSF could appoint new management which, in any case, will be assessed by the Bank of Greece. The Bank of Greece noted that it assesses the corporate governance framework, the adequacy of management and the risk profile of every bank on an ongoing basis in order to ensure that excessive risks are not taken. It also pointed out that the HFSF had already appointed representatives in the Boards of Directors of the recapitalised banks.

- (161) Regarding the necessity of the first bridge recapitalisation, the Bank of Greece observed that the Bank's recapitalisation was limited so as to ensure that the then applicable minimum capital requirements (8 %) were met. It also stated that the protracted period of time prior to the recapitalisations was due to the sharp deterioration of the operating environment in Greece and the impact of the PSI programme, to the complexity of the whole project and to the need to maximise private investors' participation in the share capital increases.
- (162) Regarding the proportionality of the first bridge recapitalisation, the Bank of Greece pointed out that the full implementation of the restructuring plan to be submitted to the Commission would be safeguarded by the fact that the suspension of the voting rights of the HFSF would be lifted if, inter alia, the restructuring plan were substantively violated. The Bank of Greece also observed that the Bank's difficulties were not due either to an underestimation of risks by the Bank's management or to commercially aggressive actions.

5.2. COMMENTS FROM THE HFSF

- (163) Regarding the appropriateness of the first bridge recapitalisation, to address the issue of potential State interference in the event that the State provides high amounts of State aid through the HFSF and the HFSF has full voting rights, the HFSF stated that the HFSF-funded banks are not considered to be public entities or under State control and that they will not be controlled by the State after they have been permanently recapitalised by the HFSF. The HFSF pointed out that it is a fully independent private-law legal entity with autonomy of decision. It is not subject to government control, pursuant to Article 16(C)(2) of the HFSF law, according to which the credit institutions to which the HFSF has provided capital support are not part of the broader public sector. It also pointed to the governing structure of the HFSF.
- (164) As regards the intervention of the HFSF in the Bank's management, the HFSF noted that it would respect the Bank's autonomy and not interfere with its day-to-day management given that its role is limited to that laid down in the HFSF Law. It stated that there would not be any State interference or coordination and that the decisions of the Bank regarding the lending process (inter alia on collateral, pricing and solvency of borrowers) would be taken on the basis of commercial criteria.
- (165) The HFSF pointed out that the HFSF Law and the pre-subscription agreement contained appropriate safeguards in order to prevent existing private shareholders from excessive risk-taking. It pointed to elements such as (i) the appointment of HFSF representatives as independent non-executive members of the Board of Directors of the Bank and their presence at committees, (ii) the HFSF carrying out due diligence in the Bank and (iii) the fact that after the final recapitalisation its voting rights would be restricted only for as long as the Bank complied with the terms of the restructuring plan.
- (166) The HFSF stated that there are appropriate measures in place in order to ensure that banks in which the HFSF participates do not share commercially sensitive information between them. They include the appointment of different HFSF representatives to those banks, the mandates addressed to those representatives which specifically safeguard against the flow of information from one representative to another and clear internal instructions to those representatives not to transmit commercially sensitive information of the banks. Moreover, the HFSF stated that it does not exercise its rights in relation to the banks in a manner which may prevent, restrict, distort or significantly lessen or impede effective competition. Lastly, the HFSF pointed out that the members of its Board of Directors and its employees are subject to strict confidentiality rules and fiduciary duties and are bound by provisions concerning professional secrecy with regards to its affairs.

6. ASSESSMENT OF AID RELATED TO THE ACQUISITION OF ATE AND THE GREEK OPERATIONS OF THE THREE CYPRIOT BANKS

6.1. ASSESSMENT OF AID RELATED TO ATE

- (167) In the ATE Restructuring Decision, the Commission concluded that the measures described in recitals 58 and 108 of this Decision constitute State aid and that they are in line with the internal market.
- (168) In the ATE Liquidation Decision, the Commission concluded that the measures described in recitals 109 and 110 of this Decision constitute State aid to the ATE Transferred Activities. Moreover, the Commission concluded that the aid to ATE is compatible with the internal market only if the integration of the ATE Transferred Activities is implemented according to plan and if the restructuring plan of the Bank – which includes the ATE Transferred Activities – enables its long-term viability to be restored. That restoration of long-term viability will be established in section 7.6.2.
- (169) Therefore, the Commission does not have to reassess the aforementioned measures and confirms that they are compatible with the internal market.

6.2. ASSESSMENT OF AID RELATED TO THE GREEK OPERATIONS OF THE THREE CYPRIOT BANKS (MEASURE C)

6.2.1. Existence and the amount of aid

- (170) The Commission has to establish the existence of State aid within the meaning of Article 107(1) of the Treaty in relation to measure C. According to that provision, State aid is any aid granted by Member State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States.
- (171) The recapitalisation by the HFSF of the Bank for EUR 524 million, was committed in March 2013 during the bidding process for the acquisition of the Cypriot Transferred Activities. The measure was therefore granted in March 2013. The actual recapitalisation took place in the framework of the Spring 2013 recapitalisation ⁽⁸¹⁾.
- (172) The recapitalisation of the Bank was made by the HFSF, which is an entity set up and financed by Greece to support banks, and so the disbursement was made by using State resources.
- (173) As to the beneficiary of the State aid, the recapitalisation, as explained in recital 72, aimed to cover the capital needs that would result from the acquisition of the Cypriot Transferred Activities. Moreover, the recapitalisation would be available to any Greek bank that would acquire the Cypriot Transferred Activities. The bid of the Bank, as submitted to the HFSF for approval, took into account a recapitalisation by the HFSF. At that time capital was scarce for the Greek banks and none of them would have acquired the Cypriot Transferred Activities without the promise of a recapitalisation. Therefore, even though the formal recipient of the capital provided by the HFSF is the Bank, the Commission considers that the beneficiary of the State aid is the Cypriot Transferred Activities, since the measure enables them to be sold to a Greek bank. Without the recapitalisation of the Bank, they would not have been acquired by a Greek bank. They would have been left in groups undergoing extreme difficulties (both Cyprus Popular Bank and Bank of Cyprus were under resolution in view of their large capital needs) and would therefore probably have failed or, at least, would have suffered from a large outflow of deposits. In relation to the existence of an advantage, the Commission also observes that the recapitalisation of the Bank by the HFSF does not comply with the market economy investor principle: at that time of high uncertainty, a private investor operating under normal market conditions would not have given a commitment to inject a large amount of capital into the Bank in the future without knowing the terms of the future injection (that is to say the issue price) in advance.
- (174) Moreover, the measure is *prima facie* selective since it applies exclusively to the Cypriot Transferred Activities (each of which constitutes an undertaking) and not to any other undertaking.
- (175) Last, the Cypriot Transferred Activities, that is to say, the Greek branches of the three Cypriot Banks, compete with other banks, including subsidiaries of foreign banks, which are active in Greece or potentially interested in entering the Greek market. Hence, the rescue of those activities distorts competition and has an effect on trade between Member States.
- (176) The Commission therefore concludes that the recapitalisation of the Bank by the HFSF amounting to EUR 524 million constitutes State aid within the meaning of Article 107(1) of the Treaty.

Beneficiary of the State aid

- (177) As already explained in recital 173, the Commission regards the Cypriot Transferred Activities as being the beneficiary of the disbursement of the EFSF bonds by the HFSF.
- (178) Furthermore, as explained in recitals 71 and 173, the Cypriot Transferred Activities, that is to say the Greek branches of the three Cypriot Banks, had to be acquired by another bank for reasons of financial stability and mainly because the three Cypriot Banks were in a very difficult situation. Therefore, the sale of the Cypriot Transferred Activities and whether that sale entails State aid to the buyer, that is to say the Bank, should be examined under the 'Viability through sale of a bank' section of the Restructuring Communication ⁽⁸²⁾.

⁽⁸¹⁾ See recital 101.

⁽⁸²⁾ Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

- (179) For the purpose of that sale, the Bank of Greece decided to contact only the largest domestic banks operating in Greece, of which only the Bank and two other banks submitted non-binding offers. The Bank is the only bidder that submitted a valid binding offer. The limited set of buyers contacted cannot exclude that the tender was open given that it was reasonable not to expect a formal bid from other investors. Indeed, at that time, due to the financial instability of the Greek banking system, which registered large loan losses due to the deep and protracted recession, foreign banks present in Greece had divested, or were about to divest themselves of their Greek activities (e.g. Geniki, MBG, Emporiki Bank). In other words, they were exiting the Greek market and were not seeking new investments opportunities in Greece. Moreover it is reasonable to assume that only an investor able to quickly stabilise and make viable the acquired activities — i.e. a large banking group — would have been interested in those activities. Finally, due to the very short timeframe available to close the sale — which was dictated by the financial crisis within which the selling banks were operation — the participation of foreign banks or other types of investors in the sales procedure was very unlikely, since those investors would normally have wanted to carry out a due diligence of the assets offered for sale before submitting a formal bid.
- (180) The Commission, therefore, concludes that the sale price of the Cypriot Transferred Activities was the market price and that aid to the buyer, that is to say the Bank, can be excluded.

6.2.2. Legal basis for the compatibility assessment

- (181) Article 107(3)(b) of the Treaty empowers the Commission to find that aid is compatible with the internal market if it is intended 'to remedy a serious disturbance in the economy of a Member State'.
- (182) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks may remedy that disturbance. This has been confirmed in the 2008 Banking Communication, the Recapitalisation Communication, and the Restructuring Communication. The Commission still considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication ⁽⁸³⁾ and the 2013 Banking Communication ⁽⁸⁴⁾.
- (183) In respect of the Greek economy, in its decisions approving and prolonging the Greek Banks Support Scheme as well as in its approvals of State aid measures granted by Greece to individual banks ⁽⁸⁵⁾, the Commission has acknowledged that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Therefore, the legal basis for the assessment of the aid measures should be Article 107(3)(b) of the Treaty.
- (184) During the financial crisis, the Commission has developed compatibility criteria for different types of aid measures. Principles for assessing aid measures were first laid down in the 2008 Banking Communication.
- (185) In line with point 15 of the 2008 Banking Communication, in order for an aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility:
- (a) Appropriateness: The aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.
 - (b) Necessity: The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to achieve the objective, and take the form most appropriate to remedy the disturbance.
 - (c) Proportionality: The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to achieve the measure's objectives.

⁽⁸³⁾ Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7).

⁽⁸⁴⁾ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, (OJ C 216, 30.7.2013, p. 1).

⁽⁸⁵⁾ See footnote 6.

- (186) During the financial crisis, the Commission has developed compatibility criteria for different types of aid measures. Principles for assessing aid measures were first laid down in the 2008 Banking Communication.
- (187) The Recapitalisation Communication sets out further guidance on the level of remuneration required for State capital injections.
- (188) Finally, the Commission has explained in the Restructuring Communication how it will assess restructuring plans. In its assessment of the restructuring plan of the Bank under the Restructuring Communication, the Commission will take into account all the measures listed in Table 11.

6.2.3. Compliance of the aid measure C with the 2008 Banking Communication and the Recapitalisation Communication

6.2.3.1. Appropriateness

- (189) With respect to the appropriateness of the measure, that is to say, the commitment given by the HFSF to recapitalise the Bank amounting to EUR 524 million, the Commission considers that the measure is appropriate because it allowed the Greek operations of the three Cypriot Banks to be sold to the Bank.
- (190) In the absence of the measure, none of the Greek banks, including the Bank, would have been willing to acquire the Cypriot Transferred Activities at a time no bank outside of Greece was willing to enter that market. If the Cypriot Transferred Activities had not been acquired, those activities and in particular the deposits of the Greek branches would have been in danger. The measure therefore ensured that financial stability in Greece is maintained. On that basis, the Commission finds that the measure is appropriate as rescue aid.

6.2.3.2. Necessity

- (191) In line with the 2008 Banking Communication, the aid measure must, in its amount and form, be necessary to achieve the objective of the measure. It implies that a capital injection, for example, must be of the minimum amount necessary to achieve that objective.
- (192) At a time when it was very difficult for Greek banks to find capital, the measure covered the capital needs that would result from the payment of the purchase price for the acquisition of the Cypriot Transferred Activities so that the acquisition could occur.
- (193) Moreover, the Commission notes positively that the aid took the form of a capital injection in the framework of the Spring 2013 recapitalisation as the HFSF did not give a grant to the Bank but received ordinary shares for the same value.
- (194) The measure is therefore necessary to achieve the objective of limiting the disturbance in the Greek banking system and the economy as a whole.

6.2.3.3. Proportionality

- (195) The aided activities were sold after the Greek authorities launched a call for tender. In addition, the acquired activities were quickly integrated within the Bank. The aid did not allow the aided activities to remain as separate competitors on the market.
- (196) Furthermore the amount of the aid was relatively small as it corresponds to around 3 % of the total net loans of the Cypriot Transferred Activities (or around 3 % of their RWA) ⁽⁸⁶⁾.
- (197) Therefore, the Commission considers that the measure was designed in such a way as to minimise undue distortions of competition.

6.2.3.4. Conclusion on the compliance with the 2008 Banking Communication and the Recapitalisation Communication

- (198) On the basis of the analysis in recitals 189 to 197, it is concluded that the recapitalisation of the Bank by the HFSF amounting to EUR 524 million was appropriate, necessary to achieve the objective of limiting the disturbance in the Greek banking system and the economy as a whole and was designed in such a way as to minimise undue distortions of competition, and is in line with the 2008 Banking Communication and the Recapitalisation Communication.

⁽⁸⁶⁾ Restructuring plan submitted on 25 June 2014, p. 40.

6.2.4. Compliance of the aid measure with the Restructuring Communication

- (199) As explained in recital 178, the sale of the Cypriot Transferred Activities falls under the section of the Restructuring Communication on 'Viability through sale of a bank'. In line with point 17 of the Restructuring Communication, in the case of the sale of an ailing bank to another financial institution, the requirements of viability, own contribution and limitations of distortions of competition need to be respected.

6.2.4.1. Long-term viability of the Cypriot Transferred Activities through sale

- (200) Point 17 of the Restructuring Communication clarifies that the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.
- (201) The Bank successfully integrated the Cypriot Transferred Activities. As stated in section 7.6, on the basis of its restructuring plan the Bank can be considered as a viable entity. Therefore, the fact that the Cypriot Transferred Activities have been transferred to the Bank allows their long-term viability to be restored.

6.2.4.2. Own contribution and burden-sharing

- (202) Concerning the contribution of the shareholders of the three Cypriot Banks to the restructuring costs, the Commission observes that the three Cypriot Banks did not sell the Cypriot Transferred Activities at their book value but at the value adjusted in line with the PIMCO report. In addition, even after that adjustment was made, the three Cypriot Banks transferred more assets than liabilities to the Bank. Therefore, sufficient burden-sharing of shareholders was achieved since the loss in the value of the Cypriot Transferred Activities was borne by their sellers.

6.2.4.3. Measures to limit distortions of competition

- (203) Regarding measures to limit distortions of competition, point 30 of the Restructuring Communication provides that 'the Commission takes as a starting point for its assessment of the need for such measures, the size, scale and scope of the activities that the bank in question would have upon implementation of a credible restructuring plan ... The nature and form of such measures will depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the market or markets on which the beneficiary bank will operate.'
- (204) As described in recital 196, the amount of aid corresponds to around 3 % of the RWA of the Cypriot Transferred Activities. Therefore the Commission considers it to be relatively small given that that amount enabled the sale of the Cypriot Transferred Activities and, as explained in recital 190, ensured the maintenance of the financial stability in Greece.
- (205) Following the sale of the Cypriot Transferred Activities, the Greek branches ceased to exist as stand-alone competitors as they were fully integrated into the Bank.
- (206) The Commission concludes that given the relatively small aid amount to the Cypriot Transferred Activities and the fact that they will not continue to exist as stand-alone competitors, there are no undue distortions of competition.

6.2.4.4. Conclusion on compliance with the Restructuring Communication

- (207) On the basis of the analysis in recitals 199 to 206, it is concluded that the sale of the Cypriot Transferred Activities and their integration into the Bank ensure their long-term viability, that aid is limited to the minimum necessary and that there is no undue distortion of competition, in line with the Restructuring Communication.
- (208) The recapitalisation of the Bank amounting to EUR 524 million by the HFSF should therefore be declared compatible with the internal market.

7. ASSESSMENT OF AID GRANTED TO THE BANK

7.1. EXISTENCE AND AMOUNT OF AID

- (209) The Commission has to establish the existence of State aid to the Bank within the meaning of Article 107(1) of the Treaty.

7.1.1. Existence of aid in the measures granted under the Greek Bank Support Scheme

7.1.1.1. State liquidity support granted under the guarantee and the government bond loan measures (measure L1)

- (210) The Commission has already established in the decisions approving and prolonging the Greek Banks Support Scheme⁽⁸⁷⁾ that liquidity support granted under the scheme constitutes aid. In 2011, the Bank issued bonds guaranteed by the State amounting to a total of EUR 9,9 billion. Greece also lent the Bank EUR 1 289 million of government bonds. At the end of March 2014, the outstanding amount of bonds guaranteed by the State and of government bonds was EUR 9,9 billion and EUR 1 024 million respectively⁽⁸⁸⁾. Future liquidity support granted under the Greek Banks Support Scheme would also constitute aid.

7.1.1.2. State recapitalisation granted under the recapitalisation measure (measure A)

- (211) The Commission has already established in the Decision of 19 November 2008 on the Greek Banks Support Scheme that recapitalisations to be granted under its recapitalisation measure constitutes aid. The Bank has received EUR 750 million by means of preference shares, which represents 2,1 % of the Bank's RWA⁽⁸⁹⁾.

7.1.2. Existence of aid in the State-guaranteed ELA (measure L2)

- (212) The Commission clarified in point 51 of the 2008 Banking Communication that the provision of central banks' funds to financial institutions does not constitute aid if four cumulative conditions are met regarding the solvency of the financial institution, the collateralisation of the facility, the interest rate charged to the financial institution, and the absence of counter-guarantee from the State. Since the State-guaranteed ELA granted to the Bank does not comply with those four cumulative conditions, in particular because it is State-guaranteed and it is granted in conjunction with other support measures, it cannot be concluded that the State-guaranteed ELA does not constitute State aid.
- (213) The State-guaranteed ELA meets the requirements laid down in Article 107(1) of the Treaty. First, because that measure includes a State guarantee in favour of the Bank of Greece, any loss will be borne by the State. The measure therefore involves State resources. ELA enables banks to get funding at a time when they have no access to the wholesale funding market and to the regular Eurosystem refinancing operations. The State-guaranteed ELA therefore grants an advantage to the Bank. Because the State-guaranteed ELA is limited to the banking sector the measure is selective. Because the State-guaranteed ELA allows the Bank to continue operating on the market and avoids it defaulting and having to exit the market, it distorts competition. Since the Bank is active in other Member States and since financial institutions from other Member States operate or would potentially be interested in operating in Greece, the advantage granted to the Bank affects trade between Member States.
- (214) On the basis of the above, the Commission considers that the State-guaranteed ELA (measure L2) constitutes State aid. The amount of State-guaranteed ELA has varied over time. On 31 December 2012, it amounted to around EUR 31,4 billion. After a sharp decrease in 2013, it amounted to only EUR 750 million at the end of that year.

7.1.3. Existence of aid in the measures granted through the HFSF

7.1.3.1. First bridge recapitalisation (measure B1)

- (215) In section 5.1 of the Piraeus Opening Decision, the Commission has already concluded that the first bridge recapitalisation constitutes State aid. The capital received amounted to EUR 4,7 billion.

7.1.3.2. Second bridge recapitalisation (measure B2)

- (216) Measure B2 was implemented with HFSF resources, which, as explained in recital 65 of the Piraeus Opening Decision, involve State resources.

⁽⁸⁷⁾ See footnote 4.

⁽⁸⁸⁾ Restructuring plan submitted on 25 June 2014, p. 51

⁽⁸⁹⁾ See Piraeus Opening decision, recital 41.

- (217) As regards the existence of an advantage, measure B2 increased the Bank's capital ratio to a level that allowed it to continue to function on the market and to access Eurosystem funding. Furthermore, the remuneration of measure B2 consisted of the accrued interests on EFSF notes and an additional 1 % fee. Because that remuneration is manifestly lower than the remuneration of similar capital instruments in the market, the Bank would have certainly been unable to raise that capital on such terms in the market. Therefore, measure B2 granted an advantage to the Bank from State resources. As the measure was made available only to the Bank, it is selective in nature.
- (218) The position of the Bank was strengthened as a result of measure B2 since the Bank was provided with the financial resources necessary to continue to comply with the capital requirements, thus leading to distortions of competition. Since the Bank is active in banking markets in other Member States and since financial institutions from other Member States operate in Greece or would potentially be interested in operating in Greece measure B2 affects trade between Member States.
- (219) The Commission considers that measure B2 constitutes State aid. It was notified as aid by the national authorities. The capital received amounted to EUR 1 553 million.

7.1.3.3. *Commitment letter (measure B3)*

- (220) By measure B3, the HFSF committed to provide the additional capital necessary to complete the recapitalisation of the Bank up to the amount requested by the Bank of Greece in the framework of the stress test of 2012. The HFSF receives its resources from the State. The letter therefore commits State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by law. Accordingly the use of those State resources is imputable to the State. The HFSF gave a commitment to provide up to EUR 1 082 million of additional capital.
- (221) The commitment letter granted an advantage to the Bank because it reassured depositors that the Bank would be able to raise the entire amount of capital it had to raise, that is to say, the HFSF would provide the capital should the Bank fail to raise it on the market. That commitment also facilitated the raising of private capital from the market, since investors were reassured that, if the Bank could not find part of the capital from the market, the HFSF would provide it. No private investor would have accepted to commit before the terms of the recapitalisation were known, and at that time the Bank had no access to capital markets. That advantage is selective since it was not granted to all the banks operating in Greece.
- (222) Since the Bank is active in other Member States and since financial institutions from other Member States operate or would potentially be interested in operating in Greece, measure B3 is also likely to affect trade between Member States and to distort competition.
- (223) Measure B3 therefore constitutes aid and was notified as State aid by the Greek authorities.

7.1.3.4. *HFSF's participation in the Spring 2013 recapitalisation to cover the capital needs of the stress test of 2013 (measure B4)*

- (224) HFSF's participation in the Spring 2013 recapitalisation aiming to cover the capital needs identified in the stress test of 2012 (measure B4) is the partial conversion of the first and second bridge recapitalisations (measures B1 and B2) into a permanent recapitalisation of EUR 5 891 million in ordinary shares. Since measure B4 is the partial conversion of aid already granted, it still involves State resources but it does not increase the nominal amount of aid. However for a given nominal amount of aid, it increases the advantage to the Bank (and therefore the distortions of competition) since it is a permanent recapitalisation and not a temporary recapitalisation as in the case of measures B1 and B2.
- (225) The Commission notes that such support was not granted to all banks operating in Greece. As regards distortions of competition and effect on trade, the Commission notes for instance that the aid enabled the Bank to pursue its operations in other Member States. A liquidation of the Bank would have led to the termination of its activities abroad, through the liquidation of those activities or their sale. In addition, certain banks from other Member States were operating in Greece. Therefore, the measure distorts competition and affects trade between Member States. The Commission therefore considers that measure B4 constitutes State aid.

7.1.3.5. *Conclusion on measures B1, B2, B3 and B4*

- (226) Measures B1, B2, B3 and B4 constitute State aid within the meaning of Article 107(1) of the Treaty. The amount of State aid included in measures B1, B2, and B3 is EUR 7 335 million. As indicated in section 7.1.3.3, since the Bank attracted private capital amounting to EUR 1 444 million in the Spring 2013 recapitalisation, only part of the first and second bridge recapitalisation (measures B1 and B2) was converted into a permanent recapitalisation (measure B4). The additional capital of EUR 1 082 million (measure B3) committed by the HFSF was not

necessary and therefore not paid out. The amount of State support paid out was therefore only the sum of the first and the second bridge recapitalisations, that is to say EUR 6 253 million and part of that aid was repaid within six months during the Spring 2013 recapitalisation (measure B4) as the private participation exceeded the amount of the commitment.

- (227) Point 31 of the Restructuring Communication indicates that, besides the absolute amount of aid, the Commission has to take into account the aid 'in relation to the bank's risk-weighted assets'. Measures B1, B2, and B3 were granted over the course of a one-year period, from April 2012 until May 2013. During that period, the RWA of the Bank increased greatly following successive acquisitions. The question therefore arises as to which level of RWA should be used, and more particularly whether the State aid should be assessed by reference to the RWA that existed at the beginning of the period or at the end of the period. Measures B1, B2, and B3 aim at covering a capital need identified by the Bank of Greece in March 2012 (the stress test of 2012). In other words, the capital needs that those State support measures aim to address already existed in March 2012. The Commission therefore considers that the aid amount included in measures B1, B2, and B3 should be compared to the RWA of the Bank at 31 March 2012. It is also recalled that, after March 2012 and until the Spring 2013 recapitalisation, the Bank of Greece did not take into account acquisitions made by Greek banks to adjust their capital needs upwards or downwards. That element further demonstrates that measures B1, B2, and B3 were aid measures related to the perimeter of the Bank as it existed at 31 March 2012.
- (228) The aid granted to the Bank amounted to the sum of the first and the second bridge recapitalisations (measures B1 and B2) and the commitment given by the HFSF (measure B3), that is to say EUR 7 335 million or 21,5 % of the Bank's RWA at 31 March 2012.
- (229) The aid paid out to the Bank amounted to the sum of the first and the second bridge recapitalisations (measures B1 and B2), that is to say EUR 6 253 million or 18,4 % of the Bank's RWA at 31 March 2012.
- (230) Since the Bank managed to attract private capital, the amount definitively injected by the HFSF into the Bank in the form of ordinary shares amounted to EUR 5 891 million, which represents 17,3 % of the Bank's RWA at 31 March 2012.

7.1.4. Conclusion on the existence and total amount of aid received by the Bank

- (231) Measures A, B1, B2, B3, B4, L1 and L2 constitute State aid within the meaning of Article 107(1) of the Treaty. Those measures are summarised in Table 11.

Table 11

Overview of the total aid received by the Bank

Ref.	Measure	Type of measure	Amount of aid	Aid/RWA
A	Preference Shares	Capital support	EUR 750 million	2,1 %
B1	First bridge recapitalisation	Capital support	EUR 4 700 million	13,8 %
B2	Second bridge recapitalisation		EUR 1 553 million	4,5 %
B3	Commitment letter		EUR 1 082 million	3,2 %
Total capital aid granted to the Bank A + B1 + B2 + B3			EUR 8 085 million	23,7 %

Ref.	Measure	Type of measure	Amount of aid	Aid/RWA
Total aid paid out to the bank A + B1 + B2			EUR 7 003 million	21,6 %
B4	Recapitalisation	Capital support	EUR 5 891 million	17,3 %
Total capital aid paid out to the Bank minus aid repaid within 6 months			EUR 6 641 million	19,4 %
Ref.	Measure	Type of measure	Nominal amount of aid	
L1	Liquidity support	Guarantee Bond loan	Guarantees: EUR 9,9 billion Bond loans: EUR 1,3 billion	
L2	State-guaranteed ELA	Funding and Guarantee	EUR 31,4 billion	
Total liquidity aid granted to the Bank			EUR 42,6 billion	

7.2. LEGAL BASIS FOR THE COMPATIBILITY ASSESSMENT

- (232) As concluded in recital 183, the legal basis for the assessment of the aid measures should be Article 107(3)(b) of the Treaty ⁽⁹⁰⁾.
- (233) During the financial crisis, the Commission has developed compatibility criteria for different types of aid measures. Principles for assessing aid measures were first laid down in the 2008 Banking Communication.
- (234) Guidance for recapitalisation measures can be found in the Recapitalisation Communication and the 2011 Prolongation Communication.
- (235) The Restructuring Communication defines the approach adopted by the Commission as regards the assessment of restructuring plans, in particular the need to return to viability, to ensure a proper contribution from the beneficiary and to limit distortions of competition.
- (236) That framework was complemented by the 2013 Banking Communication, which applies to aid measures notified or granted without prior approval by the Commission after 31 July 2013.

7.2.1. Legal basis for the assessment of the compatibility of the liquidity support to the Bank (measure L1)

- (237) The liquidity support already received by the Bank has been definitively approved through the successive decisions authorising the measures under the Greek Banks Support Scheme and its amendments and prolongations ⁽⁹¹⁾. Any future liquidity support for the Bank will have to be granted under a scheme duly approved by the Commission. The terms of such aid will have to be authorised by the Commission before it is granted and therefore do not have to be further assessed in this decision.

7.2.2. Legal basis for the assessment of the compatibility of the preference shares (measure A)

- (238) The recapitalisation granted in 2009 in the form of preference shares (measure A) was granted under the recapitalisation measure of the Greek Banks Support Scheme, which was approved in 2008 under the 2008 Banking Communication. It therefore does not have to be reassessed under the 2008 Banking Communication and has to be assessed only under the Restructuring Communication.

⁽⁹⁰⁾ It is also noted that Greece granted the aid to the Bank under the Greek Banks Support Scheme which has been authorised by the Commission on the basis of Article 107(3)(b) of the Treaty as well as through the HFSF whose creation has also been approved by Commission decision.

⁽⁹¹⁾ See footnote 6.

7.2.3. Legal basis for the assessment of the compatibility of the State-guaranteed ELA (measure L2)

- (239) The compatibility of the State-guaranteed ELA (measure L2) should be first assessed on the basis of the 2008 Banking Communication and the 2011 Prolongation Communication. Any State-guaranteed ELA granted without prior approval by the Commission after 31 July 2013 falls under the 2013 Banking Communication.

7.2.4. Legal basis for the assessment of the compatibility of the HFSF recapitalisations (measures B1, B2, B3, and B4)

- (240) The compatibility of the HFSF recapitalisations (measures B1, B2, B3 and B4), in particular as regards remuneration, should first be assessed on the basis of the 2008 Banking Communication, the Recapitalisation Communication and the 2011 Prolongation Communication. In the Piraeus Opening Decision the Commission expressed doubts as to the compatibility of measure B1 with those Communications. Since they were implemented before 1 August 2013, those measures do not fall under the 2013 Banking Communication. The compatibility of the HFSF recapitalisations (measures B1, B2, B3 and B4) should also be assessed on the basis of the Restructuring Communication.

7.3. COMPLIANCE OF MEASURE L2 WITH THE 2008 BANKING COMMUNICATION, THE RECAPITALISATION COMMUNICATION AND THE 2011 PROLONGATION COMMUNICATION

- (241) In order for an aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility: appropriateness, necessity and proportionality.
- (242) Because Greek banks were shut out from wholesale markets and became entirely dependent on central bank financing, as indicated in recital 37, and since the Bank could not borrow a sufficient amount of funds through the standard refinancing operations, the Bank relied on State-guaranteed ELA to obtain sufficient liquidity thereby preventing it from defaulting. The Commission considers measure L2 to be an appropriate mechanism to remedy the serious disturbance which would have been caused by the default of the Bank.
- (243) Since the State-guaranteed ELA entails a relatively high cost of funding for the Bank, the Bank has a sufficient incentive to avoid relying on that source of funding for developing its activities. The Bank had to pay an interest rate of [...] bps higher than standard refinancing operations with the Eurosystem. In addition, the Bank had to pay a guarantee fee of [...] bps to the State. As a result, the total cost of State-guaranteed ELA for the Bank is much higher than the normal costs of ECB refinancing. In particular, the difference between the former and the latter is higher than the level of the guarantee fee requested by the 2011 Prolongation Communication. As a result, the total remuneration charged by the State can be considered as sufficient. As regards the amount of the State-guaranteed ELA, it is regularly reviewed by the Bank of Greece and the ECB based on the actual needs of the Bank. They closely monitor its use and ensure it is limited to the minimum necessary. Therefore measure L2 does not provide the Bank with excess liquidity which could be used to finance activities distorting competition. It is limited to the minimum amount necessary.
- (244) Such close scrutiny of the use of the State-guaranteed ELA and regular verification that its use is limited to the minimum also ensures that that liquidity is proportionate and does not lead to undue distortion of competition. The Commission also notes that Greece has given a commitment that the Bank will implement a restructuring plan reducing its reliance on central bank funding and that the Bank will comply with behavioural limitations, as analysed in section 7.6. Those factors ensure that the reliance on liquidity support will end as soon as possible and that such aid is proportionate.
- (245) Measure L2 therefore complies with the 2008 Banking Communication and the 2011 Prolongation Communication. As the 2013 Banking Communication has not introduced further requirements as regards guarantees, measure L2 also complies with the 2013 Banking Communication.

7.4. COMPLIANCE OF MEASURES B1, B2, B3 AND B4 WITH THE 2008 BANKING COMMUNICATION, THE RECAPITALISATION COMMUNICATION, THE 2011 PROLONGATION COMMUNICATION AND THE 2013 BANKING COMMUNICATION

- (246) As indicated in recital 241, and in line with point 15 of the 2008 Banking Communication, in order for an aid to be compatible under Article 107(3)(b) of the Treaty it must comply with the general criteria for compatibility⁽⁹²⁾: appropriateness, necessity and proportionality.

⁽⁹²⁾ See recital 41 of Commission Decision in Case NN 51/2008 Guarantee scheme for banks in Denmark (OJ C 273, 28.10.2008, p. 2).

- (247) The Recapitalisation Communication and the 2011 Prolongation Communication set out further guidance on the level of remuneration required for State capital injections.

7.4.1. Appropriateness of the measures

- (248) The Commission considers the HFSF recapitalisations (measures B1, B2, B3, and B4) to be appropriate because they enable the Bank to comply with capital requirements. Without the HFSF recapitalisations, the Bank would have been unable to pursue its activities and would have lost access to ECB refinancing operations.
- (249) In that respect, the Commission noted in the Piraeus Opening Decision that the Bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, the Bank is a systemically important bank for Greece. Consequently, a default by the Bank would have created a serious disturbance in the Greek economy. Under the then prevailing circumstances, financial institutions in Greece had difficulties in accessing funding. That lack of funding limited their ability to provide loans to the Greek economy. In that context, the disturbance to the economy would have been aggravated by the default of the Bank. Moreover, measures B1, B2, B3 and B4 came about to a significant extent because of the PSI programme, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the Bank. The measures are therefore mainly intended to deal with the results of the PSI programme and contribute to maintaining financial stability in Greece.
- (250) In the Piraeus Opening Decision, the Commission expressed doubts as to whether all the measures possible had been taken immediately to avoid the Bank needing aid again in the future. As indicated in recitals 140 and 141 of this Decision, Greece has given a commitment to implement a number of actions related to the corporate governance and commercial operations of the Bank. As described in recitals 115, 116 and 117, the Bank has also significantly restructured its activities, with many cost reductions already implemented. Therefore the Commission's doubts have been allayed.
- (251) In the Piraeus Opening Decision, the Commission also expressed doubts as to whether sufficient safeguards existed in case the Bank came under State control, or in case private shareholders retained control while the majority of the ownership would be held by the State. The commitments described in recitals 140 and 141 of this Decision ensure that the credit operations of the Bank will be run on a commercial basis and daily business will be protected from State interference. The relationship framework agreed between the HFSF and the Bank also ensures that interests of the State as main shareholder are protected against excessive risk-taking by the management of the Bank.
- (252) Measures B1, B2, B3 and B4 therefore ensure that financial stability in Greece is maintained. Significant actions have been taken to minimise future losses and to ensure that the activities of the Bank are not jeopardised by inappropriate governance. On that basis, the Commission finds that measures B1, B2, B3 and B4 are appropriate.

7.4.2. Necessity — limitation of the aid to the minimum

- (253) In line with the 2008 Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. It means that the capital injection must be of the minimum amount necessary to achieve the objective.
- (254) The amount of capital support was calculated by the Bank of Greece in the framework of the stress test of 2012 so as to ensure that the Bank's Core Tier 1 capital ratio remained above a certain level over the period 2012-2014, as reflected in Table 3. Measures B1, B2, B3 and B4 therefore do not provide the Bank with any excess capital. As explained in recital 250, actions have been taken to reduce the risk that the Bank will need additional aid in the future.
- (255) As regards the remuneration of the first and second bridge recapitalisations (measures B1 and B2), the Commission recalls that they were granted in May 2012 and December 2012 respectively, and paid in kind in the form of EFSF notes. The HFSF has received as remuneration, from the date of disbursement of the EFSF notes to the date of the Spring 2013 recapitalisation, the accrued interest on the EFSF notes plus a 1 % fee ⁽⁹³⁾. As underlined in the Piraeus Opening Decision, that remuneration is lower than the 7 % to 9 % range defined in the Recapitalisation Communication. However, the period of low remuneration was limited to one year for measure B1 and five months for measure B2 (that is to say, until the conversion of the bridge recapitalisation into a standard recapitalisation in ordinary shares, namely measure B4). While the first and second bridge recapitalisations did not trigger the

⁽⁹³⁾ See recital 96: the accrued interests count as additional contribution by the HFSF and therefore reduced the payment which HFSF had to make to the Bank to pay the Spring 2013 recapitalisation.

dilution of existing shareholders, the Spring 2013 recapitalisation, which was the partial conversion of the first and second bridge recapitalisations, heavily diluted the pre-existing shareholders, as their stake in the Bank's equity fell to 2,3 %. The abnormal situation which prevailed from the date of the first bridge recapitalisation was then terminated. The doubts raised in the Piraeus Opening Decision have therefore been allayed.

- (256) Second, given the atypical source of the Bank's difficulties, where losses came mainly from a debt waiver in favour of the State (the PSI programme and the debt buy-back, which provide a significant advantage to the State, that is to say, a debt reduction) and from the consequences of a protracted recession in its domestic economy, the Commission can accept such a temporary deviation from the standard remuneration requirements set in the Recapitalisation Communication ⁽⁹⁴⁾.
- (257) As regards measure B3, it was a commitment to provide capital in the framework of a future capital increase. That commitment made in December 2012 could have been implemented in an actual injection of capital in May-June 2013, a mere five months later, when the Bank proceeded with its capital increase. Since the Bank attracted private investors, the HFSF was not required to inject the capital committed. In view of the short period during which that commitment to provide capital was in place and for the reasons set out in recital 256, it is acceptable that no remuneration was paid for that commitment.
- (258) As regards measure B4, in line with point 8 of the 2011 Prolongation Communication, capital injections should be subscribed at a sufficient discount to the share price, adjusted for the dilution effect, to give a reasonable assurance of an adequate remuneration for the State. While measure B4 did not provide for a significant discount to the share price as adjusted for the dilution effect, it was, in fact, impossible to achieve a significant discount to the theoretical ex-right price ⁽⁹⁵⁾. Prior to the Spring 2013 recapitalisation, the Bank's market capitalisation was only a few hundred millions euros. In such circumstances, the question arises whether the existing shareholders should have been fully wiped out. The Commission notes that the issue price was set at a 50 % discount to the average market price over the fifty days preceding the determination of the issue price. The Commission also notes that the dilution of the existing shareholders has been huge, since after the Spring 2013 recapitalisation they held only 2,3 % of the shareholding of the Bank. Therefore, applying a further discount on the market price would have had a small impact on the remuneration of the HFSF. In view of the specific situation of the Greek banks explained in recital 256, and given the fact that the need for aid stems to a large extent from a waiver of debt in favour of the State, the Commission considers that the issue price of the shares subscribed by the State was sufficiently low.
- (259) The HFSF also issued warrants and granted one warrant for each new share subscribed by a private investor participating in the Spring 2013 recapitalisation. The HFSF granted those warrants for no consideration. As explained in recital 106, each warrant incorporates the right to purchase 4,48 shares of the HFSF at specified intervals and strike prices. The exercise price is equal to the subscription price of the HFSF increased by an annual and cumulative margin (4 % for year one, 5 % for year two, 6 % for year three, 7 % for year four and 8 % per cent annualised for the last six months). The remuneration received by the HFSF on the shares it owns is de facto capped at those levels. That remuneration is lower than the 7 % to 9 % range defined in the Recapitalisation Communication. However, because those warrants were a key factor in the success of the rights issue and private placement launched by the Bank in the framework of the Spring 2013 recapitalisation, the Commission considers that those warrants enabled the Bank to reduce the amount of aid by EUR 1 444 million. Indeed due to the low capital ratio of the Bank prior to the recapitalisation and the high uncertainty prevailing at the time, the simulations which were then available showed that without the warrants, private investors would not have achieved a sufficient return and would not have participated. For the reasons explained in recitals 249 and 256, because the HFSF would receive a minimal positive remuneration if the warrants were exercised and because it was an objective of the MEFP to attract some private investors to keep some banks under private management, and avoid situations where the whole banking sector would be controlled by the HFSF, the Commission can accept such a deviation from the standard remuneration requirements set out in the Recapitalisation Communication. That acceptance is also based on the fact that the HFSF law, as amended in March 2014, does not provide for any adjustment of the warrants in the event of a non-pre-emptive share capital increase, and that in the event of a rights issue only the warrant strike price may be adjusted and the adjustment may take place only *ex post* and only up to the amount of the proceeds realised from the sale of pre-emption rights of the HFSF. Moreover, the commitment given by Greece that it would seek the approval of the Commission prior to any buy-back of the warrants issued by the HFSF will allow the Commission to ensure that any potential future buy-back does not further reduce the remuneration of HFSF and increase the remuneration of the warrant holders.

⁽⁹⁴⁾ See also section 7.5.1.

⁽⁹⁵⁾ The theoretical ex-right price (TERP) is a generally accepted market methodology for quantifying the dilution effect of share capital increase.

(260) As regards the fact that the HFSF shares are non-voting, the Commission recalls that the need for aid does not come mainly from excessive risk taking. In addition, it was an objective of the MEFP to keep some banks under private management. Moreover, the relationship framework and automatic reintroduction of voting rights in the event of non-implementation of the restructuring plan provide safeguards against future excessive risk taking by private managers. Finally, the PSI and the December 2012 buy-back are a kind of remuneration to the State, as the latter's debt towards the Bank was reduced by several billion euros. For all those reasons, the Commission can accept that the HFSF receives non-voting shares. The Commission therefore concludes that measure B4 was necessary.

(261) In conclusion, measures B1, B2, B3 and B4 are necessary as rescue aid in both their amount and form.

7.4.3. Proportionality — measures limiting negative spill-over effects

(262) The Bank has received a very large amount of State aid. That situation may therefore lead to serious distortions of competition. However, Greece has given a commitment to implement a number of measures aiming at reducing negative spill-over effects. In particular, the commitments provide that the Bank's operations will continue to be run on a commercial basis, as explained in recitals 136 and 137. Greece has also committed to an acquisition ban and to a number of divestments, as described in recitals 138, 139 and 143. Limits to distortions of competition will be further assessed in section 7.6.

(263) A monitoring trustee has been appointed in the Bank to monitor the correct implementation of commitments on corporate governance and commercial operations. That will avoid any detrimental change in the Bank's commercial practice and thereby reduce the potential negative spill-over effects.

(264) Finally a new comprehensive restructuring plan was submitted on 25 June 2014 to the Commission. That restructuring plan will be assessed in section 7.6.

(265) To conclude, the doubts raised in the Piraeus Opening Decision have been allayed. Measures B1, B2, B3 and B4 are proportionate in the light of point 15 of the 2008 Banking Communication.

7.4.4. Conclusion on the compliance of the HFSF recapitalisations with the 2008 Banking Communication, the Recapitalisation Communication and the 2011 Prolongation Communication

(266) It is thus concluded that the HFSF recapitalisations (measures B1, B2, B3 and B4) are appropriate, necessary and proportionate, in the light of point 15 of the 2008 Banking Communication, of the Recapitalisation Communication and of the 2011 Prolongation Communication. Measures B1, B2, B3 and B4 therefore comply with the 2008 Banking Communication, the Recapitalisation Communication and the 2011 Prolongation Communication.

7.5. COMPLIANCE OF THE ACQUISITIONS OF ATE TRANSFERRED ACTIVITIES, OF GENIKI, OF THE CYPRIOT TRANSFERRED ACTIVITIES AND OF MBG WITH THE RESTRUCTURING COMMUNICATION

(267) Point 23 of the Restructuring Communication explains that acquisitions of undertakings by aided banks cannot be financed through State aid unless this is essential for restoring an undertaking's viability. Furthermore, points 40 and 41 of the Restructuring Communication state that banks should not use State aid for the acquisition of competing businesses, unless the acquisition is part of a consolidation process necessary to restore financial stability or to ensure effective competition. In addition, acquisitions may endanger or complicate the restoration of viability. The Commission must therefore assess whether the acquisitions made by the Bank can be reconciled with the Restructuring Communication.

7.5.1. Compliance of the acquisition of the ATE Transferred Activities with the Restructuring Communication

7.5.1.1. Effect of the acquisition of the ATE Transferred Activities on the long-term viability of the Bank

(268) The acquisition of the ATE Transferred Activities brought to the Bank a large pool of deposits with a much smaller amount of net loans ⁽⁹⁶⁾. It therefore contributed to significantly reducing the very high loan-to-deposit ratio of the Bank.

⁽⁹⁶⁾ See recital 55.

(269) Furthermore, the acquisition has led to considerable synergies such as cost synergies through branch, staff reduction and IT integration, funding synergies and revenue synergies.

(270) The acquisition is therefore very positive for the restoration of the long-term viability of the Bank.

7.5.1.2. Effect of the acquisition of the ATE Transferred Activities on the amount of aid needed by the Bank

(271) In line with point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank.

(272) The consideration paid by the Bank for the acquisition of the ATE Transferred Activities was determined at 0,6 % of the value of the transferred deposits and amounted to approximately EUR 95 million. It was equivalent to 0,02 % of the total assets of the Bank at the time of the acquisition. That amount can therefore be considered as small, but not negligible.

(273) The acquisition of ATE Transferred Activities dramatically improved the very stressed liquidity position of the Bank and put it in a much more viable situation. The Commission recalls that [...]. Therefore the acquisition and its low purchase price can be considered as essential for the restoration of the long-term viability of the Bank and falls under the exemption in point 23 of the Restructuring Communication.

7.5.1.3. Distortive effect of the acquisition of the ATE Transferred Activities on competition

(274) In line with points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses. Point 41 of the Restructuring Communication also states that acquisitions may be authorised if they are part of a consolidation process necessary to restore financial stability or to ensure effective competition. In such circumstances the acquisition process should be fair and the acquisition should ensure the conditions of effective competition in the relevant market.

(275) ATE was not deemed viable on a stand-alone basis by the Bank of Greece when it reviewed the viability of all the Greek banks early in 2012. Furthermore, the Bank of Greece analysed different alternatives for ATE (for example, liquidation) and concluded that selling the ATE Transferred Activities was the most attractive option, since it would reduce the execution risk and would minimise the costs for Greece. The acquisition can thus be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.

(276) Furthermore, no non-aided bidder submitted a bid for the ATE Transferred Activities.

(277) Last, since the acquisition of the ATE Transferred Activities was authorised by the Hellenic Competition Authority⁽⁹⁷⁾, it can be assumed that the outcome of the sale process does not endanger effective competition in Greece.

(278) The acquisition of the ATE Acquired Activities is therefore in line with section 4 of the Restructuring Communication.

7.5.1.4. Conclusion on the acquisition of the ATE Transferred Activities

(279) It is concluded that, in the light of the unique situation of Greek banks and the specificities of the acquisition of the ATE Transferred Activities, that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.5.2. Compliance of the acquisition of Geniki with the Restructuring Communication

7.5.2.1. Effect of the acquisition of Geniki on the long-term viability of the Bank

(280) In terms of operating profitability, the acquisition of Geniki will enhance the Bank's return to long-term viability. According to the analysis submitted by the Bank at the time of that acquisition, merging two banks in the same geographical market will create synergies such as cost savings through personnel reduction and branch closures. The Bank will acquire the customers and depositors of Geniki, thereby significantly reducing distribution costs.

(281) In terms of liquidity position, as illustrated in recital 65, Geniki held more deposits than net loans. Therefore, the acquisition increased the Bank's liquidity and helped the Bank decrease its loan-to-deposit ratio. In addition, Geniki was adequately capitalised before being acquired by the Bank. Thus, the acquisition is not likely to create any future capital needs for the Bank.

⁽⁹⁷⁾ http://www.epant.gr/apofasi_details.php?Lang=gr&id=345&nid=689.

(282) The acquisition is therefore positive for the restoration of the long-term viability of the Bank.

7.5.2.2. Effect of the acquisition of Geniki on the amount of aid needed by the Bank

(283) In line with point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank. In this case, although the acquisition has positive implications for the Bank's viability, it is not essential for its viability within the meaning of point 23 of the Restructuring Communication.

(284) However, the Bank only paid EUR 1 million to purchase Geniki, which is considered to be a very small amount. Furthermore, Geniki was adequately capitalised and, as a condition to the transaction, Société Générale injected a significant amount of capital into the Bank ⁽⁹⁸⁾.

(285) The Commission concludes that, in the light of the specificities of the transaction (acquisition at a very low price of a fully capitalised bank and injection of capital by the seller into the Bank), the acquisition does not generate any further capital need for the Bank and therefore the acquisition of Geniki exceptionally does not contravene the principle that aid should be limited to the minimum necessary.

7.5.2.3. Distortive effect of the acquisition of Geniki on competition

(286) As stated in recital 274, in line with points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses, except under specific circumstances.

(287) Geniki was not deemed viable on a stand-alone basis by the Bank of Greece, when it reviewed the viability of all the Greek banks early in 2012. Geniki was generating large losses for Société Générale which therefore wanted to sell it and, if no sale was possible, could have considered how to let it fail. The acquisition can therefore be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.

(288) Furthermore, no non-aided bidder submitted any valid bid to acquire Geniki. There was therefore no crowding-out of any non-aided bidder by the Bank.

(289) In addition, since the acquisition was authorised by the Hellenic Competition Authority ⁽⁹⁹⁾, it can be assumed that the outcome of the sale process does not endanger effective competition in Greece.

(290) Finally the purchase price was very low. It can therefore not be considered that the Bank used State aid to finance the acquisition. In view of those elements, it can be concluded that the acquisition of Geniki falls under the exemption in point 41 of the Restructuring Communication.

7.5.2.4. Conclusion on the acquisition of Geniki

(291) It is concluded that, in the light of the unique situation of Greek banks and the specificities of the acquisition of Geniki, that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.5.3. Compliance of the acquisition of the Cypriot Transferred Activities with the Restructuring Communication

7.5.3.1. Effect of the acquisition of the Cypriot Transferred Activities on the long-term viability of the Bank

(292) The acquisition of the Cypriot Transferred Activities enhances the long-term viability of the Bank.

(293) According to the analysis submitted by the Bank at the time of the acquisition, the transaction will lead to considerable synergies such as cost synergies through administration and staff cost savings and significant improvement of the cost of deposits. Since the acquisition the Bank has fully integrated the Greek operations of the three Cypriot Banks, rebranded all the branches of the three Cypriot Banks and is well advanced in the rationalisation of the network.

(294) The loan portfolios of the Greek operations of the three Cypriot Banks were well provisioned. Indeed, the Bank acquired those loans at a price well below their nominal amounts: the purchase price was decreased to reflect the future losses estimated by PIMCO in the framework of a stress test. The risk of loan losses exceeding those already reflected in the low purchase price is therefore limited.

⁽⁹⁸⁾ See recital 68

⁽⁹⁹⁾ http://www.epant.gr/news_details.php?Lang=en&id=89&nid=497.

- (295) The Bank also acquired a large pool of deposits, nearly as large as the net loans acquired. It therefore strengthened its liquidity position.
- (296) The acquisition is therefore positive for the restoration of the long-term viability of the Bank.

7.5.3.2. Effect of the acquisition of the Cypriot Transferred Activities on the amount of aid needed by the Bank

- (297) In line with point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank.
- (298) As analysed in section 7.3, the aid aimed to cover the capital needs of the acquirer of the Cypriot Transferred Activities, since their acquisition would ensure the maintenance of financial stability in Greece. The consideration ultimately paid by the Bank for the acquisition of the Cypriot Transferred Activities was far lower than the book value of the acquired portfolio. It was even lower than the value of the loans after it was adjusted downward to reflect the future loan losses estimated by PIMCO under the stress test. The acquisition price could therefore be considered to be negative. That conclusion is supported by the fact that the Bank booked a large negative goodwill when acquiring the Cypriot Transferred Activities, which increased its capital.
- (299) However, should it nevertheless be considered that the Bank paid a positive price, the Commission observes that, as a pre-condition of the acquisition, the HFSF had given a commitment to the buyer that it would inject the amount of the purchase price in capital. The HFSF respected that commitment in the framework of the Spring 2013 recapitalisation. That capital injection is aid to the Cypriot Transferred Activities and not to the Bank as explained in section 6.2.1. Therefore, the acquisition did not create a need for additional State aid to the Bank.
- (300) It is concluded that, due to the atypical terms (low purchase price and commitment given by the HFSF to inject the purchase price in the framework of a capital increase), the acquisition of the Cypriot Transferred Activities exceptionally does not contravene the principle that aid should be limited to the minimum necessary.

7.5.3.3. Distortive effect of the acquisition of the Cypriot Transferred Activities on competition

- (301) As stated in recital 274, in line with points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses, except under specific circumstances.
- (302) The sale of the Greek operations of the Cypriot Banks aimed to safeguard the stability of the Greek banking system and to ensure that the Cypriot Banks could sell those businesses before they were likely to lose any value. The transaction can thus be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.
- (303) Furthermore, no non-aided bidder submitted any valid bid to acquire the three Cypriot Banks. The sale process was open, transparent and non-discriminatory.
- (304) Last, since that acquisition was authorised by the Hellenic Competition Authority⁽¹⁰⁰⁾, it can be assumed that the outcome of the sale process does not endanger effective competition in Greece.
- (305) In view of those elements, it can be concluded that the acquisition of the Cypriot Transferred Activities falls under the exemption in point 41 of the Restructuring Communication.

7.5.3.4. Conclusion on the acquisition of the Cypriot Transferred Activities

- (306) It is concluded that, in the light of the unique situation of Greek banks and the specificities of the acquisition of the Cypriot Transferred Activities, that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.5.4. Compliance of the acquisition of MBG with the Restructuring Communication

7.5.4.1. Effect of the acquisition of MBG on the long-term viability of the Bank

- (307) The acquisition of the fully recapitalised MBG enhances the long-term viability of the Bank.

⁽¹⁰⁰⁾ http://www.epant.gr/apofasi_details.php?Lang=gr&id=352&nid=713.

- (308) According to the analysis submitted by the Bank at the time of the acquisition, the transaction will lead to considerable synergies such as cost synergies through branch and staff reduction, lower deposit costs and revenue synergies. In the meantime, the Bank has fully integrated MBG.
- (309) In addition, since MBG was adequately capitalised before being acquired by the Bank and since the bank paid a purchase price of EUR 1 million, the acquisition is not likely to create any future capital needs for the Bank. In addition, the seller gave a commitment, as part of the transaction, to inject EUR 400 million of capital into the Bank. That commitment was implemented in the framework of the Spring 2013 recapitalisation, during which BCP injected EUR 400 million into the Bank.
- (310) It is concluded that the acquisition is positive for the restoration of the long-term viability of the Bank and that the purchase price of MBG was so low that it did not prevent the aid from being limited to the minimum necessary.

7.5.4.2. Effect of the acquisition of MBG on the amount of aid needed by the Bank

- (311) In line with point 23 of the Restructuring Communication, restructuring aid should not be used for the acquisition of other companies but merely to cover restructuring costs which are necessary to restore the viability of the Bank. In this case, although the acquisition has positive implications for the Bank's viability, it is not essential for its viability within the meaning of point 23 of the Restructuring Communication.
- (312) However, the Bank only paid EUR 1 million to purchase MBG, which is considered to be a very small amount. Furthermore, MBG was adequately capitalised by BCP and, as a condition of the transaction, BCP injected EUR 400 million of capital into the Bank⁽¹⁰¹⁾.
- (313) It is concluded that, in the light of the specificities of the transaction (acquisition at a very low price of a fully capitalised bank and injection of capital by the seller into the Bank), the acquisition of MBG does not generate any further capital needs for the Bank and therefore, the acquisition of MBG exceptionally does not contravene the requirement to minimise the aid.

7.5.4.3. Distortive effect of the acquisition of MBG on competition

- (314) As stated in recital 274, in line with points 39 and 40 of the Restructuring Communication, State aid should not be used to the detriment of non-aided companies and in particular for acquiring competing businesses, except under specific circumstances.
- (315) MBG was not deemed viable on a stand-alone basis by the Bank of Greece, when it reviewed the viability of all the Greek banks early in 2012. MBG was generating large losses for BCP which therefore wanted to sell it and, if no sale was possible, could have considered to let it fail. The sale of MBG was also part of BCP's restructuring plan⁽¹⁰²⁾. The acquisition can therefore be considered to be part of a consolidation process which is necessary to restore financial stability of the kind described in point 41 of the Restructuring Communication.
- (316) Furthermore, no non-aided bidder submitted any valid bid to acquire MBG.
- (317) Against that background, it can be concluded that the acquisition of MBG falls under the exemption in point 41 of the Restructuring Communication.

7.5.4.4. Conclusion on the acquisition of MBG

- (318) It is concluded that, in the light of the unique situation of Greek banks and the specificities of the acquisition of MBG, that acquisition is in line with the requirements laid down in the Restructuring Communication.

7.6. COMPLIANCE OF MEASURES A, B1, B2, B3, AND B4 WITH THE RESTRUCTURING COMMUNICATION

7.6.1. Sources of difficulties and consequences on the assessment under the Restructuring Communication

- (319) As indicated in sections 2.1.1 and 2.1.2, the difficulties faced by the Bank come mainly from the Greek sovereign crisis and the deep recession in Greece and southern Europe. As regards the former factor, the Greek government lost access to financial markets and finally had to negotiate an agreement with its domestic and international creditors, the PSI programme, which resulted in a haircut of the claims held against the State by 53,3 %. In addition, 31,5 % of the claims was exchanged for new GGBs with lower interest rates and longer maturities. Those new GGBs were bought back by the State from the Greek banks in December 2012 at a price between

⁽¹⁰¹⁾ See recital 80.

⁽¹⁰²⁾ Commission Decision of 30 August 2013 in SA.34724, 'Restructuring of Banco Comercial Português (BCP) Group', not yet published.

30,2 % and 40,1 % of their nominal value, thereby crystalising a further loss for the Greek banks. Beside the impact of the PSI programme and the debt buy-back on its capital position, the Bank also observed huge deposit outflows between 2010 and mid-2012, due to the risk that Greece might exit the euro area as a consequence of an unsustainable public debt and the economic recession.

- (320) The aid granted to the Bank, that is to say the sum of measures B1, B2, B3 and B4, or EUR 7 335 million, is above the amount of the loss booked following the PSI programme (EUR 5 911 million).
- (321) A large part of the capital needs stem from standard exposure of a financial institution to the sovereign risk of its domestic country. That fact was also pointed out in recitals 63 and 74 of the Piraeus Opening Decision. As a consequence there is less need for the Bank to address moral hazard issues in its restructuring plan than for other aided financial institutions which accumulated excessive risks. As the aid measures are less distortive, the measures taken to limit distortions of competition should therefore be proportionately softened. Since the PSI programme and the debt buy-back constitute a debt waiver in favour of the State, the remuneration of the State when recapitalising banks can be lower. The Commission, however, observes that the Bank's exposure to the Greek sovereign risk was larger than the exposure of the other large Greek banks ⁽¹⁰³⁾. As a result, not all the losses on GGBs can be attributed to the standard exposure of a financial institution to the sovereign risk of its domestic country.
- (322) The second source of losses for the Bank is the losses on its loans to Greek households and corporations. The Commission considers that those losses are mainly due to the exceptionally deep and protracted recession GDP contraction of approximately 25 % over five years, and are not due to risky lending practices by the Bank. As a result, the aid granted to cover those losses does not create moral hazard, which is the case when the aid shelters a bank from the consequences of past risky behaviours. The aid is therefore less distortive ⁽¹⁰⁴⁾.
- (323) However, part of the capital needs and loan losses of the Bank comes from some international subsidiaries. The stress tests performed in 2012 to determine the capital needs of the Bank indicated that credit loss projections on foreign loans amounted to EUR 1 314 million in the base scenario and EUR 1 624 million in the adverse scenario. Several of those foreign businesses were loss-making in recent years. The losses from international activities amounted to EUR 244 million before taxes in 2012 ⁽¹⁰⁵⁾. The foreign assets also constituted a drain on liquidity.
- (324) Therefore, it can be concluded that a significant part of the losses and the need for aid fall under point 14 of the 2011 Prolongation Communication, which allows the Commission to lighten its requirements. Similarly, part of the need for aid stems from the exceptionally deep recession in Greece and not from risky lending. Such aid does not create moral hazard and is therefore less distortive.
- (325) Finally, part of the need for aid comes from the Bank's own risk taking as regards its large holding of sovereign debt and its foreign subsidiaries.

7.6.2. Viability

- (326) A restructuring plan must ensure that the financial institution is able to restore its long-term viability by the end of the restructuring period (section 2 of the Restructuring Communication). In the case at hand, the restructuring period is defined as the period between the date of adoption of this Decision and 31 December 2018.
- (327) In line with points 9, 10 and 11 of the Restructuring Communication, Greece submitted a comprehensive and detailed restructuring plan which provides complete information on the Bank's business model. The plan also identifies the causes of the difficulties faced by the Bank, as well as the measures taken to tackle all viability issues which it faced. In particular, the restructuring plan describes the strategy chosen to preserve the Bank's operational efficiency and to tackle the high level of NPL, its vulnerable liquidity and capital positions, and its foreign businesses, which, during recent years, have relied on their parent company for their funding and capital.

⁽¹⁰³⁾ See Table 2.

⁽¹⁰⁴⁾ See point 28 of the Restructuring Communication and see recital 320 of the Commission Decision of 5 April 2011 on the measures No C 11/09 (ex NN 53b/2008, NN 2/10 and N 19/10) implemented by the Dutch State for ABN AMRO Group NV (created following the merger between Fortis Bank Nederland and ABN AMRO N) (OJ L 333, 15.12.2011, p. 1).

⁽¹⁰⁵⁾ <http://www.piraeusbankgroup.com/en/investors/financials/presentation-audio-archive>

7.6.2.1. Greek banking activities

- (328) As regards liquidity⁽¹⁰⁶⁾ and the Bank's reliance on Eurosystem funding, the restructuring plan foresees a limited growth of the balance sheet in Greece while the deposit base should grow again. The reliance on State-guaranteed ELA, which has already fallen, will continue to decrease which will also help the Bank to reduce its cost of funding.
- (329) The loan-to-deposit ratio commitment mentioned in recital 137 ensures that the Bank's balance sheet structure will be sustainable at the end of the restructuring period. The sale of securities and of other non-core activities will also strengthen the liquidity position of the Bank. Due to the still stressed liquidity position of the Bank, the Commission can accept the request of the Greek authorities to be authorised to provide liquidity to the Bank under the guarantee and government bond loan measures of the Greek Banks Support Scheme and under the State-guaranteed ELA.
- (330) To decrease its funding costs, Greece has also given a commitment that the Bank will continue reducing the interest rates it pays on deposits in Greece, as described in recital 137. The achievement of such a decrease in the cost of deposits will be a key contribution to improving the pre-provisioning profitability of the Bank.
- (331) Since the start of the crisis the Bank has made large acquisitions which dramatically increased its size and deposits base. The Bank successfully integrated the acquired business in record time. The Bank is currently attempting to realise all the synergies possible following those acquisitions. It has started rationalising its commercial network in Greece, through a reduction in the number of branches and employees⁽¹⁰⁷⁾. By 2017, the total costs of the Bank in Greece will have decreased by a further [...] % compared to 2013. To achieve that target Greece has committed that the Bank will reduce its branches and employees in Greece to [...] and [...] respectively at 31 December 2017, with maximum total costs in Greece of EUR [...] billion. The expected cost-to-income ratio will be less than [...] % at the end of the restructuring period. The Commission considers that the restructuring plan preserves the efficiency of the Bank in the new market environment.
- (332) One other key area is the handling of NPL, since they amounted to 36 % of the Bank's portfolio at 31 December 2013⁽¹⁰⁸⁾. The Bank plans to enhance its credit policy (limits, collateral coverage) and to focus on the core activity in order to minimise its losses. Greece has also given a commitment that the Bank will comply with high standards as regards its credit policy in order to manage risks and to maximise the value for the Bank at each stage of the credit process including restructuring of loans, as described in recital 141.

7.6.2.2. Corporate governance

- (333) Another point of attention is the governance of the Bank given that the HFSF owns the majority of the Bank's shares following the Spring 2013 recapitalisation, but with restricted voting power. Additionally, some of the private investors which control the Bank also own warrants and thus would gain the full benefit if the share price were to soar during the restructuring period. Because that situation could create moral hazard, a specific relationship framework was agreed between the Bank and the HFSF in 2013. That agreement protects the day-to-day business of the Bank from any interference from its main shareholders, while ensuring that the HFSF can monitor the implementation of the restructuring plan and prevent excessive risk-taking by the Bank's management through appropriate consultation procedures. The Bank has also given a commitment to monitor closely its exposure to connected borrowers. The Commission notes positively the fact that the HFSF automatically regains voting rights if the Bank does not implement its restructuring plan.

7.6.2.3. International activities

- (334) Some of the Bank's international activities have drained the Bank's capital and liquidity in the past, as explained in recital 323.
- (335) The restructuring plan anticipates that the Bank will continue to re-focus on its domestic market. The Bank has already sold its subsidiary in the United States of America. It has also started to rationalise the other subsidiaries, to strengthen the loan underwriting process and to reduce the subsidiaries' funding gap. It is planning further rationalisation of its network in the retained subsidiaries, as described in recital 130.
- (336) The total amount of foreign assets will therefore shrink in the future. At the end of the restructuring period they will account for a [...] part of the Bank's total balance sheet.

⁽¹⁰⁶⁾ The Commission also observes that part of the liquidity needs of the Bank stems from the atypical form of the HFSF's participation in the first and second bridge recapitalisations as well as in the Spring 2013 recapitalisation. Indeed, as consideration for its participation, the HFSF transferred to the Bank EFSF notes instead of cash. The Bank holds a large amount of medium- and long-term EFSF notes, which increase its funding needs compared to a situation where the recapitalisation would have been paid in cash. That part of the liquidity needs does not reflect an inappropriate business model or balance sheet structure. It will automatically disappear when the EFSF notes mature.

⁽¹⁰⁷⁾ See recital 116.

⁽¹⁰⁸⁾ Restructuring plan submitted on 25 June 2014, p. 132.

- (337) Therefore the Commission believes that the Bank will have sufficiently restructured and reduced those foreign businesses in size to avoid it being exposed to additional capital needs and liquidity shortages in the future. The commitment described in recital 138 to refrain from injecting large amounts of capital into the Bank's international subsidiaries also contributes to ensuring that foreign subsidiaries will not represent a threat for capital or the liquidity position of the Bank.

7.6.2.4. Conclusion on viability

- (338) The base case scenario as described in section 2.4 shows that at the end of the restructuring period the Bank will be able to realise a return which allows it to cover all its costs and provide an appropriate return on equity taking into account its risk profile. At the same time, the Bank's capital position is projected to remain at a satisfactory level.
- (339) Finally, the Commission takes note of the adverse scenario described in the restructuring plan of the Bank as submitted by the Greek authorities. That adverse scenario is based on a set of assumptions agreed with the HFSF. It takes into account a longer and deeper recession, as well as a more severe deflation of real estate prices. The restructuring plan shows that the Bank is able to withstand a reasonable amount of stress as, in the adverse scenario, the Bank remains profitable and well capitalised at the end of the restructuring period.
- (340) The amount of additional capital which was raised in 2014, namely EUR 1 750 million, is sufficient to cope with the baseline scenario of the 2013 stress test in the restructuring period and to repay the preference shares, which the Bank did in May 2014 ⁽¹⁰⁹⁾. [...] The Commission recalls that in the assessment of the capital needs under the baseline scenario, the Bank of Greece already introduced several adjustments which resulted in an increase of the estimated capital needs compared to the capital needs estimated by the Bank in its own baseline scenario. The Commission therefore considers that the baseline capital needs estimated by the Bank of Greece assume a certain degree of stress. To conclude that the Bank is viable, the Commission does not require that the Bank has enough capital upfront to cover the stressed scenario capital needs estimated by the Bank of Greece, as that estimated level represents a high level of stress and as the capital raising of March 2014 shows that the Bank has regained access to capital markets.
- (341) In addition, it is positive that the Bank will not make additional investments in non-investment grade paper, which will help to preserve its capital and liquidity position.
- (342) It is therefore concluded that the combination of the already implemented restructuring and the additional proposed restructuring are sufficient to restore the Bank's long-term viability.

7.6.3. Own contribution and burden-sharing

- (343) As stated in section 3 of the Restructuring Communication, banks and their stakeholders need to contribute to the restructuring as much as possible in order to ensure that aid is limited to the minimum necessary. Thus banks should use their own resources to finance the restructuring, for instance by selling assets, while the stakeholders should absorb the losses of the bank where possible.

7.6.3.1. Own contribution by the Bank: divestments and cost cutting

- (344) The Bank has already divested small foreign businesses (in the United States of America) and deleveraged part of its portfolio in order to enhance both its capital adequacy and its liquidity position. The restructuring plan foresees the deleveraging of its foreign activities, as described in recitals 125 to 129. Considering the deleveraging and the divestments already implemented and following the implementation of the commitments related to the deleveraging and divestments of foreign businesses, the Bank will have significantly reduced its geographical presence in [...]. The downsizing of the Bank's international assets will also significantly reduce the contingent risk that aid will be needed in the future. It therefore helps to reduce the amount of aid to the minimum.
- (345) In order to limit its capital needs, the Bank will not use capital to support or expand its foreign subsidiaries, as described in recital 138. In addition, the commitments made by Greece ensure that the Bank will not make costly acquisitions.
- (346) The Bank has also engaged in a far-reaching cost reduction programme, as indicated in section 2.4.2. Its costs will further decrease until 2017. Its workforce is being reduced and salaries adjusted downwards. Greece has also committed to limit the remuneration of the Bank's managers, [...].

⁽¹⁰⁹⁾ See recital 52.

7.6.3.2. *Burden-sharing by historical shareholders and new capital raised on the market*

- (347) The historical shareholders of the Bank were diluted by the rights issue completed in 2009 ⁽¹¹⁰⁾ and then again by the HFSF recapitalisation (measure B4) and private capital raising of 2013 and March 2014. For instance, the stake held by the shareholders of the Bank, which at the time included the investors that injected money in 2009, was reduced from 100 % prior to the Spring 2013 recapitalisation to only 2,3 % after that recapitalisation. In addition, the Bank has not paid any dividend in cash since 2008. In addition to that burden-sharing by historical shareholders, the Bank has raised a significant amount of private capital since the crisis started in 2008, that is to say EUR 807 million in 2009, EUR 1 444 million in 2013 and EUR 1 750 million in 2014.

7.6.3.3. *Burden-sharing by subordinated debt holders*

- (348) The Bank's hybrid and subordinated debt holders have contributed to the restructuring costs of the Bank. The Bank has performed several liability management exercises in order to generate capital, as described in recital 134.
- (349) The still outstanding instruments are subject to the coupon ban mentioned in recital 143. Therefore, the Commission considers that an adequate burden-sharing from the Bank's hybrid and subordinated debt holders is ensured and the requirements of the Restructuring Communication in that respect are met.

7.6.3.4. *Conclusion on own contribution and burden-sharing*

- (350) In comparison with the total State recapitalisation received, the own contribution and burden-sharing, especially in the form of sale of assets and downsizing of the loan book, is much lower than what the Commission would usually consider sufficient. The downsizing only concerns the foreign activities, which account for a limited part of the Bank ⁽¹¹¹⁾ and the restructuring does not envisage any reduction of the size of the loan and deposit books in Greece, which, to the contrary, have increased dramatically over the last year, following acquisitions. However, the Commission takes into account the elements discussed in section 7.6.1 and in particular the facts that the aid received partly qualifies for the exemption lay down in point 14 of the 2011 Prolongation Communication, under which the Commission can accept a lower own contribution and burden-sharing. The Commission also notes positively that the Bank raised EUR 1 444 million on the market in May 2013 and EUR 1 750 million in March 2014, [...]. Moreover, the capital raised in March 2014 was raised at a price per share equal to the price per share at which the HFSF subscribed in the framework of the Spring 2013 recapitalisation (measure B4). The high issue price therefore limited the dilution of the HFSF. The Bank also repaid the preference shares (measure A). Taking into account all those elements, the restructuring plan can be considered as providing for sufficient own contribution and burden-sharing measures to limit the aid to the minimum necessary.

7.6.4. **Measures to limit distortions of competition**

- (351) The Restructuring Communication requires a restructuring plan to propose measures limiting distortions of competition and ensuring a competitive banking sector. Moreover, those measures should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.
- (352) Point 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting competition distortions, the Commission has to take into account both the absolute and relative amount of the State aid received as well as the degree of burden-sharing and the position of the financial institution on the market after the restructuring. In that respect, the Commission recalls that the Bank has received capital support from the State equivalent to 23,7 % of its RWA ⁽¹¹²⁾. In addition, the Bank obtained liquidity guarantees in 2010 amounting to EUR 9,9 billion and government bond loans for an amount of EUR 1,3 billion, representing together almost 25 % of the Bank's balance sheet. In addition, the Bank received State-guaranteed ELA. Measures to limit potential distortions of competition are therefore necessary in view of the large amount of the aid. Additionally, the market share of the Bank in Greece is large. The acquisition of the ATE Transferred Activities, Geniki, MBG and the Cypriot Transferred Activities increased the market shares of the Bank. After those acquisitions, the Bank's market share in deposits in Greece amounted to 29 % at the end of 2013, while its market shares in residential mortgages, consumer loans and corporate loans were 25 %, 22 % and 35 % respectively (compared with 10 %, 8 %, 8 % and 14 % respectively in 2011) ⁽¹¹³⁾.

⁽¹¹⁰⁾ See recital 132.

⁽¹¹¹⁾ The size of the proposed own contribution measure has to be compared with the size of the Bank before the acquisitions of the ATE Transferred Activities, Geniki, BCP and the Cypriot Transferred Activities for the reason explained in section 7.1.3.5.

⁽¹¹²⁾ When taking into account only the aid actually paid out, which is the most advantageous and therefore the most distortive of competition, the amount of aid is reduced to 19,4 % of the RWA of the Bank.

⁽¹¹³⁾ Restructuring plan submitted on 25 June 2014, p. 35.

- (353) The Commission recalls that the difficulties of the Bank resulted to a large extent from external shocks such as the Greek sovereign crisis and the protracted recession which has disrupted the Greek economy since 2008, as has already been noted in recital 74 of the Piraeus Opening Decision. The need to address moral hazard issues is therefore reduced. As discussed in section 7.6.1 of this Decision, the distortive effect of the aid measures is lower in the light of those factors as is the need for measures to limit distortions of competition. For those reasons, the Commission can exceptionally accept that, in spite of the high aid amount and the high market shares, the restructuring plan does not envisage any downsizing of the balance sheet and loans in Greece. However it would be problematic if the most aided bank among the four large Greek banks and the one which grew the most through acquisitions over the last years would continue to grow in the restructuring period at a pace quicker than the market, potentially crowding out the less aided banks. Therefore, the Commission welcomes the commitment that the Bank will not grow quicker than the growth of the market.
- (354) However, the Commission notes that the State recapitalisations enabled the Bank to continue its banking activities in foreign markets.
- (355) The Commission notes that, in addition to the deleveraging and restructuring already implemented, the Bank will further restructure and deleverage its foreign assets by 30 June 2018⁽¹¹⁴⁾. In addition the Bank gave a commitment not to use aid to fund the growth of those activities. The aid will therefore not be used to distort competition on those foreign markets.
- (356) Greece has also committed that the Bank will not make costly acquisitions, ensuring that the Bank will not use the State aid received to acquire new business. That ban contributes to ensuring that the aid is strictly used to support the restoration of the viability of the Greek banking activities, and not, for instance, to grow in foreign markets.
- (357) The commitment to decrease the interest paid on Greek deposits from unsustainably high levels also ensures that the aid will not be used to finance unsustainable deposit collection strategies which distort competition on the Greek market. Similarly, the commitment to implement strict guidelines as regards the pricing of new loans, based on a proper credit risk assessment, will prevent the Bank from distorting competition on the Greek market with inappropriate pricing strategies on the loans to customers.
- (358) Taking into account the specific situation described in section 7.6.1 and the measures provided for in the restructuring plan, the Commission considers there are sufficient safeguards to limit distortions of competition.

7.6.5. Monitoring

- (359) In accordance with section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the restructuring plan is being implemented properly. As stated in the commitments given by Greece⁽¹¹⁵⁾, Greece will ensure that until the end of the restructuring period, namely, 31 December 2018, the Monitoring Trustee, which has been appointed by the Bank with the approval of the Commission, will monitor the commitments given by Greece on the restructuring of activities in Greece and abroad and on corporate governance and commercial operations. The Commission therefore finds that proper monitoring of the implementation of the restructuring plan is ensured.

7.6.6. Conclusion on the compliance of measures A, B1, B2, B3 and B4 with the Restructuring Communication

- (360) The Commission finds that the restructuring plan when considered together with the commitments in the Annex to this Decision ensures the restoration of the long-term viability of the Bank, is sufficient with respect to burden-sharing and own contribution, is appropriate to offset the competition distorting effects of the aid measures examined in this Decision and is proportionate. The restructuring plan and commitments submitted to the Commission fulfil the criteria of the Restructuring Communication.

8. CONCLUSION

- (361) The Commission regrets that Greece has unlawfully implemented aid measures B2, B3 and B4 in breach of Article 108(3) of the Treaty, since they were implemented before their formal notification. However, those measures, as well as the other measures analysed in this Decision, can be considered compatible with the internal market,

⁽¹¹⁴⁾ See Annex, chapter II.

⁽¹¹⁵⁾ See recital 129.

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures implemented by Greece constitute State aid within the meaning of Article 107(1) of the Treaty:

- (a) the emergency liquidity assistance provided to Piraeus Bank S.A. by the Bank of Greece and guaranteed by Greece (measure L2);
- (b) the second bridge recapitalisation of EUR 1 553 million granted by the Hellenic Financial Stability Fund ('HFSF') to Piraeus Bank S.A. in December 2012 (measure B2);
- (c) the commitment letter of EUR 1 082 million granted by the HFSF to Piraeus Bank S.A. on 20 December 2012 (measure B3);
- (d) the recapitalisation of EUR 5 891 million granted by the HFSF to Piraeus Bank S.A. in Spring 2013 (measure B4); and
- (e) the recapitalisation of EUR 524 million by the HFSF to Piraeus Bank S.A. granted in Spring 2013 (measure C).

2. In the light of the restructuring plan relating to the Piraeus Bank Group, which includes Piraeus Bank S.A. and all its subsidiaries and branches, submitted on 25 June 2014 and of the commitments provided by Greece on that date, the following State aid is compatible with the internal market:

- (a) the capital injection of EUR 750 million granted by Greece to Piraeus Bank S.A. in May 2009 and December 2011 under the Recapitalisation Scheme (measure A);
- (b) the emergency liquidity assistance provided to Piraeus Bank S.A. by the Bank of Greece and guaranteed by Greece since July 2011, for an amount of EUR 30,4 billion at 31 December 2012 (measure L2);
- (c) the first bridge recapitalisation of EUR 4,7 billion granted by the HFSF to Piraeus Bank S.A. in May 2012 (measure B1);
- (d) the second bridge recapitalisation of EUR 1 553 million granted by the HFSF to Piraeus Bank S.A. in December 2012 (measure B2);
- (e) the commitment of EUR 1 082 million granted by the HFSF to Piraeus Bank S.A. on 20 December 2012 (measure B3);
- (f) the recapitalisation of EUR 5 891 million granted by the HFSF to Piraeus Bank S.A. in Spring 2013 (measure B4); and
- (g) the recapitalisation of EUR 524 million granted by the HFSF to Piraeus Bank S.A., in Spring 2013 (measure C).

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 23 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

PIRAEUS BANK — COMMITMENTS BY THE HELLENIC REPUBLIC

The Hellenic Republic shall ensure that **the Bank** is implementing the restructuring plan submitted on 25 June 2014. The restructuring plan is based on macroeconomic assumptions as provided by the European Commission (the 'Commission') in the Appendix as well as regulatory assumptions.

The Hellenic Republic hereby provides the following Commitments (the '**Commitments**') which are integral part of the restructuring plan. The Commitments include the commitments regarding to the implementation of the restructuring plan (the '**Restructuring Commitments**') and the **Commitments on Corporate Governance and Commercial Operations**.

The Commitments shall take effect upon the date of adoption of the Commission's decision approving the restructuring plan (the 'Decision').

The restructuring period shall end on 31 December 2018. The Commitments apply throughout the restructuring period unless the individual Commitment states otherwise.

This text shall be interpreted in the light of the Decision in the general framework of Union law, and by reference to Council Regulation (EC) No 659/1999 ⁽¹⁾.

CHAPTER I. DEFINITIONS

For the purpose of the Commitments, the following terms shall mean:

- (1) **Bank:** Piraeus Bank S.A. and all its subsidiaries. Therefore, it includes the entire Piraeus Bank Group with all its Greek and non-Greek subsidiaries and branches, both banking and non-banking.
- (2) **Capital accretive bid in the banking sector:** a bid which results in an increase in the regulatory capital ratio of the Bank, taking into account all relevant elements, in particular the profit/loss booked on the transaction and the reduction of RWA resulting from the sale (if necessary corrected for the increase of RWA resulting from remaining financing links).
- (3) **Capital accretive bid in the insurance sector:** a bid which results in an increase in the regulatory capital ratio of the Bank. Any bid above the book value of the insurance activity in the account of the Bank is automatically assumed to be capital accretive.
- (4) **Closing:** the date of transfer of the legal title of the Divestment Business to the Purchaser.
- (5) **Divestment Business:** all the businesses and assets that the Bank commits to sell, run-off or wind down.
- (6) **Effective Date:** the date of adoption of the Decision.
- (7) **End of restructuring period:** 31 December 2018.
- (8) **Foreign assets or non-Greek assets:** assets related to the activities of customers outside Greece, independently of the country where the assets are booked. For instance, assets booked in Luxembourg but related to the activities of customers in Greece are not included in the scope of this definition. Conversely, assets booked in Luxembourg or Greece but related to the activities of customers in other SEE countries are considered as foreign assets and are included in the scope of this definition.
- (9) **Foreign businesses:** foreign banking and non-banking subsidiaries and branches of the Bank.
- (10) **Foreign subsidiaries:** all banking and non-banking subsidiaries of the Bank outside Greece.
- (11) **Greek banking activities:** the Bank's Greek banking activities independently from where the assets are booked.
- (12) **Greek non-banking activities:** the Bank's Greek non-banking activities independently from where the assets are booked.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p.1).

- (13) **Greek subsidiaries:** all Greek banking and non-banking subsidiaries of the Bank.
- (14) **Monitoring Trustee:** one or more natural or legal person(s), independent from the Bank, approved by the Commission and appointed by the Bank; the Monitoring Trustee has the duty to monitor the Bank's compliance with the Commitments.
- (15) **Purchaser:** one or more natural or legal person(s) to acquire, in whole or in part, the Divestment Business.
- (16) **Sale:** the sale of 100 % of the shareholding held by the Bank, unless the individual Commitment states otherwise.

For the purpose of the Commitments, the singular of those terms shall include the plural (and vice versa), unless the Commitments provide otherwise.

CHAPTER II. RESTRUCTURING COMMITMENTS

- (1) **Number of branches in Greece:** The number of branches in Greece shall amount to [...] at the maximum on 31 December 2017. In case of a divestment of Geniki, this figure shall be revised to [...].
- (2) **Number of employees in Greece:** The number of Full Time Equivalents (the 'FTEs') in Greece (Greek banking and non-banking activities) shall amount to [...] at the maximum on 31 December 2017. In case of a divestment of Geniki, this figure shall be revised to [...].
- (3) **Total costs in Greece:** The total costs ⁽¹⁾ in Greece (Greek banking and non-banking activities) shall amount to EUR 1 200 million at the maximum in 2017. In case of a divestment of Geniki, this figure shall be revised to EUR [...] million.
- (4) **Costs of deposits in Greece:** In order to restore its pre-provisioning profitability on the Greek market, the Bank shall decrease the cost of funding through the decrease of cost of deposits collected in Greece (including savings, sight and term deposits, and other similar products offered to customers and which costs are borne by the Bank) [...].
- (5) **Ratio net loans to deposits in Greece:** For the Greek banking activities, the ratio net loans to total deposits shall amount at the maximum to [...] on 31 December 2017. [...]
- (6) **Growth rate of gross loans for the Greek banking activities:** The growth rate of the gross loans shall not be higher than the growth rate of the market as reported by the Bank of Greece, unless the market growth rate is below the Commission's projections (see Appendix) on which the restructuring plan is based. In such case, the loan growth cap can be revised, taking into account macroeconomic conditions and competition in the Greek banking sector. That Commitment shall be monitored on a yearly basis.
- (7) **Support to foreign subsidiaries:** For each foreign subsidiary, from the Effective Date until 30 June 2018, the Bank shall not provide additional equity or subordinated capital for an amount higher than the lesser of (i) [...] % of the RWA of that subsidiary as calculated on 31 December 2012 or (ii) EUR [...] million on aggregate for all foreign subsidiaries (cumulatively between 30 June 2013 and 30 June 2018). If the Bank intends to inject equity or subordinated debt to the foreign subsidiary for an amount higher than the defined threshold, it must request the Greek authorities to seek a Commission decision to amend the restructuring plan [...].
- (8) **Deleverage of non-Greek assets by 30 June 2018:** The Greek authorities commit that the Bank shall fulfil at least one of the following two conditions at 30 June 2018:
 - (a) The total size of the portfolio of foreign assets shall be reduced to a maximum amount of EUR [...] billion. If the Bank engages in [...], this cap of EUR [...] billion shall be increased to EUR [...] billion.
 - (b) The Bank shall have divested [...]
- (8.1) [...]
- (8.2) [...]
- (9) **Sale of [...]:** [...]
- (10) **Sale of securities:** The portfolio of listed securities, defined as follows, shall be divested by [...] while the portfolio of unlisted securities shall be divested by [...]: these portfolios include all equity investments larger than EUR [...] million, as well as all investments in subordinated bonds and hybrid bonds. This commitment shall not apply to the participations in foreign subsidiaries or to investments in the following entities:
 - [...].

⁽¹⁾ Including TEKE contribution.

(11) For any sale performed to comply with the sale or divestment commitments included in this document, the Hellenic Republic commits that:

- (a) The Purchaser shall be independent of and unconnected to the Bank;
- (b) For the purpose of acquiring the Divestment Business, the Purchaser shall not be financed directly or indirectly by the Bank ⁽¹⁾;
- (c) The Bank shall, for a period of 5 years after the closing of the sale, not acquire direct or indirect influence over the whole or part of the Divestment Business without a pre-approval from the Commission.

(12) **Investment policy:** Until 30 June 2017, the Bank shall not purchase non-investment grade securities.

This Commitment shall not apply to the following securities (the Exempted Securities): [...]

(13) **Salary cap:** Until [...], the Bank will not pay to any employee or manager a total annual remuneration (wage, pension contribution, bonus) higher [...]. In case of a capital injection from HFSF, the remuneration cap will be re-evaluated in line with the European Banking Communication of 1 August 2013.

CHAPTER III. COMMITMENTS ON CORPORATE GOVERNANCE AND COMMERCIAL OPERATIONS – PROLONGATION AND AMENDMENTS

- (1) The Bank shall continue to implement the Commitments on Corporate Governance and Commercial Operations, as submitted by the Hellenic Republic on 20 November 2012, with the subsequent amendments provided in Chapter III of the Commitments, until 30 June 2018.
- (2) In case an individual Commitment does not apply at the Bank's level, the Bank shall not use the subsidiaries or activities not covered by that individual Commitment to circumvent the Commitment.

Section A. Setting up an efficient and adequate internal organisation

- (3) The Bank, excluding its foreign subsidiaries, shall abide at all times with the totality of the provisions of law 3016/2002 on Corporate Governance and law 2190/1920 on the Sociétés Anonymes and especially the provisions in connection to the functions of corporate bodies such as the shareholders' meeting and Board of Directors in order to secure a clear distribution of responsibilities and transparency. The powers of the shareholders' meeting shall be restricted to the tasks of a general meeting in line with company law, in particular as regards rights related to information. More extensive powers, which would allow improper influence on management, shall be rescinded. Responsibility for day-to-day operational management shall clearly rest with the executive Directors of the Bank.
- (4) The Bank, excluding its foreign subsidiaries, shall comply at all times with the Hellenic Financial Stability Fund (the 'HFSF') Relationship Framework.
- (5) The Bank shall abide by the provisions of Governor's Act 2577/9.3.2006, as in force, in order to maintain, on an individual and a group basis, an effective organisational structure and an adequate Internal Control System including the three key pillars, namely the Internal Audit, Risk Management and Compliance functions and best international corporate governance practices.
- (6) The Bank shall have an efficient organisational structure, so as to ensure that the Internal Audit and the Risk Management departments are fully independent from commercial networks and report directly to the Board of Directors. An Audit Committee and a Risk Committee — created within the Board of Directors — shall assess all issues raised by those respective departments. An adequate Internal Audit Charter and Risk Management Charter shall specify the roles, responsibilities and resources of those departments. Those charters shall comply with international standards and secure a full independence to the departments. A Credit Policy shall provide guidance and instructions regarding the granting of loans, including the pricing of loans and the restructuring of loans.
- (7) The Bank shall make public to the competent authorities the list of shareholders holding at least 1 % of ordinary shares.

⁽¹⁾ This does not apply to the sale of real estate, in which case the Bank can provide financing to the Purchaser, if this new lending is performed in line with prudent lending practice. For the purpose of verifying the compliance with the commitment on deleveraging of non-Greek assets, any new lending falling in the defining of non-Greek assets will be taken into account.

Section B. Commercial practices and risk monitoring

General principles

- (8) The Credit Policy shall specify that all customers shall be treated fairly through non-discriminatory procedures other than those related to credit risk and ability to pay. The Credit Policy defines the thresholds above which the granting of loans must be approved by higher levels of management. Similar thresholds shall be defined regarding the restructuring of loans and the handling of claims and litigations. The Credit Policy shall centralise in selected centres the decision-making process at national level, and provide clear safeguards to ensure a consistent implementation of its instructions within all the Greek banking activities.
- (9) For all the Greek banking activities, the Bank shall fully incorporate the Credit Policy rules in their loan origination and loan refinancing workflow and disbursement systems.

Specific provisions

- (10) The specific provisions listed in paragraphs (8) to (18) of Chapter III of the Commitments shall apply to the Greek banking activities, unless explicitly stated otherwise.
- (11) The Credit Policy shall require that the pricing of loans and mortgages to comply with strict guidelines. Those guidelines shall include the obligation to respect strictly the credit policy's standard tables of interest rate bands (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with the Bank (e.g. level and stability of deposits, fee structure and other cross-sales activities) and the funding cost of the Bank. Specific loan asset classes are generated (e.g. commercial loan, mortgage, secured/unsecured, etc.) and their pricing framework is tabulated to an appropriate Credit Policy table that shall be updated on a regular basis by the Credit Committee. Any exception must be duly authorised by the Credit Committee, or at lower level of authority when allowed by the Credit Policy. Tailor-made transactions such as syndicated loans or project finance shall respect the same principles, with due account being taken of the fact that they may not fit in standardised credit policy tables. Infringements of that pricing policy shall be reported to the Monitoring Trustee.
- (12) The Risk Management Department shall be responsible for the assessment of credit risk and the valuation of collateral. When assessing the loan quality, the Risk Management Department shall act independently, providing its written opinion so as to ensure that criteria used in the assessment are applied consistently over time and among customers and in respect of the Bank's credit policy.
- (13) Regarding loans to individuals and legal entities, for all the Greek banking activities, on the basis of the best international practices, the Bank shall apply strict individual and aggregated limits governing the maximum loan amount that can be granted to a single credit risk (if at all allowed under Greek and EU law). Those limits shall take into account the maturity of the loan and the quality of any collateral/security provided and shall be set against key benchmarks including against capital.
- (14) Granting loans ⁽¹⁾ to enable borrowers to purchase shares or hybrid instruments of the Bank and other banks ⁽²⁾ shall be prohibited, whoever are those borrowers ⁽³⁾. This provision shall apply and shall be monitored at the Bank's level.
- (15) All loan requests by non-connected borrowers greater than [...] % of the Bank's RWA] or any loan which keeps the exposure to one group (defined as a group of connected borrowers that represent a single credit risk) higher than [...] % of the Bank's RWA] shall be reported to the Monitoring Trustee, which may, if the conditions do not appear to be set at arm's-length or if no sufficient information has been provided to the Monitoring Trustee, postpone the granting of the credit line or the loan by [...] working days. In emergency cases, that period may be reduced to [...] working days provided sufficient information has been provided to the Monitoring Trustee. That period will enable the Monitoring Trustee to report the case to the Commission and the HFSF before any definitive decision is taken by the Bank.

⁽¹⁾ For the purpose of that Commitment, the term 'loans' shall be interpreted *largo sensu*, as any kind of financing, e.g. credit facility, guarantee, etc.

⁽²⁾ For clarification, 'other banks' refer to any bank — financial institution in the world.

⁽³⁾ For clarification, all borrowers, including the Bank's private banking clients, are covered by that Commitment.

- (16) The Credit Policy shall give clear instructions on the restructuring of loans. It clearly defines which loans are eligible, under which circumstances, and indicates the terms and conditions that can be proposed to eligible customers. For all the Greek banking activities, the Bank shall ensure that all restructurings aim at enhancing the future recoveries by the Bank, thus safeguarding the interest of the Bank. In no case the restructuring policy will jeopardise the future profitability of the Bank. For that purpose, the Bank's Risk Management Department shall be responsible for developing and deploying adequate restructuring effectiveness reporting mechanisms, for performing in-depth analyses of internal and/or external best practices, reporting its findings at least on a quarterly basis to the Credit Committee and the Board Risk Committee, suggesting actionable improvements to the processes and policies involved and oversee and reporting on their implementation to the Credit Committee and the Board Risk Committee.
- (17) For all the Greek banking activities, the Bank shall enact a claim and litigation policy aiming at maximising recovery and preventing any discrimination or preferential treatment in the management of litigations. The Bank shall ensure that all necessary actions are taken to maximise the recoveries for the Bank and protect its financial position in the long-term. Any breach in the implementation of that policy shall be reported to the Monitoring Trustee.
- (18) The Bank shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the Bank on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.

Provisions applying to connected borrowers

- (19) All the provisions applying on connected borrowers shall apply at the Bank's level.
- (20) Within the Credit Policy, a specific section shall be devoted to the rules governing relations with connected borrowers. Connected borrowers include employees, shareholders, directors, managers, as well as their spouses, children and siblings and any legal entity directly or indirectly controlled by key employees (i.e. employees involved in the decision-making process of the Credit Policy), shareholders, directors or managers or their spouses, children and siblings. By extension, any public institution or government-controlled organisation, any public company or government agency shall be considered as a connected borrower. Political parties shall also be treated as connected borrowers in the Credit Policy. Particular focus shall be on decisions regarding any restructuring and write downs of loans to current or former employees, directors, shareholders, managers and their relatives as well as policies followed in the appropriateness, valuation, registration of liens and foreclosure of loan collateral. The definition of connected borrowers has been further specified in a separate document.
- (21) The Risk Management Department shall be responsible for the mapping of all connected groups of borrowers that represent a single credit risk with a view to properly monitoring credit risk concentration.
- (22) Regarding loans to individuals and legal entities, the Bank, on the basis of the best international practices, applies strict individual and aggregated limits governing the maximum loan amount that can be granted to a single credit risk which relates to connected borrowers (if at all allowed under Greek and EU law).
- (23) The Bank shall monitor separately its exposure to connected borrowers including the public sector entities and political parties. The new production of loans ⁽¹⁾ to connected borrowers (annual % of Y-1 stock ⁽²⁾) shall be no higher than the new production of the total loan portfolio in Greece (annual % of Y-1 stock). That Commitment shall be complied with separately for each type of connected borrower (employees, shareholder, managers, public entities, political party). The credit assessment of the connected borrowers, as well as the pricing conditions and possible restructuring offered to them, shall not be more advantageous compared to conditions offered to similar but unconnected borrowers, in order to secure a level-playing field in the Greek economy. That obligation does not

⁽¹⁾ For clarification, the new production of loans covers also the rolling over of loans and the restructuring of existing loans.

⁽²⁾ For clarification, 'annual % of Y-1 stock' refers to the new production as a percentage of the stock at the end of the previous year. The amount of RWA is the one at the end of the year.

apply to existing general schemes benefiting employees, offering them subsidised loans. The Bank shall report every month about the evolution of that exposure, the amount of the new production and the recent requests greater than [...] % of the Bank's RWA] to be addressed at the Credit committee.

- (24) The credit criteria applied to employees/managers/shareholders shall be no less strict than those applied to other, non-connected borrowers. If the total credit exposure to a single employee/manager/shareholder exceeds an amount equal to a [...] fixed salary for secured loans and an amount equal to a [...] fixed salary for unsecured loans, the exposure shall be reported promptly to the Monitoring Trustee who may intervene and postpone the granting of the loan pursuant to the procedure described in paragraph (25) of Chapter III of the Commitments.
- (25) All loan requests by connected borrowers greater than [...] % of the Bank's RWA] or any loan which keeps the exposure to one group (defined as a group of connected borrowers that represent a single credit risk) higher than [...] % of the Bank's RWA] shall be reported to the Monitoring Trustee, which may, if the conditions do not appear to be set at arm's-length or if no sufficient information has been provided to the Monitoring Trustee, postpone the granting of the credit line or the loan by [...] working days. In emergency cases, that period may be reduced to [...] working days provided sufficient information has been provided to the Monitoring Trustee. That period will enable the Monitoring Trustee to report the case to the Commission and the HFSF before any definitive decision is taken by the Bank.
- (26) The restructuring of loans involving connected borrowers shall comply with the same requirements as for non-connected borrowers. Furthermore, established frameworks and policies to deal with troubled assets shall be assessed and improved, if necessary. However, it is expected that restructured loans of connected borrowers shall be reported separately, at least per loan asset class and connected borrower type.

Section C: Other restrictions

- (27) **Dividend, Coupon, Repurchase, Call and Buy Back ban:** Unless the Commission otherwise agrees to an exemption, the Hellenic Republic commits that:
- (a) The Bank shall not pay any coupons on hybrid capital instruments (or any other instruments for which the coupon payment is discretionary) or dividends on own funds instruments and subordinated debt instruments other than where there is a legal obligation to do so. The Bank shall not release reserves to put itself in such a position. In case of doubt as to whether, for the purpose of the present Commitment, a legal obligation exists, the Bank shall submit the proposed coupon or dividend payment to the Commission for approval;
 - (b) The Bank shall not repurchase any of its own shares or exercise a call option in respect of those own funds instruments and subordinated debt instruments;
 - (c) The Bank shall not buy back hybrid capital instruments.
- (28) **Acquisition ban:** The Hellenic Republic commits that the Bank shall not acquire any stake in any undertaking, be it an asset or share transfer. That ban on acquisitions covers both undertaking which have the legal form of a company and any package of assets which forms a business ⁽¹⁾.
- (i) **Exemption requiring Commission's prior approval:** Notwithstanding that prohibition, the Bank may, after obtaining the Commission's approval, and, where appropriate, on a proposal of the HFSF, acquire businesses and undertakings if it is in exceptional circumstances necessary to restore financial stability or to ensure effective competition.
 - (ii) **Exemption not requiring Commission's prior approval:** The Bank may acquire stakes in undertakings provided that:
 - (a) The purchase price paid by the Bank for any acquisition is less than [...] % of the balance sheet size ⁽²⁾ of the Bank at the Effective Date of the Commitments ⁽³⁾; and

⁽¹⁾ For clarification, for the purpose of that Commitment, the Bank's Private Equity/Venture Capital business shall be excluded from the scope of that Commitment. In that respect, the Bank shall make a formal request to the Commission, which shall include a business plan for that entity.

⁽²⁾ For clarification, for the purpose of that Commitment, the size of the balance sheet is equal to the Bank's total assets.

⁽³⁾ For clarification, in case the Commission's approval to lift the acquisition ban is obtained according to point i, paragraph (28), Chapter III of the Commitments, the balance sheet of the Bank at the Effective Date of the Commitments shall be calculated to include also the assets of the acquired entities or the acquired assets at the date of acquisition.

- (b) The cumulative purchase prices paid by the Bank for all such acquisitions starting with the Effective Date of the Commitments until the end of the restructuring period, is less than [...] % of the balance sheet size of the Bank at the Effective Date of the Commitments.
- (iii) **Activities not falling under the acquisition ban:** The acquisition ban shall not cover acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms, including the conversion of existing debt to equity instruments.
- (29) **Advertising ban:** The Hellenic Republic commits that the Bank shall refrain from advertising referring to State support and from employing any aggressive commercial strategies which would not take place without the support of the Hellenic Republic.

CHAPTER IV. MONITORING TRUSTEE

- (1) The Hellenic Republic commits that the Bank shall amend and extend the mandate of the Monitoring Trustee approved by the Commission and appointed by the Bank on 16 January 2013 until the end of the restructuring period. The Bank shall also broaden the scope of that mandate to incorporate the monitoring of (i) the restructuring plan and (ii) all Commitments set out in this catalogue.
- (2) Four weeks after the Effective Date of the Commitments, the Hellenic Republic shall submit to the Commission the full terms of the amended mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under those Commitments.
- (3) Additional provisions on the Monitoring Trustee are specified in a separate document.

The Secretary-General
Christina PAPAKONSTANTINOY

Appendix

Macroeconomic projections for Greek domestic operations

% annual growth (unless otherwise stated)	2012	2013	2014	2015	2016	2017	Cumulative growth rate 2013-2017
Real GDP	– 6,4	– 4,2	0,6	2,9	3,7	3,5	6,4
Nominal Loan growth Greece	– 6,4	– 4,2	0,6	2,9	3,7	3,5	6,4
GDP deflator	– 0,8	– 1,1	– 0,4	0,4	1,1	1,3	1,3
Property prices	– 11,7	– 10	– 5	0	2	3,5	
Nominal household disposable income	– 8,8	– 9,5	– 0,3	– 0,4	2,6	3,6	– 4,5
Private Sector deposits	– 7	1,3	1	3,4	5	5	16,6
Unemployment (%)	24,2	27	26	24	21	18,6	
ECB refinancing rate (%)	0,75	0,5	0,5	1	1,5	1,75	
NPL formation peak			2H2014				
Euribor 3 months (average, %)		0,24	0,43	0,75	1,25	1,80	
Access to capital markets — repos		YES — No Cap					
Access to capital market — covered/senior unse- cured		YES — up to EUR 500 million each	YES — up to EUR 1 billion each	YES — No Cap			

COMMISSION DECISION (EU) 2015/456**of 5 September 2014****on the aid scheme No SA.26212 (11/C) (ex 11/NN — ex CP 176/A/08) and SA.26217 (11/C) (ex 11/NN — ex CP 176/B/08) implemented by the Republic of Bulgaria in the context of swaps of forest land***(notified under document C(2014) 6207)***(Only the Bulgarian text is authentic)****(Text with EEA relevance)**

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 regard to the Commission Decision C(2011) 4444 of 29 June 2011 ⁽¹⁾,

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

Whereas:

1. PROCEDURE

- (1) On 17 July 2008, the Commission received a letter from a complainant wishing to remain anonymous ('the first complainant') alleging that the Republic of Bulgaria had granted aid in the context of the swap of ownership of privately owned forest land for government-owned public forest land often followed by a change in the designated use of the swapped land from forest land to land available for construction. The first complainant submitted additional information by letters of 28 August 2008, 3 September 2008, 1 October 2008, 5 December 2008, 18 February 2010, 12 October 2010 and 26 January 2011.
- (2) On 27 January 2009, additional information on the contested swap transactions was received by the Commission from a third party. On 14 May 2009, a second complaint was submitted on those swaps, with additional information submitted by that complainant on 2 June 2009 and 8 June 2009. On 23 March 2010, another third party submitted information on those swaps to the Commission.
- (3) The Bulgarian authorities provided the Commission with information on the contested swap transactions by letters dated 2 September 2008, 28 October 2008, 4 January 2010, 23 March 2010, 27 March 2010, 30 August 2010 and 14 February 2011. During meetings held between the Commission's services and the Bulgarian authorities on 22 February 2010, 12 October 2010 and 3 February 2011, the latter provided additional information on those swaps.
- (4) By letter of 29 June 2011, the Commission informed the Republic of Bulgaria that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the contested swap transactions. The Commission decision to initiate the formal investigation procedure ('the opening decision') was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the measure.
- (5) By letter received on 29 September 2011, the Bulgarian authorities provided their comments on the opening decision.

⁽¹⁾ OJ C 273, 16.9.2011, p. 13.

⁽²⁾ See footnote 1.

- (6) The Commission received comments on the opening decision from the following interested parties: *Ecobalkani-Bulgaria EOOD* ⁽³⁾, *Vihren OOD* ⁽⁴⁾, *Aqua Estate OOD* ⁽⁵⁾, *Elkabel AD* ⁽⁶⁾, *Jivka Blagoeva* ⁽⁷⁾, *V-N-G Confort OOD* ⁽⁸⁾, *Yavor Haytov* ⁽⁹⁾, *Simeon Stoev Mirov* ⁽¹⁰⁾, *LM Impex EOOD* ⁽¹¹⁾, *All Seas Property 2 OOD* ⁽¹²⁾, *Litex Commerce AD* ⁽¹³⁾, *Foros Development EAD* ⁽¹⁴⁾, *Izgreva 5 EOOD* ⁽¹⁵⁾, *BOIL OOD* ⁽¹⁶⁾, *BG Land Co OOD* ⁽¹⁷⁾, *Mirta Engineering EOOD* ⁽¹⁸⁾, *Beta Forest EOOD* ⁽¹⁹⁾, *Kosta Gerov* ⁽²⁰⁾, *Marieta Babeva* ⁽²¹⁾, *Dimitar Terziev* ⁽²²⁾, *Svetoslav Mihailov* and *Elizabet Mihailova* ⁽²³⁾, and from a complainant who requested that his/her identity is not disclosed ⁽²⁴⁾.
- (7) By letters dated 1 September 2011, 5 October 2011, 25 November 2011, 14 December 2011 and 3 April 2012, the Commission forwarded those comments to the Bulgarian authorities, which were given the opportunity to react. The comments of the Republic of Bulgaria on the interested parties' comments were received by letters dated 4 November 2011, 15 December 2011, 12 January 2012 and 25 April 2012, respectively.
- (8) The Bulgarian authorities provided additional information on the contested swap transactions by letter of 2 December 2011 and during a meeting held with the Commission's services on 9 December 2011.
- (9) By letter of 9 February 2012, the Commission requested further clarifications from the first complainant on certain evidence it submitted.
- (10) On 3 April 2012, the Commission forwarded additional comments from a number of third parties ⁽²⁵⁾ to the Bulgarian authorities. The Commission received the comments of the Republic of Bulgaria on these comments on 25 April 2012 and 15 May 2012.
- (11) On 26 July 2012, the Commission requested additional information from the Bulgarian authorities. On 17 August 2012, the Bulgarian authorities requested an extension of the deadline to provide that information, which was granted by the Commission on 31 August 2012. On 19 September 2012, the Bulgarian authorities provided the requested information.
- (12) On 3 October 2012, the Commission requested further clarifications from *Elkabel AD*, one of the third parties who submitted comments on the opening decision, which were provided on 31 October 2012.
- (13) By letters of 14 January 2013, 17 May 2013, 22 July 2013 and 22 October 2013, the Commission requested additional information from the Bulgarian authorities, which was provided on 4 and 5 February 2013, 25 June 2013 and 5 July 2013, 16 and 23 August 2013, and 19 November 2013 and 20 December 2013, respectively. Part of the information submitted with the last submission was subsequently resubmitted by the Bulgarian authorities by e-mail of 21 January 2014.

⁽³⁾ Letter dated 26 July 2011.

⁽⁴⁾ Letter dated 27 July 2011.

⁽⁵⁾ Letters dated 28 July and 14 October 2011.

⁽⁶⁾ Letter dated 29 July 2011.

⁽⁷⁾ Letter dated 29 July 2011.

⁽⁸⁾ Letter dated 29 July 2011.

⁽⁹⁾ Letters dated 30 July 2011, 15 and 22 October 2011.

⁽¹⁰⁾ Letter dated 31 July 2011.

⁽¹¹⁾ Letter dated 1 August 2011.

⁽¹²⁾ Letter dated 1 August 2011.

⁽¹³⁾ Letter dated 5 August 2011.

⁽¹⁴⁾ Letter dated 12 August 2011.

⁽¹⁵⁾ Letter dated 22 August 2011.

⁽¹⁶⁾ Letter dated 12 October 2011.

⁽¹⁷⁾ Letters dated 14 and 23 October 2011.

⁽¹⁸⁾ Letter dated 14 October 2011.

⁽¹⁹⁾ Letter dated 14 October 2011.

⁽²⁰⁾ Letters dated 16 September and 15 October 2011.

⁽²¹⁾ Letters dated 16 September and 15 October 2011.

⁽²²⁾ Letters dated 16 September and 15 October 2011.

⁽²³⁾ Letters dated 15 October 2011 and 7 December 2011.

⁽²⁴⁾ Letter dated 17 October 2011. In accordance with Article 6(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1), this interested party has requested its identity is not disclosed to the Member State concerned on grounds of potential damage.

⁽²⁵⁾ *Aqua Estate OOD*, *Beta Forest EOOD*, *Kosta Gerov*, *Dimitar Terziev*, *Yavor Haytov*, *Valentina Haytova*, *Georgi Aleksandrov Babev*, *Marieta Babeva*, *Elizabet Mihaylova*, *Svetoslav Mihaylov*, *BG Land Co OOD*, *Mirta Engineering EOOD*, *Miks PS-OOO*, and *Boil OOD*.

2. DESCRIPTION OF THE MEASURE

2.1. THE LAND SWAPS

- (14) In 1947, all forest land in Bulgaria became public property as a result of expropriation by the State. This remained the case until 2000, when the restitution of forest land to previous private owners was started.
- (15) On the basis of an amendment to the Forest Act ⁽²⁶⁾, which came into effect on 22 February 2002, swaps of recently privatised forest land with government-owned public forest land from the State forest fund were made possible. This amendment to the Forest Act was in force until 27 January 2009 and defined the order and conditions under which those swaps were conducted.
- (16) For the purposes of the swaps, the prices of the privately owned and publicly owned forest land were determined on the basis of a specialised regulation, namely, the Regulation on the calculation of basic prices, prices for land in excluded areas and creating rights of use and easements in respect of forests and forest stock land ⁽²⁷⁾ (the 'Regulation on basic prices'), which entered into force on 18 November 2003. Bulgarian law did not allow expert evaluators to deviate from the prices determined for forest land by applying the Regulation on basic prices.
- (17) On the basis of that regulation, the basic price of a plot of forest land is determined as the sum of the basic value of that land and the value of the stand (plant species situated on that land).
- (18) The value of the land is determined on the basis of the average value of land according to the categories of land offering identical conditions for the growth of plants (150 site types, as per Annex 1 of the Regulation on basic prices). That value is then adjusted using an adjustment coefficient that takes account of the location of the land in relation to the local and national infrastructure. That adjustment coefficient (Km), set out in Annex 2 of the Regulation on basic prices, is determined by using the following formula:

$$Km = 1 + g + m + s + p$$

where:

p = coefficient of proximity to a surfaced road measured in a straight line (from 0,00 to 0,20)

s = coefficient of proximity to an urban area measured in a straight line (from 0,00 to 0,25)

m = coefficient of proximity to the sea measured in a straight line (from 0,00 to 0,20)

g = coefficient of proximity to a city, expressed in figures reflecting the distance to a given city (shortest road distance between the plot in question and city). Cities are divided into six groups as set out in Table 1:

Table 1

Group 1:	Group 2:	Group 3:	Group 4:	Group 5:	Group 6:
Sofia (from 0,00 to 0,70)	Ruse, Plovdiv, Burgas, and Varna (from 0,00 to 0,50)	Blagoevgrad, Veliko Tarnovo, Vratza, Pleven, and Stara Zagora (from 0,00 to 0,40)	other district cities (from 0,00 to 0,35)	other big cities (Botevgrad, Gorna Oryahovitza, Dimitrovgrad, Dupnitsa, Kazanlak, Karlovo, Lom, Petrich, Samokov, Svishtov, and Cherven Bryag (from 0,00 to 0,30)	other municipal centres (from 0,00 to 0,10)

⁽²⁶⁾ Bulgarian Forest Act published in Bulgarian State Journal No 125 of 29 December 1997.

⁽²⁷⁾ Adopted by Decree of the Council of Ministers No 252 of 6 November 2003, published in Bulgarian State Journal No 101 of 18 November 2003 (last amended in Bulgarian State Journal No 1 of 5 January 2007).

- (19) The value of the land is further adjusted by adding an increase per hectare (increment) which is set on the basis of the average price of land observed in the area where the plot is situated. Those increments are laid down in the provisions of Annex 3 to the Regulation on basic prices and are indicated in Table 2:

Table 2

	Increment (BGN/hectares)
Sofia, national resorts and adjacent residential holiday areas, land located within 10 kilometres from the sea	5 000
Settlements of 1st and 2nd category	2 000
Settlements of 3rd and 4th category	1 000
Settlements of 5th and 6th category	500
Settlements of 7th and 8th category	0

- (20) The total value of the land determined through this mechanism is referred to as the basic value of the land.
- (21) The value of the stand (plant species situated on the land) is the value of the stand's current age and the projected value of its rotation age. The value of wood from forest stands at their current age (the age at the time of valuation) is equal to the profits from the sale of the varieties in question at average market prices where costs related to felling, primary processing and transportation to a temporary storage place are deducted. If the income does not cover the costs, the wood is not considered to have any value.
- (22) Income from sales is determined by grading the stock and the volume of wood categories. The costs (BGN/cubic metre) related to felling and primary processing of wood with an average level of difficulty of the wood-felling area are determined by the type of trees and category of wood on the land. The costs of wood transportation are determined by the type of trees, the category of the wood and the average transportation distance from the plot in question. The transport costs are multiplied to each kilometre of transport by a coefficient which takes into account the level of difficulty of the route.
- (23) The average market prices and the costs related to felling, primary processing and transportation of wood should be regularly determined and updated by the Executive Forests Agency ('EFA') ⁽²⁸⁾, on the basis of weighted averages calculated from statistical data collected over a period of three years (the last year carries double the weight).
- (24) Thus, by adding the value of the stand, as determined by an evaluator, to the basic value of the land, the basic price of a plot of forest land is obtained.
- (25) To this basic price, an adjustment accounting for the protection of the environment-shaping nature and recreational functions of the forest land is made to land located in areas of so-called 'special protection against urbanisation', established in certain regions of Bulgaria by law. Pursuant to the provisions of Annex 19 to the Regulation on basic prices, the basic value of forest properties situated in such areas are multiplied by a coefficient (K) identified in Table 3 ⁽²⁹⁾, namely:

Table 3

Black Sea coast first area	K = 6;
Black Sea coast second area	K = 5;

⁽²⁸⁾ The Executive Forests Agency was previously called State Forest Agency, or SFA. It will be referred to as the 'EFA' throughout the present decision for reasons of consistency.

⁽²⁹⁾ In cases in which an estate falls into more than one area, the higher coefficient is taken into account.

Resort areas, resorts, and settlements of national significance	K = 4;
Forest and land located in areas stretching from the edge of national and municipal roads to the restrictive lines for construction	K = 3
Resort areas, resorts, and settlements of local significance	K = 4;

- (26) Finally, a so-called 'market regulator coefficient' is applied to the basic price of the land according to Annex 20 to the Regulation on basic prices. That coefficient is expressed in BGN/m² and ranges from 10 for land adjacent to the seaside, big mountain resorts and Sofia, to 1 for the least attractively situated land.
- (27) Notwithstanding the foregoing, if the private party received forest land under the swap transaction of a higher total administrative price than the land it relinquished, it had to pay compensation to the State for that difference in price. According to the Bulgarian authorities, as a general rule, the State only accepted swaps as a result of which the State received land of a higher administrative value. This rule, however, relates only to the total administrative price of the privately owned plot being higher than the administrative price of the publicly owned plot for which it was swapped, not its price per square metre.
- (28) On 27 January 2009, a ban on swaps of forest land came into force. The period under review of the contested swap transactions is thus from 1 January 2007, the date of the accession of the Republic of Bulgaria to the Union, to 27 January 2009, the date of the swaps moratorium ('the period under review').

2.2. THE CHANGE IN THE DESIGNATED USE OF THE LAND

- (29) The complainants further allege that the swap transactions were often followed by a change in the designated use of the land from forest land to land available for construction and that that change further increased the disparity between the market value of the government-owned public forest land swapped with the privately owned plot.
- (30) The Bulgarian authorities explained that the procedure for the change in the designated use of the land is not governed by the provisions of the Forest Act (like the swap transactions) but by a separate set of legislation, among others, the Spatial Planning Act (ZUT) ⁽³⁰⁾. According to that legislation, any owner of forest land may request a change in the designated use of their forest land into land available for construction by sending an application to the Executive Director of the EFA, which was part of the Ministry of Agriculture and Food ⁽³¹⁾. A commission of (internal and potentially external) experts then examines that request and provides an opinion to the Executive Director, who adopts a preliminary decision on the application. If that decision is positive and confirms the grounds for and the legality of the application, it will be forwarded to all services responsible for the change of designation (the provincial governor, the mayor of the municipality and the director of the regional directorate responsible for forests).
- (31) On the basis of a positive preliminary decision, the owner will submit an application to the municipality concerned for the commissioning, drafting and approval of a detailed master plan. Such a plan requires the consultation of all (local) stakeholders. If that plan is approved by the responsible authorities and once it comes into force, the owner of the land will submit an application to the Minister of Agriculture and Food for the exclusion of that forest land from the protected forest stock. If that application is accepted, a stamp duty, determined by an independent evaluator in line with the provisions of the Regulation on basic prices, is due.
- (32) After the payment of the stamp duty by the owner of the forest land to the responsible authorities, the procedure for the issuance of an administrative decision on the change of the designated use of the land will be launched. Depending on the size of the property, this decision is granted by either the Minister of Agriculture and Food (if it concerns a property of less than 10 hectares) or by the Council of Ministers.
- (33) On 3 September 2009, a moratorium on the subsequent change of the designated use of swapped land was introduced.

2.3. LEGAL BASIS FOR THE MEASURES

- (34) The swaps, the calculation of prices for use in the swap transactions and the procedure for the change in the designated use of the swapped forest land are governed by the following legal texts:

⁽³⁰⁾ Published in the Bulgarian State Journal No 1 of 2 January 2001

⁽³¹⁾ During the period 1999 to 2007, this Ministry was known as the Ministry of Agriculture and Forests. It was renamed the Ministry of Agriculture and Food at the beginning of 2008. The Ministry is referred to by its current name throughout this decision for reasons of consistency. The Executive Forests Agency (EFA) was once part of this Ministry.

- Bulgarian Forest Act
- Regulation on the calculation of basic prices, prices for land in excluded areas and creating rights of use and easements in respect of forests and forest stock land
- State Property Act ⁽³²⁾
- Obligations and Contracts Act ⁽³³⁾
- Spatial Planning Act.

2.4. BENEFICIARIES

- (35) Potential beneficiaries of the swap transactions are natural persons, private companies and municipalities, often active in real estate development and/or tourism activities, who exchanged their forest land for publicly owned forest land.

3. GROUNDS FOR INITIATING THE PROCEDURE

- (36) In the opening decision, the Commission expressed doubts as to whether the swap transactions and/or the subsequent change in the designated use of the land contained elements of State aid within the meaning of Article 107(1) of the Treaty and whether such aid could be found compatible with the internal market.

3.1. INTRINSIC LINK BETWEEN THE SWAPS AND THE CHANGE IN THE DESIGNATED USE OF THE LAND

- (37) A first doubt raised by the Commission related to the allegation made by the complainants that in several cases the swaps were followed by a change in the designated use of the land swapped, i.e. from forest land to land available for construction.
- (38) In light of the numerical evidence provided by the Bulgarian authorities, the Commission noted in the opening decision that out of the 147 swaps carried out during the period under review (2006-2009), 15 were followed by a change in designated use (10 %). Moreover, the Commission observed that different legal provisions apply to the swap transaction and to potential requests for a change in the designated use and that separate administrative procedures are in place for both procedures. These elements appeared, at first sight, to confirm the thesis of the Bulgarian authorities that — as a general principle — the two steps are not intrinsically linked ⁽³⁴⁾.
- (39) However, the Bulgarian authorities indicated that the formulas for setting the administrative prices of forest land and the stamp duty payable for the change in the designated use of the land were set at a level to ensure that the full swap price of forest land plus the change in the designed use of the land would, to a large extent, equal the market price of similar land available for construction. This could imply that the authorities assumed that many investors would try to couple both steps into one transaction.
- (40) Consequently, the Commission raised doubts whether the potential change of the designated use of forest land concerned should be taken into account when determining the price of the plot for the purpose of the swap transactions, i.e. whether the swap and the subsequent change of the designated use of the swapped land should be considered intrinsically linked.

3.2. POTENTIAL STATE AID IN THE CHANGE OF THE DESIGNATED USE OF THE LAND

- (41) A second doubt raised by the Commission was whether the change in the designated use of the land swapped could result in the grant of State aid, as it further increased the value of the land swapped.
- (42) The Commission noted in the opening decision that the change in the designated use of the land does not *prima facie* seem to have involved any transfer of State resources. The stamp duty due on such transactions was calculated according to the legal provisions and — to the Commission's knowledge — paid in all cases concerned. Therefore, although undertakings concerned by the change in the designated use of the land may have benefitted from that change, the administrative decisions effectuating the change would not result in State aid within the meaning of Article 107(1) of the Treaty. The Commission did not take a definite position on this issue and invited interested parties to comment on whether State aid was involved in the operation.

⁽³²⁾ Published in Bulgarian State Journal No 44 of 21 May 1996 (last amended in Bulgarian State Journal No 41 of 2 June 2009)

⁽³³⁾ Published in Bulgarian State Journal No 275 of 22 November 1950 (last amended in Bulgarian State Journal No 50 of 30 May 2008)

⁽³⁴⁾ An unknown number of intended changes of use may be blocked by the moratorium imposed in 2009.

3.3. POTENTIAL STATE AID IN THE SWAP OF FOREST LAND

- (43) The Commission noted in the opening decision that the prices of the forest land for the purposes of the swaps were determined by experts using solely the formulas set out in the Regulation on basic prices. The Commission, therefore, raised doubts as to whether the application of those formulas led to an administrative price which was similar to the prices obtained in arm's length transactions between two private parties. The Commission therefore invited the Republic of Bulgaria and third parties to provide information on market prices obtained in fully private sales (or swap transactions) of forest land that took place in Bulgaria during the period under review. The Commission further invited the Republic of Bulgaria and third parties to provide information on the differences between those prices and the administrative prices used for the contested swap transactions and, hence, the potential amount of State aid involved in those transactions. In addition, the Commission invited the Republic of Bulgaria and third parties to provide information on the rules applied as far as the compensation paid in swap transactions in case of difference in prices for the two swapped plots of land is concerned. Finally, the Commission invited the Republic of Bulgaria to provide further information to substantiate its claim that the contested swaps do not affect intra-Union trade.
- (44) The Commission also set out its preliminary view in the opening decision on how the advantage arising from the contested swap transactions should be quantified, should those swaps be found to give rise to State aid:
- (i) the difference between the real market price of privately owned forest plot 1 and the administrative price for plot 1, determined in line with the prescriptions of the Regulation on basic prices,
 - (ii) the difference between the real market price of publicly owned forest plot 2 and the administrative price for plot 2, determined in line with the prescriptions of the Regulation on basic prices.

The State aid amount involved in the swap transactions would then be equal to the value of (ii) less the value of (i).

Any monetary compensation resulting from the difference in the administrative prices of two plots being the object of the swap transaction paid by one party to another shall also be taken into account while calculating the potential State aid element involved in the transaction.

3.4. COMPATIBILITY OF POTENTIAL STATE AID

- (45) Should State aid be found to be present either as a result of the change in the designated use of the land and/or as a result of the swap transactions, the Commission then raised doubts in the opening decision as to whether such aid could be considered compatible with internal market and, more specifically, with Article 107(3)(a) of the Treaty and the provisions of the Guidelines for national Regional Aid 2007-2013 ⁽³⁵⁾ and/or 107(3)(c) of the Treaty and the provisions of the Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ('Forestry Guidelines') ⁽³⁶⁾.
- (46) The Commission therefore requested the Republic of Bulgaria and interested parties to provide observations on the compatibility of the contested measures.

4. COMMENTS FROM INTERESTED PARTIES

4.1. COMMENTS FROM THE FIRST COMPLAINANT IN RELATION TO THE DOUBTS RAISED BY THE COMMISSION IN THE OPENING DECISION

- (47) The first complainant argues that the contested swaps constitute State aid within the meaning of Article 107(1) of the Treaty, which is incompatible with the internal market
- (48) As regards the first doubt expressed by the Commission, the first complainant argues that the change in the designated use of the land and the swap transactions should be regarded as intrinsically linked. Firstly, the complainant claims that many of the beneficiaries of the swaps are active in the construction and tourism sectors, not in forest activities. Secondly, according to the first complainant, since the moratorium came into effect in 2009, swapped forest land is virtually not exploited commercially. Thirdly, at the time that the swap transactions were carried out many of the beneficiaries allegedly announced and advertised their development projects for the swapped forest land as ski or seaside resorts and had even initiated discussions with the relevant

⁽³⁵⁾ OJ C 54, 4.3.2006, p. 13.

⁽³⁶⁾ OJ C 319, 27.12.2006, p. 1.

local authorities to ensure a change in the designated use of the land would come about. Fourthly, the complainant contends that the same State agency (the EFA) was often responsible for the conclusion of the swap and for the exclusion of the swapped land from the forest fund (EFA and the competent regulator) ⁽³⁷⁾, thus clearing the way for its commercial development.

- (49) Accordingly, the first complainant considers that a potential reclassification of the designated use of the land and the corresponding price increase should be taken into account when quantifying the total amount of State aid involved in the swap transactions. Therefore, in the complainant's view, comparisons with plots of constructible land should be made in the quantification of the aid to properly reflect the market price of the swapped land.
- (50) The complainant also mentions that in view of the attractiveness of the regions where the government forest plots were located, it would have been more prudent for the authorities first to act to increase the plots' value (i.e. change their designated use to make them available for construction) and only afterwards dispose of the plots. According to the complainant, in none of the cases where a request for a swap was made, did the EFA proceed to change the designated use of that land prior to that swap. This is, according to the complainant, a clear indication that there was intent to bring benefit to the acquirer of the government-owned forest land. This practice was also criticised by the World Bank in a Report on Bulgarian Forest of 2009, which noted that the State was incurring losses in this particular way ⁽³⁸⁾.
- (51) As regards the second doubt expressed by the Commission, on whether State aid was granted as a result of the change in the designated use of the swapped land, the first complainant argues that while the acquirer of the land subsequently paid a stamp duty upon the decision to convert the designated use of the land and that this amount should be deducted from the quantification of any aid received as a result of the swap, that duty does not reflect the actual increase in the value of the plot as a result of that change. The complainant further claims that in those instances where the swap was conducted before Bulgaria's accession to the Union but the change in the designated use of the land took place after accession, the illegal State aid granted to the acquirer of the land should be the difference between the market value of the respective plot at the time of the swap (prior to accession) and the market value of the plot after the change in the land designation (after accession).
- (52) As regards the third doubt expressed by the Commission concerning the presence of State aid as a result of the swaps, the complainant argues that the formulas prescribed by the Regulation on basic prices do not reflect the market value of the swapped land. The complainant also contests the independence of the evaluators, as, in its view, the acquirer of the land is free to choose a friendly evaluator, leading towards a significant underestimate of prices.
- (53) The complainant also provided additional information on the market prices of the swapped forest land or very similar forest land allegedly showing considerable discrepancies with the administrative prices for the plots. Due to time constraints the complainant only researched the prices of nine of the swapped plots. For this exercise, bank evaluations of land were used, as well as information from the public real estate registry in Bulgaria showing actual prices at which real estate deals were concluded for similar plots. The price discrepancies encountered ranged from an undervaluation (by using the administrative price) of 50-65 % to cases where forest land was allegedly acquired at 1 to 2 % of its market value.
- (54) Finally, the complainant claims that the fact that criminal proceedings were initiated against the former head of the EFA on charges of concluding swaps to the detriment of the State is an indication that the Bulgarian authorities themselves consider that forest land was delivered to certain private parties at a price far below market value.
- (55) As regards the question whether the swaps distort competition and affect trade between Member States, the complainant claims that to its knowledge none of the beneficiaries of the swaps engage in forest activities as their main commercial activity. Rather, almost all beneficiaries allegedly have a history of or future business plans for economic activities or investments in one of the following sectors: real estate speculation, construction and/or tourism. According to the complainant, tourism by definition concerns the whole of the internal market so that even a few cases of selective aid are bound to distort it. The complainant further adds that, in light of the number

⁽³⁷⁾ According to the complainant, the exclusion of forest from the State forest fund prejudices the subsequent decision of the local authorities regarding its subsequent use, as they have no better option but to adopt a Detailed Spatial Plan for the plot, which has ceased to be forest land and protected as such.

⁽³⁸⁾ 'Bulgaria: Forest Policy Note', 10.3.2009, p. 11, paragraph 51, <http://siteresources.worldbank.org/BULGARIAEXTN/Resources/305438-1224088560466/BulgariaForestPolicyNote03102009GOB.pdf>

and the scale of the swaps, foreign competitors are effectively deterred from entering the Bulgarian market. While several major Union investors (e.g. Lindner, ECE) have been active in urban construction projects in Bulgaria (business centres and large department stores), virtually all large-scale investments in sea, ski or golf resorts have allegedly been made by Bulgarian-controlled companies.

4.2. COMMENTS FROM THE BENEFICIARIES OF THE SWAP TRANSACTIONS AND OTHER THIRD PARTIES

- (56) The Commission received comments from numerous third parties, most of which were private parties to the swap transactions ('the beneficiaries'). The Commission notes that a number of beneficiaries ⁽³⁹⁾ merely issued a brief statement that no State aid was involved in the swap deals they were a party to. Other beneficiaries provided more detailed observations on the doubts expressed by the Commission in the opening decision, which will be examined in the following sections.

4.2.1. Intrinsic link between the swap and the change in the designated use of the land

- (57) As regards the first doubt expressed by the Commission on the existence of an intrinsic link between the swaps and the change in the designated use of the land, the majority of beneficiaries ⁽⁴⁰⁾ who responded to the opening decision argue that no such link exists. The swap and the subsequent change of the designated use of the swapped land would be governed by two separate procedures, which are each within the competence of two different State bodies that operate independently from one another. The swaps fall within the competence of the Minister of Agriculture and Food or the Council of Ministers, depending on the size of the plot to be swapped, and the EFA, while the change in the designated use of the land falls within the competence of the local authorities — mayors of municipalities or the municipal council; the Minister of Regional Development and Public Works; or the regional governor for sites located within their region — and requires the approval of a detailed or general spatial development plan.
- (58) One beneficiary ⁽⁴¹⁾ further adds that there is no automatic link between changing the designated use of the land and an increase in its value. The decision to change the designated use of the land would be based on the appraisal of its necessity, which has a wider scope and often overrides the private interests of owners, and is therefore not based on the commercial interests of the parties to the swap transaction. Another beneficiary ⁽⁴²⁾ notes that the statistical information provided by the Bulgarian authorities confirms the lack of an intrinsic link. Finally, other beneficiaries ⁽⁴³⁾ deem the question of whether a link exists to be irrelevant, since in their specific cases the swapped land they acquired was not excluded from forest protection for development purposes nor has any procedure been initiated to change the designated use of the land.
- (59) As regards the question of whether the potential change in the designated use of the swapped land should be taken into account for determining the price of that land, the majority of beneficiaries argue that it should not, for various reasons. A number of beneficiaries ⁽⁴⁴⁾ argue that it would be unjustified to take the hypothetical possibility of changing the designated use of swapped land into account, since such a change may never be requested or may be rejected due to a failure to comply with the respective administrative requirements. The strategic location of swapped forest land, which allegedly increases its value, should be irrelevant if the designated use of land has not been changed and the acquired land can only be used for the purpose stipulated by law. Thus, one beneficiary ⁽⁴⁵⁾ argues that regard should be had to the specific agreement reached between the parties to the swap at the date of valuation. An objective and fair calculation of market value should also take into account the spatial development master plans (allowing or not construction) in force at the date of valuation of the swapped forest land. Consequently, a set of uniform criteria should be specified that allows for a distinction between a hypothetical possibility and the actual intention of the parties to the swap to subsequently undertake a change in the use of the land.
- (60) Moreover, many beneficiaries note that for the exclusion of land from forest protection the payment of a fee for the change of its designated use is required, which is equal to the price per square metre of constructible land in the area in question. Hence, those beneficiaries claim that they do not accrue an economic benefit from the change, because if the acquired land is sold, used as collateral or developed, its value would be the same as the value of land available for construction. A similar argument was made by Mirta Engineering and Beta Forest, who

⁽³⁹⁾ Ecobalkani-Bulgaria EOOD, Vihren OOD and Elkabel AD

⁽⁴⁰⁾ This opinion was supported by Foros, Mirta Engineering, Beta Forest, LM Impex, Mr Gerov, Mr Babev and Mrs Babeva, Mr Terziev, Mr Mihailov and Mrs Mihailova

⁽⁴¹⁾ All Seas

⁽⁴²⁾ LM Impex

⁽⁴³⁾ This opinion was supported by Izgrev, Litex, MIKS, BOIL, and Mrs Blagoeva.

⁽⁴⁴⁾ This opinion was supported by Mr Gerov and Terziev and by Mr Babev and Mrs Babeva.

⁽⁴⁵⁾ All Seas

note that the change of the designated use of land involves additional expenses, notably stamp duty and local tax as well as design costs, which further increase property value. Indeed, Mr Mihailov and Mrs Mihailova claim that in their case the change of the designated use of the land was conditional upon payment of the State fees defined in Article 17 of the Forest Act and the Implementing Regulation on the Forest Act.

- (61) Finally, certain beneficiaries ⁽⁴⁶⁾ deem the question irrelevant, since in their specific cases the swapped land they acquired was not excluded from the forest protection for development purposes nor has any procedure been initiated to change the designated use of the land. MIKS noted in its submission that in its swaps contract the Bulgarian State stipulated that no change of the designated use of the land was permitted.

4.2.2. State aid in the swap of forest land

- (62) As regards the doubts raised by the Commission of whether the administrative prices for the swap transactions led to a market price, the beneficiaries ⁽⁴⁷⁾ provided several similar arguments, in relation to their own swap transactions, why that should be the case.
- (63) First, one beneficiary ⁽⁴⁸⁾ argues that, in determining administrative prices, the Regulation on basic prices takes account of objective criteria, such as the location of the land, the importance of the districts and the type and importance of the plant varieties on the land, while two other beneficiaries ⁽⁴⁹⁾ argue that the administrative swap price is based on criteria that are identical to those used in swaps of private forest land undertaken by private investors, which involve land situated in proximity to local or national infrastructure that is similar to the contested swap transactions in terms of plant species, location in areas placed under special protection from urbanisation, etc. Similarly, other beneficiaries ⁽⁵⁰⁾ argue that the valuations resulting from the Regulation on basic prices lead to administrative prices which are similar to, or in many cases higher than, market prices for forest land in Bulgaria due to the lack of a domestic market for this type of land and the fact that the few private transactions were undertaken at low prices. Hence, the swaps were conducted under the prevailing economic conditions on the market.
- (64) Second, a number of beneficiaries ⁽⁵¹⁾ argue that they carried out valuations of the swapped parcels that lead to administrative prices which are similar to ⁽⁵²⁾, or in many cases even higher than ⁽⁵³⁾, market prices for forest land in Bulgaria.
- (65) Third, several beneficiaries ⁽⁵⁴⁾ point to the absence of fully private swaps or sale transactions in the areas where the swaps of those beneficiaries took place as a reason why administrative prices should be considered to approximate market prices.
- (66) Finally, several beneficiaries ⁽⁵⁵⁾ argue that since the Minister of Agriculture and Food, in the exercise of his discretionary power, is entitled to refuse to carry out the swap if the State has no interest in acquiring the private forest land and the conditions of the swap agreement have to be approved by both parties (public and private), the swap transactions should be considered as commercial transactions in which context the State behaves as a market economy operator ('MEO').
- (67) As regards the potential amount of State aid involved in the transactions (i.e. the difference between the administrative and market prices for the forest land), the majority of beneficiaries ⁽⁵⁶⁾ replied that where the privately held land is more valuable than the publicly owned land, the Bulgarian authorities did not cover the difference in prices.

⁽⁴⁶⁾ Foros Development, Izgrev, Liteks Komers and Jivka Blagoeva

⁽⁴⁷⁾ This opinion was supported by Mr Mihailov and Mrs Mihailova, Mirta Engineering, Beta Forest, Elkabel and Mrs Blagoeva.

⁽⁴⁸⁾ Mrs Blagoeva

⁽⁴⁹⁾ Izgrev and Litex Komers

⁽⁵⁰⁾ Mr Gerov, Mr Babev and Mrs Babeva, and Mr Terziev (and their lawyer Mrs Shankova on their behalf).

⁽⁵¹⁾ LM Impex, Mr Mihailov and Mrs Mihailova, Mirta Engineering, Beta Forest, Foros Development.

⁽⁵²⁾ Elkabel. In response to doubts expressed by the Commission, Elkabel ordered a new expertise from an independent expert which showed that even though for some of the plots concerned the market prices would be higher than the administrative prices calculated in line with the Regulation on basic prices, the total administrative price of all plots exchanged by Elkabel was higher than their market value. It was further explained that the total administrative price of the publicly-owned plots that were exchanged was also higher than their market value. The evaluator hence concluded that the use of administrative prices did not lead to the granting of an unwarranted advantage to Elkabel

⁽⁵³⁾ Izgrev, Litex Komers, Mr Gerov, Mr Terziev, Mr Babev and Mrs Babeva, MIKS and BOIL. In the case of Mr Mihailov and Mrs Mihailova, the value of the swapped privately owned land was allegedly higher (BGN 83 322,66) than that of the publicly owned land (BGN 67 125,00).

⁽⁵⁴⁾ Mr Mihailov and Mrs Mihailova, Mirta Engineering and Beta Forest (in relation to the Novo Orjahovo Region), Foros Development (in relation to the Burgas Municipality), and MIKS and BOIL (in relation to the Nessebar Region).

⁽⁵⁵⁾ MIKS, BOIL, Foros Development, Mirta Engineering and Beta Forest

⁽⁵⁶⁾ Izgrev, Mrs Blagoeva, MIKSD, BOIL, Mirta Engineering, Beta Forest, Mr Mihailov and Mrs Mihailova

Another beneficiary⁽⁵⁷⁾ claimed that the difference in the market prices of swapped private and public forests situated in the same or adjacent areas favours the government as the administrative prices are higher than the market prices freely negotiated between private forest owners in the areas concerned.

- (68) As regards the other conditions for a finding of State aid, several beneficiaries⁽⁵⁸⁾ contested that they had been met. Thus, certain beneficiaries⁽⁵⁹⁾ argue that they are natural persons, to which the Bulgarian State Aid Act and Article 107 of the Treaty do not apply. In relation to State resources, those beneficiaries note that the government acquired the land through unlawful expropriation without adequate compensation so that the State cannot be considered to dispose of those resources. In relation to selectivity, those beneficiaries argue that the Forest Act applies *erga omnes* and thus does not discriminate.
- (69) Another beneficiary⁽⁶⁰⁾ also considers that the conditions of Article 107 of the Treaty have not been fulfilled as regards the swap transactions, but for slightly different reasons. First, there would be no transfer of State resources since the swap is a 'double sale transaction' that was undertaken after a valuation was conducted by an independent property assessor on the basis of the objective criteria for price calculation stipulated by law. No advantage has been granted, nor have the counter-parties to the swap been placed in a more favourable position than that of its competitors since every forest land owner could have requested a swap of its private land for publicly owned forest land. A similar argument is made by another beneficiary⁽⁶¹⁾ which considers the swaps scheme to be a general measure available to all forest land owners.
- (70) In relation to the existence of an economic advantage, the majority of beneficiaries⁽⁶²⁾ contested that they received such an advantage from the transactions since, according to them, the administrative price for the swapped land was equivalent to or higher than its market price.
- (71) Finally, as regards the question of whether the swap transactions distort competition and affect trade between Member States, the large majority of beneficiaries⁽⁶³⁾ answered that they do not operate in the real estate development or tourism sectors and/or have not taken any steps to obtain a licence as a tour operator. Furthermore, they confirmed to neither have used the land acquired through the swap for timber production following its acquisition, nor to have sold any timber in Bulgaria or in other Member States. Therefore, they claim that no actual or potential impact on intra-Community trade may be alleged. Another beneficiary⁽⁶⁴⁾ added that the swaps do not lead to a boost in domestic output thereby limiting the possibilities available to undertakings from other Member States to import products into the local market.
- (72) Other beneficiaries⁽⁶⁵⁾ claimed that since the swaps do not entail a transfer of State resources and do not confer an economic advantage upon them, they cannot be considered to affect the market balance and economic conditions in which enterprises operate, i.e. initial investment for the acquisition of tangible assets is required. Thus, undertakings from other Member States can enter and operate on the same market upon equitable conditions, so that trade between Member States cannot be said to have been affected by the contested swaps.
- (73) Finally, one beneficiary⁽⁶⁶⁾ explained that the forest land he acquired from the State is not suitable for afforestation. He further considers his property superior to the one he received from the State and that the transaction does not entail State aid. Finally, he mentioned that the land acquired is used for mobile beekeeping by making use of the land for pasture during the summer.

4.2.3. Compatibility of potential aid

- (74) While the Commission requested interested parties to provide any available evidence which would allow it to examine the compatibility of the contested swap transactions with the internal market, none of the beneficiaries did so.

⁽⁵⁷⁾ Litex Komers.

⁽⁵⁸⁾ BOIL, Mr Mihailov and Mrs Mihailova

⁽⁵⁹⁾ Mr Gerov, Mr Terziev, and Mr Babev and Mrs Babeva

⁽⁶⁰⁾ LM Impex

⁽⁶¹⁾ All Seas

⁽⁶²⁾ Izgrev, Mrs Blagoeva, Litex Komers, MIKS, Foros Development, Mirta Engineering and Beta Forest

⁽⁶³⁾ Izgrev, Litex Komers, MIKS, BOIL, Mirta Engineering, Beta Forest, Mr Mihailov and Mrs Mihailova, LM Impex

⁽⁶⁴⁾ LM Impex

⁽⁶⁵⁾ Mr Gerov, Mr Babev and Mrs Babeva and Mr Terziev

⁽⁶⁶⁾ Mr Stoev.

5. COMMENTS FROM THE REPUBLIC OF BULGARIA

5.1. BULGARIA'S COMMENTS ON THE OPENING DECISION

- (75) The Bulgarian authorities maintain that the contested swap transactions do not constitute State aid within the meaning of Article 107(1) of the Treaty.
- (76) In relation to the alleged intrinsic link between the swap transactions and the change in the designated use of the swapped forest land, the Bulgarian authorities noted that Article 15(b) of the Forest Act allows for the possibility to apply for a change in the designated use of forest land irrespective of the way in which the land was acquired, whether through a swap, sales transaction or by other means. However, such a theoretical possibility should not be understood as a firm, prior agreement between the authorities and the private party to the swap to subsequently change the designated use of the land.
- (77) The Bulgarian authorities provided evidence that, in relation to the 132 swaps that took place during the period 2007 to 2009, there were 24 requests made to change the designated use of the swapped forest land, of which in only 15 cases (i.e. 11,4 % of all swaps) a positive administrative decision was adopted allowing for the requested change.
- (78) The Bulgarian authorities also note the different goals pursued by the swap transactions and the change in the designated use of the land. While the swaps seek to achieve the consolidation and conservation of Bulgarian forests so as to ensure their sustainable development and reproduction for the benefit of society as a whole, the change in the designated use of the land aims at achieving the goals laid down in the Spatial Planning Act, which provides the rules for the incorporation of land into the boundaries of agglomerations where construction is allowed in line with public needs and interests relating to sustainable development and building appropriate living, working and recreational conditions for citizens. In addition, while the swap transactions depend on decisions taken by the Minister of Agriculture and Food changes to the designated use of land depend on the approval of a spatial development plan by different competent bodies, namely the Minister of Regional Development and Public Works, the Regional Governor or municipal councils. Finally, considering that the right to request a change in the designated use of land does not arise directly from the Forest Act but requires satisfying conditions stipulated in other laws, the Bulgarian authorities consider that the hypothetical possibility to change the designated use of the land does not mean that such a change is intrinsically linked to the swap transactions.
- (79) As regards the question of whether the potential change in the designated use of the swapped land should be taken into account for determining the price of that land, the Bulgarian authorities reiterated their position that there is no direct link between the price at which the swap is valued and the subsequent change in the use of the land. The authorities provided an extensive description of the procedure to be followed to determine the prices for the swap (ex Articles 20(5) and 21 of the Regulation on basic prices) and the fees due for the change in the designated use of the land, respectively. Those authorities also note that private owners may request a change in the designated use of forest land regardless of how they obtained the land, so that any investor would enjoy the same advantages, regardless of whether they have acquired the forest from the government or under an arm's length transaction concluded with a private party, so that the fees payable to bring about a change in the designated use of the land should be considered non-selective vis-à-vis beneficiaries.
- (80) As regards the Commission's doubts whether the methodology for calculating administrative prices correctly reflects market prices, the Bulgarian authorities note, first, that the administrative prices are set following the provisions of the Regulation on basic prices and that that Regulation was designed taking as an example practices for administrative price-setting for forest land in other Member States, most notably Germany. Moreover, the valuations of private and public forests were conducted by independent experts following a single set of criteria.
- (81) Second, the Bulgarian authorities provided data on all transactions ⁽⁶⁷⁾ involving the sale and purchase of privately owned forests carried out in the period 2007-2009 ⁽⁶⁸⁾. The information provided in respect of the average prices of privately owned properties (i.e. 'market prices') comprises a summary of credible market evidence in line with the requirement stipulated in point 34 of the Supplementary provisions of the Regulation on basic prices. Where no information is available about transactions concluded in the same areas, details of ones that took place in areas situated in proximity and involved forests that are similar in terms of location and plant species have been

⁽⁶⁷⁾ The authorities indicated that in the period under review 567 private forest sales transactions took place.

⁽⁶⁸⁾ Subsequently, in January 2009 the swaps of government land under the old rules and procedure were prohibited by law and the practice was discontinued.

provided. According to the Bulgarian authorities, on the basis of these data it can be demonstrated that in the majority of cases the administrative price used for the contested swap transactions was in general higher than the market prices obtained in arm's-length transactions ⁽⁶⁹⁾. In this regard, the Bulgarian authorities call into question the evidence provided by the complainant. On the one hand, the prices quoted by the complainants would namely be prices for which the land was offered for sale and not necessarily prices effectively obtained or prices of plots of land that had already had their designated use changed and where the stamp duty was paid. On the other hand, the market price quoted by the complainant is not always reliable as in many cases it was obtained only as a result of a single private transaction.

- (82) Third, the Bulgarian authorities reiterated that the government did not cover any shortfall between the higher administrative total value of the private forest land it acquired and that the swap transactions were only carried out if the privately owned plot of forest land received was higher or equal in value to the government-owned plot for which it was swapped. Additionally, the private party had to pay overheads in the amount of 2 % of the property's value.
- (83) Finally, the Bulgarian authorities point out that, since its original enactment, the Regulation on basic prices has been amended on three occasions — in 2004, 2005 and 2007, respectively. The amendment of the Regulation in 2005 would be particularly noteworthy in light of the advanced stage in the restitution of expropriated forests and forest land as it meant that private forests were already both available and in demand on the market. This amendment essentially aimed to alter the land valuation methodology. In addition, the coefficients relating to areas protected from urbanisation were also increased and several new categories setting out the increments to land prices depending on the category of the settlement were introduced.
- (84) Moreover, following Bulgaria's accession to the Union on 1 January 2007, the coefficients in the regulation were fully updated, including those relating to the areas protected from urbanisation and the so-called 'market regulator' coefficients, which depend on the category of land. Additionally, Article 20(5) of the Regulation on basic prices was amended by increasing the swap price of government land by 50 % of the value of the 'market regulator' coefficient. Moreover, an increment to be added to land value according to the different categories of settlements was introduced.
- (85) According to the Bulgarian authorities, those amendments to the Regulation on basic prices demonstrate that despite there being no well-developed domestic market for forest land and in light of the impending accession of Bulgaria to the Union, the authorities attempted to update the valuation mechanism set out in the regulation by ensuring it was based on credible market evidence. Consequently, at the date of Bulgaria's accession to the Union the calculated administrative prices calculated on the basis of the Regulation on basic prices would not have been lower than the market prices for those plots.
- (86) In relation to the Commission's doubt on swap transactions potential to distort competition and affect trade between Member States, the Bulgarian authorities point out, first, that of the private parties that took part in the contested swap transactions, 81 of these constitute undertakings within the meaning of Article 107(1) of the Treaty. The remaining 51 private parties were natural persons not engaged in trading goods or services. Bulgaria underlines in this context that neither the State Forest Agency nor its successor the Executive Forests Agency has received any applications for timber felling or export from the natural persons who conducted swaps in the period under review.
- (87) Second, the Bulgarian authorities claim that the swap transactions cannot affect intra-Union trade since the aided firms are engaged in activities that do not involve the import or export of products or services. The Bulgarian authorities supplemented the information already provided on volumes of timber produced and exported to the Union during the period under review and provided a document showing that none of the private parties that acquired government forest land under the contested swap transactions produced, sold in the national market or exported timber from the Republic of Bulgaria.
- (88) Third, the Bulgarian authorities argue that the tourism sector (e.g. as operating a tour operator, travel agency, hotel proprietor and provider of ancillary tourist services) is governed by the rules set out in the Bulgarian Tourism Act. That Act requires an administrative registration of operators in a public registry kept by the Ministry of Economy, Energy and Tourism. Persons engaged in hotel management are also subject to a requirement for registration into a dedicated registry pursuant to Article 58 of the Tourism Act. For this reason, only those companies entered into

⁽⁶⁹⁾ The Bulgarian authorities point to evidence showing that in 105 swap transactions the administrative swap price was higher than the market price obtained by private parties in arm's-length transactions, while it was lower only in 13 cases.

the respective public registers kept by the Ministry of Economy Energy and Tourism may be regarded as undertakings operating in the tourism sector. A check of the relevant registries showed that only one of the companies that acquired government-owned forest land as a result of the contested swap transactions — Kapsi Tours OOD — is registered as a tour operator within the meaning of the Tourism Act.

- (89) Fourth, the Bulgarian authorities explained that conducting business as a real estate development company in Bulgaria is also subject to a requirement for registration in the Central Occupational Register of Builders kept by the Bulgarian Construction Chamber in accordance with a dedicated law, notably the Construction Chamber Act ⁽⁷⁰⁾. The Bulgarian authorities point out that only three of the undertakings that conducted swaps with the government were registered as construction companies and may have been in some way engaged in building work under the law.
- (90) Consequently, the Bulgarian authorities argued that most of the undertakings that potentially benefitted from the contested swap transactions were not operating in the construction and tourism sectors. Consequently, in their view, competition on the relevant markets, other than the forest sector, cannot be said to have been distorted by those transactions.

5.2. BULGARIA'S COMMENTS ON THE OBSERVATIONS OF THE COMPLAINANT

- (91) The Bulgarian authorities concur with the complainant that no State aid is present in swaps of forest land between the State and municipalities. By contrast, they argue that the complainant's allegation that most beneficiaries are active in construction or tourism sector is incorrect, for the same reasons explained in the previous section.
- (92) The Bulgarian authorities also disagree with the way in which the complainant determined the forest land's market prices by comparing the prices of forest land in different years (e.g. a few years before the forests were swapped) and contest the complainant's claim that in certain cases the owners of the swapped forest land provided that land as collateral to obtain loans as this would not comply with the provisions of Bulgarian law and the State Property Act cited by the complainant. The data provided by the complainant would contain significant errors and not correlate with available property registers and documentation of the swaps. The data provided by the complainant would also be incorrect with regard to the State-owned forest land that was acquired through swaps and subsequently provided as collateral for loans. In any event, the Bulgarian authorities explain that banks in Bulgaria require other liquid assets as collateral, in addition to real estate, to ensure that the debt will be repaid. According to those authorities it would, therefore, be incorrect to divide the amount of the loan granted by the surface in m² of the land serving as collateral for the mortgage to determine the price per square metre. The authorities also provide an opinion of the First Investment Bank on the mechanisms for granting loans and the methods of evaluating forests and forest estates proposed by the borrowers as collaterals.
- (93) The Bulgarian authorities also disagree with the complainant's allegation that the municipal authorities had no choice but to adopt detailed spatial development plans for the land whose designated use had been changed. According to those authorities any change in the designated use of the land is based on legally enforced, detailed spatial development plans that have been publicly discussed, and have amended existing general spatial development plans for populated areas. These administrative procedures are not in the discretion of the Minister of Agriculture and Food, who issues individual administrative notices for changing the zoning of land to the parties requesting such a change only after the relevant detailed spatial development plan enters into force.
- (94) The authorities further refute that many parties involved in swaps intended to change the designated use of the forest plot obtained. Pursuant to the Bulgarian Forest Act such realised changed may only be carried out by filing an application under the procedure referred to in Article 14(c) of the Forest Act (repealed). Any other intention expressed in a mass media publication or in a way other than the procedure provided by law would be irrelevant and arbitrary.
- (95) The authorities also disagree with the complainant's statement that the administrative way of determining the prices of forest land would not reflect the dynamic development of the economy. The authorities believe that the way to determine prices by using the Regulation on basic prices is adequate. It is also not true that the Regulation has not been updated, as new coefficients were introduced in 2007, so that no economic advantage was granted to economic operators through swaps already carried out.

⁽⁷⁰⁾ SG No 108/2006

- (96) The authorities counter the argument of the complainant that the evaluators would be partial. According to those authorities those evaluators are court experts, whose integrity cannot be called into question. Furthermore, in case they would value the forest land favourably for the private party and not in line with the provision of the Regulation on basic prices, such a valuation would not be accepted by the authorities for the purpose of the swap.
- (97) In relation to the complainant's allegation that the official statistical data on values/prices of transactions provided by the authorities is not correct, the authorities state that tax evasion by hiding the actual price of a transaction constitutes a crime under the Bulgarian Penal Code.
- (98) Finally, the Bulgarian authorities refute the complainant's statement that the indictment of the former head of the EFA would be proof of existence of a State aid relating to the swaps. According to those authorities the proceedings against officials who participated in the procedures for swaps of State-owned forest land are irrelevant to assess the presence of aid in the contested transactions.

5.3. BULGARIA'S COMMENTS ON THE OBSERVATIONS SUBMITTED BY OTHER THIRD PARTIES

5.3.1. Bulgaria's comments of 29 September 2011

- (99) By letter of 29 September 2011 the Bulgarian authorities responded to the comments submitted by All Seas on the opening decision.
- (100) All Seas has swapped a total of 157,4 ha of privately owned forest plots in the municipalities of Teteven and Gaborovo in return for government-owned forest plots totalling approximately 57,9 ha in the municipality of Balchik ⁽⁷¹⁾. In this context All Seas also paid the Bulgarian State BGN 138 781 in overhead expenses.
- (101) The government-owned forest plots were valued at an administrative price of BGN 11,99/m². According to the information available to the Bulgarian authorities, during the period under review the average market price (being the price agreed between private parties buying and selling forest plots on a commercial basis in the same or nearby region within the same municipality) was BGN 4,16/m². Consequently, the swap between All Seas and the Republic of Bulgaria was conducted against payment and did not result in an economic advantage within the meaning of Article 107 of the Treaty.
- (102) The Bulgarian authorities further note that All Seas applied for a change in the designated use of the forest plot in accordance with Article 14 of the Forest Act and that the Bulgarian Council of Ministers granted the application in accordance with Article 14d(2) of the Forest Act ⁽⁷²⁾. To the knowledge of the Bulgarian authorities, this decision has not entered into force. The Bulgarian authorities agree with All Seas that the State had no direct influence over the changes in the designated use of the land in question (for which no land use map existed), and therefore that change of ownership resulting from the swap cannot be expression of any common intention on the part of the parties to the swap to effect a change in its designated use. According to the Bulgarian authorities, the determining factor in the evaluation of the swaps must be whether the balance-sheet value of the assets being exchanged is equivalent. This is precisely the basis on which the Bulgarian government has conducted these transactions. Another reason that no State aid is involved in changing the use of the land after the swap is the fact that the administrative fees are the same for all applicants.
- (103) The Bulgarian authorities further note that All Seas has neither harvested timber on the plots it received as a result of the swap, nor has it engaged in intra-Union trade in timber from those plots. Furthermore, All Seas does not offer tourist services as specified in the Tourism Act, nor is it a construction company within the meaning of the Chamber of Builders Act.

5.3.2. Bulgaria's comments of 4 November 2011

- (104) By letter of 4 November 2011, the Bulgarian authorities responded to the comments of the following third parties: Elkabel AD, LM Impex EOOD, Foros Development EAD and Simeon Stoev Mirov.
- (105) As regards the swap transactions executed with Elkabel, LM Impex and Foros Development, the Bulgarian authorities stated that they did not cover any shortfall in prices and, in the cases concerned, received additional payment of overheads from the private parties. In addition, all local taxes were paid by those parties. Finally, none of the three companies requested the change in the use of the acquired forest land.

⁽⁷¹⁾ Order No RD 49-269/17.7.2007.

⁽⁷²⁾ Decision No 602/16.9.2008.

- (106) The Bulgarian authorities further note that in some of the municipalities where the exchanged plots were located, no fully private transactions had taken place, so that it was not possible to determine the market price of the plots exchanged or whether an economic advantage had been granted.
- (107) The Bulgarian authorities further note that neither Elkabel, nor LM Impex is a timber exporter, nor is either registered as a construction or tourism company under Bulgarian law.
- (108) As regards Simeon Stoev Mirov, a natural person, who swapped 5,6 decares of private forest land in Rakitovo, valued at BGN 3 436, in return for 5 decares of publicly owned forest land in Burgas (village of Kraymorie), valued at BGN 1 308, the Bulgarian authorities consider that this swap should fall under the *De minimis* Regulation.
- (109) For those reasons, the Bulgarian authorities argue that swaps with in their view the abovementioned private parties do not constitute State aid.

5.3.3. Bulgaria's comments of 16 December 2011

- (110) By letter of 16 December 2011, the Bulgarian authorities responded to the comments of the following third parties: V-G-N Confort OOD, Izgrev 5 EOOD, Ecobalkani-Bulgaria EOOD, Vihren EOOD, Liteks Komers AD and Jivka Blagoeva.
- (111) As regards the swap transactions with V-G-N Confort, Izgrev 5, Ecobalkani, Vihren and Liteks Komers, the Bulgarian authorities explained that they did not cover any shortfall in prices and, in the cases concerned, received additional payment of overheads from the private parties. Moreover, all local taxes were paid by those parties. Finally, V-G-N Confort, Ecobalkani and Liteks Komers did not request a change to the designated use of the government-owned forest land acquired by them.
- (112) The Bulgarian authorities further note that in some of the municipalities where the exchanged plots were located, no fully private transactions took place, so that it is not possible to determine the market price of the plots concerned and it cannot be conclusively ascertained whether an economic advantage was granted to abovementioned private parties. In the case of Izgrev 5, the administrative price of the swapped publicly owned forest land was slightly higher than the market price obtained in similar private transactions, so that according to the Bulgarian authorities no advantage was granted. The same reasoning would apply to the transaction with Liteks Komers, where — according to the Bulgarian authorities — administrative prices would have been four times higher than the market prices for the publicly owned forest land.
- (113) Finally, the Bulgarian authorities note that none of the abovementioned private parties is a timber exporter or is registered as a construction or tourism company under Bulgarian law, so that the swap transactions concluded with them do not affect trade between Member States.
- (114) As regards the swap transaction with Jivka Blagoeva, a natural person, it resulted in the swap of 1,9036 ha of privately owned forest land in Teteven Municipality, valued at BGN 16 091, in return for 0,3001 ha publicly-owned forest land in the Predela area, Razlog Municipality, valued at BGN 24 216. The Bulgarian State did not cover the shortfall in price, all overheads and local taxes were paid by Jivka Blagoeva and the new owner has not requested a change in the designated use of the swapped land. According to the Bulgarian authorities this swap should fall under the *De minimis* Regulation.
- (115) Accordingly, the Bulgarian authorities consider that no State aid is present in the swap transactions concluded with the private parties mentioned above.

5.3.4. Bulgaria's comments of 25 April 2012

- (116) By letter of 25 April 2012, the Bulgarian authorities responded to the comments of the following third parties: Aqua Estate, Beta Forest, Kosta Gerov, Dimitar Ivanov Terziev, Yavor Iliev Haytov, Valentina Angelova Haytova, Georgi Aleksandrov Babev, Marieta Tihomirova Damyanova, Elizabet Petkova Mihaylova, Svetoslav Petkov Mihaylov, BG Land Co, Mirta Engineering, Miks PS-OOD, and BOIL OOD.
- (117) The Bulgarian authorities support the comments submitted by these natural persons and companies which were parties to swap transactions concluded during the period under review, namely that the swaps do not involve State aid but instead constitute transactions carried out under favourable conditions for the State and at prices that are

not lower than market prices for similar real estates. Moreover, the Bulgarian authorities support the view of the above mentioned private parties that the swap transactions were carried out in compliance with Bulgarian national law in force: the regulation on basic prices and the Forest Act. Finally, some of these transactions should be considered to fall under the *De minimis* Regulation.

5.4. BULGARIA'S REPLIES TO THE COMMISSION'S REQUESTS FOR INFORMATION SENT DURING THE FORMAL INVESTIGATION PROCEDURE

- (118) In subsequent submissions, in response to requests for information, the Bulgarian authorities provided market prices — both for the privately owned and publicly owned forest land — for all the swap transactions carried out during the period under review ⁽⁷³⁾.
- (119) In their submission of 19 November 2013 ⁽⁷⁴⁾, however, the Bulgarian authorities indicated that there were some problems regarding the reliability of data they provided. In particular, for the purposes of the formula provided in recital 44, the Bulgarian authorities provided fair market prices for 82 (60 publicly owned and 22 privately owned plots) plots concerned by the contested swap transactions. For the remaining plots, they provided the market values on a best-effort basis, indicating that they might not necessarily represent fair market values. For the remaining publicly owned plots concerned, the Bulgarian authorities explained that the prices they quoted as market prices were actually the mean of prices for various types of forest transactions. Hence they do not necessarily represent a fair market value, because they are not equal to average prices of fully analogous transactions.
- (120) Similarly, for the remaining privately owned plots that were not yet the subject of an evaluation by an independent expert, the Bulgarian authorities indicated that in certain cases the prices quoted in sales certificates, which were used by the authorities as a proxy for the provided market values of these plots, were close or equal to the so-called tax values. The tax value of a plot is not its market value, but the minimum price that has to be paid in real estate transactions, i.e. the market value of the plot concerned would in principle be higher.
- (121) Notwithstanding the foregoing, the Bulgarian authorities stressed that the data they provided on market prices are the best estimates they can obtain, as: (i) there are no specific rules in Bulgaria for determining market prices for forest plots through valuation; (ii) it would take a lot of time to carry out a valuation, by an independent expert valuator, about what the market prices of the plots concerned would have been at the time of the swap; and (iii) such an evaluation would be a very costly process. Additionally, the Bulgarian authorities stated that the prices provided are anyway closer to fair market prices than they would be to the administrative prices.
- (122) Finally, the Bulgarian authorities provided information on a sample of 25 swap transactions on the administrative prices actually used and the hypothetical administrative prices that would result from the use of coefficients present in the 2010 update of the Regulation on basic prices. The sample provided covered 25 transactions that took mainly place in 2009 or 2008 (only six transactions in 2007). This information was requested by the Commission in order to verify that the system of administrative prices — if they were updated properly — would be appropriate to reflect market prices for forest land on the basis and would lead in all cases to a price as close as possible to the market value, as required by the case-law.

6. ASSESSMENT OF THE MEASURE

6.1. EXISTENCE OF AID

- (123) According to Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States.
- (124) The qualification of a measure as aid within the meaning of Article 107(1) therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

⁽⁷³⁾ This information was (re)submitted by Bulgaria in a spreadsheet sent to the Commission by e-mail of 21 January 2014 (2014/032997).

⁽⁷⁴⁾ Submission reference 2013/115208.

- (125) As a preliminary matter, however, it is also necessary to consider in the present case whether the potential beneficiaries of the swap transactions are undertakings within the meaning of Article 107(1) of the Treaty. That is because, according to the wording of that provision, the State aid rules only apply where the recipient of an aid is an undertaking.
- (126) The Court of Justice of the European Union ('CJEU') defines the notion of 'undertaking' for the purposes of Article 107(1) of the Treaty as any entity engaged in an economic activity, regardless of its legal status or the way in which it is financed ⁽⁷⁵⁾. According to the CJEU, any activity consisting in offering goods and services on a market constitutes an economic activity ⁽⁷⁶⁾. The classification of an entity as an undertaking is thus always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former. An undertaking does not need to be a legal person; natural persons can also be considered undertakings under the State aid provided they carry out an economic activity.
- (127) With this in mind, it should be noted that certain beneficiaries of the contested swap transactions did not carry out economic activities with the swapped forest land during the period under review, nor do they carry out such activities at present. As a result, those beneficiaries cannot be considered undertakings within the meaning of Article 107(1) of the Treaty so that no State aid is considered to be present in the swap transactions they concluded with the Bulgarian State.
- (128) Consequently, the remainder of this decision concerns only those beneficiaries of the contested swap transactions that constitute undertakings within the meaning of Article 107(1) of the Treaty.

6.1.1. Intrinsic link between the swap and the change of the designated use of the land

- (129) The first doubt raised by the Commission in its opening decision was whether an intrinsic link existed between the swap transactions and the change of the designated use of the swapped land received by the beneficiaries. This is important because, if such a link is found to exist, it will impact the Commission's assessment of whether the swap transactions give rise to an economic advantage and how that advantage should be quantified. An intrinsic link means that it was the intention of the parties to the swap transaction, before that transaction was completed, to change the designated use of the publicly owned land from forest land to land available for construction subsequent to the swap. Thus, while the administrative prices calculated for the swap transaction on the basis of the Regulation on basic prices would be based on the swap of two plots of forest land, the subsequent change in the designated use of publicly owned plot, if intended from the outset, could result in an undervaluation of the plot received considering its intended future use as construction land.
- (130) According to the Commission, the fact that the contested swap transactions were always — or at least in a large majority of cases — followed by a (approved) request to change the designated use of the swapped forest land received by the beneficiary to land available for construction would be an objective indication that the parties to those swap transactions intended from the outset to change the designated use of the publicly owned land subsequent to the swap.
- (131) The statistical data provided by the Bulgarian authorities in response to the opening decision, reaffirming the data reflected in recital 38, demonstrates that in relation to the 132 swap transactions that took place during the period under review, 24 requests for a change in the designed use of the land into land available for construction were submitted (representing 18,2 % of the total swaps) of which in 15 cases approval was given for the requested change (representing 11,4 % of the total swaps). On the basis of that data, the Commission concludes that in the majority of cases the swaps were not followed by a request to change the designated use of the land.
- (132) In any event, the Commission observes that Bulgarian legislation provides for two separate procedures for swaps and for the change in the designated use of land, respectively, and two separate State bodies are competent for each operation and operate independently from one another. This provides a further indication that an intrinsic link between the swap transactions and the change in the designated use of the land is missing in the present case.
- (133) Since no intrinsic link has been shown to exist between the swap transactions and the change in the designated use of the swapped land received by the beneficiary, the Commission shall examine each of those operations separately for the existence of State aid within the meaning of Article 107(1) of the Treaty.

⁽⁷⁵⁾ Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 74.

⁽⁷⁶⁾ Case 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7; Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36; Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 75.

6.1.2. Existence of Aid in the change of the designated use of the land

- (134) Land use designation is the legal control by public authorities on the use and intensity of development of a plot of land. Where a public authority approves a change in the designated use of a plot of land it performs a regulatory activity and is not acting as an economic agent.
- (135) Only advantages granted directly or indirectly through State resources are to be considered aid within the meaning of Article 107 of the Treaty. According to the case-law of the CJEU ⁽⁷⁷⁾, the distinction made in that provision between ‘aid granted by a Member State’ and aid granted ‘through State resources’ does not signify that all advantages granted by a State, whether financed through State resources or not, constitute aid. Rather, the distinction is intended merely to bring within that definition both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State.
- (136) While the approval by a public authority to change the designated use of a particular plot of land from forest land to land available for construction may result in an increase in the market value of that land, that approval does not entail a transfer of State resources within the meaning of Article 107(1) of the Treaty: the exercise of that regulatory task does not result in a positive transfer of funds to the recipient of that approval, nor does it entail a forgoing of State resources, since the State is not obliged in exercising that regulatory task to charge successful applicants a fee that captures the full economic value they extract from obtaining that approval ⁽⁷⁸⁾.
- (137) Accordingly, the decision by a public authority to change the designated use of a particular plot of land does not constitute State aid within the meaning of Article 107(1) of the Treaty.

6.1.3. Existence of aid in the swap transaction

- (138) According to settled case law ⁽⁷⁹⁾, the sale by public authorities of land or buildings to an undertaking or to an individual involved in an economic activity may give rise to an economic advantage and thus constitute State aid within the meaning of Article 107(1) of the Treaty, in particular where it is not made at market value, that is to say, where it is not sold at the price which a private investor, operating in normal competitive conditions, would be likely to have fixed. The same is true of a swap transaction where the value of the publicly owned land received from the State is superior to the value of the privately owned land relinquished to the State.
- (139) However, prior to examining whether the swap transactions give rise to an economic advantage, the Commission shall examine whether the remaining conditions listed in recital 124 are present for a finding of State aid within the meaning of Article 107(1) of the Treaty.
- (140) First, as regards the imputability of the measure, the swap transactions fall within the competence of the Minister of Agriculture and Food or the Council of Ministers (depending on the size of the plot to be swapped) and the EFA, all of which are State bodies. To the extent the swap transaction results in a transfer of publicly owned forest land of superior value to the privately owned forest land relinquished, it gives rise to a transfer of State resources in so far as the Bulgarian State forgoes certain revenues it would have been able to attain if it had operated in accordance with market conditions when carrying out that transaction.
- (141) Second, the swap transactions are selective in so far as they only benefit those land owners which swapped their privately owned forest land with publicly owned forest land.
- (142) Third, the swap transactions distort competition and affect trade between Member States. To the extent the beneficiaries of the swaps are undertakings that offer goods and services on a particular market, any financial benefit resulting from the swaps strengthens their position as compared with other undertakings competing in intra-Union trade for the same goods and services ⁽⁸⁰⁾. Indeed, a number of beneficiaries ⁽⁸¹⁾ of the swap transactions have, amongst others, real estate, tourism, restaurant activities and afforestation listed as the economic sectors in which they operate in the Bulgarian Commercial Registry. Those sectors are open to competition at

⁽⁷⁷⁾ Case C-379/98 *Preussen Elektra* [2001] ECR I-2099.

⁽⁷⁸⁾ See, by way of analogy, Case T 475/04 *Bouygues SA v Commission* [2007] ECR II-2097, paragraphs 108 to 111 and 123 upheld in Case C 431/07 P *Bouygues and Bouygues Telecom v Commission* [2009] ECR I-2665, paragraphs 94 to 98 and 125.

⁽⁷⁹⁾ Case C-239/09 *Seydaland Vereinigte Agrarbetriebe GmbH & Co. KG v BVVG Bodenverwertungs- und -verwaltungs GmbH* [2010] ECR I-13083, paragraph 34 and Case C-290/07 P *Commission v Scott* [2010] ECR I-7763, paragraph 68; Case T-244/08 *Konsum Nord ekonomisk förening v Commission* [2011] ECR II-00444, paragraph 61.

⁽⁸⁰⁾ Case T-288/97 *Friuli-Venezia Giulia* [2001] ECR II-1169, paragraph 41.

⁽⁸¹⁾ This is, amongst others, the case for: All Seas Property 2, Aqua Estate, Beta Forest, BG Land Co, Ecobalkani, MIKS and BOIL.

Union level. This is demonstrated by information in that same registry in which several beneficiaries⁽⁸²⁾ of the swap transactions have trade or (international) commercial activities listed as the economic sector in which they operate. As regards the argument put forward by the Bulgarian authorities that for companies to be active in the tourism or construction sectors their inscription in dedicated registers is necessary and that that would not be the case for most of the companies participating in the swap transactions, the Commission observes that the notion of ‘undertaking’ in Article 107(1) of the Treaty is an objective concept, so that the question of whether undertakings offer goods and services on a particular market, and thus compete with other undertakings and engage in intra-Union trade, is to be determined in light of the activities actually carried out by those undertakings and not whether they have complied with certain national legal formalities.

- (143) Finally, as regards the presence of an economic advantage, the swap transactions concern the exchange of (at least) two plots of forest land between the Bulgarian State and private parties. To determine whether an economic advantage was derived by the private parties as a result of the swap transaction, the market value of the plots swapped needs to be assessed and compared to one another. If the swap transaction results in a transfer of publicly owned forest land which is of superior value to the forest land relinquished by the private party, an economic advantage will be conferred upon that private party.
- (144) As explained in recital 16, for the swaps in question administrative prices were calculated on the basis of the Regulation on basic prices. The CJEU has recognised that, where national law establishes administrative rules for calculating the market value of land for their sale by public authorities, the application of those rules must, in order to comply with Article 107 of the Treaty, lead in all cases to an administrative price as close as possible to the market value of the land⁽⁸³⁾. As that market value is theoretical, a margin for variation on the price obtained as compared with the theoretical price will be tolerated⁽⁸⁴⁾.
- (145) The Bulgarian authorities were requested to provide information on the administrative prices used for the 132 swap transactions that took place during the period under review, as well as on market prices for those same transactions. The Commission requested the Bulgarian authorities to also consider any prior or subsequent transactions with the same forest plots when determining their market value. Consequently, even though the Commission considers that for the assessment of potential State aid elements in the swap transactions the provenance of the swapped forest plots is irrelevant, price information — where available — was taken into account.
- (146) The Bulgarian authorities indicated some problems with the reliability of the data they could provide on market prices⁽⁸⁵⁾. At the same time, however, they indicated that the information provided contains best estimates of market prices⁽⁸⁶⁾. The Commission considers those data to be sufficiently reliable estimates of the real (i.e. ‘fair’) market value of the plots concerned.
- (147) The analysis of the data showed that for privately owned plots the use of administrative prices resulted in a systematic overvaluation of the forest land concerned as compared to market prices⁽⁸⁷⁾, whereas for the publicly owned forest land the situation was more nuanced, since both cases of over- and undervaluation were encountered. Accordingly, in the determination of whether an advantage was conferred on the beneficiaries as a result of the swap transactions, a simple comparison of the market price of the publicly owned plot at the time of the swap with the market price of the privately owned plot for which it was swapped would insufficiently take account of the systematic overvaluation of the latter. Therefore, the Commission devised a formula that took account of the administrative prices used in the initial transaction for properly assessing the advantage resulting from the swap. That formula, which was already set out in the opening decision, requires the calculation of the following amounts:
- (i) the difference between the real market price of the privately owned plot of forest land and the administrative price for that plot, determined in line with the prescriptions of the Regulation on basic prices; and
 - (ii) the difference between the real market price of the publicly owned plot of forest land and the administrative price for that plot, determined in line with the prescriptions of the Regulation on basic prices.

⁽⁸²⁾ This is the case, e.g. for Izgrev, Liteks Comers, LM Impex and VNG Confort.

⁽⁸³⁾ Case C-239/09 *Seydaland*, cited above, paragraph 35. See, also, Commission Decision of 19 December 2012 in Case SA.33167 on proposed alternative method for the valuation of agriculture and forest land in Germany sold by the public agency BVVG (OJ C 43, 15.2.2013, p. 7).

⁽⁸⁴⁾ See, by way of analogy, Title II, point 2(b), of the Commission communication on State aid elements in sales of land and buildings by public authorities (OJ C 209, 10.7.1997, p. 3).

⁽⁸⁵⁾ Letter of 19 November 2013; submission reference 2013/115208.

⁽⁸⁶⁾ This issue, together with the Bulgarian arguments, is described in detail in Section 5.4.

⁽⁸⁷⁾ Under- or overvaluation in comparison to the market price provided by the Bulgarian authorities for the plot concerned.

An advantage would be considered to be present if the value of (ii) less the value of (i) was positive.

However, any monetary compensation paid by one party to the other to cover the difference in the administrative prices of two plots being the object of the swap transaction shall also be taken into consideration for determining whether the swap transaction gave rise to an advantage.

- (148) Applying that formula to the data provided by the Bulgarian authorities on the fair market values and administrative prices of the swapped forest land, the Commission concludes that an advantage was conferred on the beneficiaries of the land swaps in almost 80 % of the swap transactions carried out during the period under review, as reflected in Table 4.

Table 4

Comparison administrative prices used in swaps and market prices provided by the Bulgarian authorities

Swap transactions	2007	2008	2009	Total
Advantage granted (No of cases)	18	48	38	104
<i>As percentage of all swaps</i>	78 %	77 %	81 %	79 %
Number of swaps executed	23	62	47	132

- (149) The above data show that the administrative prices, set for the purpose of the swap transactions in accordance with the Regulation on basic prices, did not sufficiently reflect the real market value of the forest plots concerned.
- (150) That discrepancy between the administrative prices used for the contested swap transactions and the market prices of the plots in question results, on the one hand, from the fact that the underlying methodology used in the Regulation on basic prices does not sufficiently reflect the criteria that a market operator would consider important to value the swapped plots of forest land, nor does it accord them their appropriate weight. First, the average values of land listed in Annex 1 of the Regulation on basic prices according to the categories of land offering identical conditions for the growth of plants, which are used as a basis for determining the basic value of the land (see recital 18), were supposed to be set on the basis of market prices or the accounts kept of State-owned forests, but in reality were determined by experts on the basis of a small number of market sources.
- (151) Second, the coefficients and increments used to account for certain attributes of the forest land in the calculation of the basic value of that land, described in recitals 18 to 26, reflect a means of administrative simplification rather than an attempt to accurately measure the economic value that a similarly situated hypothetical market operator would award to those attributes. Indeed, the Bulgarian authorities have provided no economic data to support the levels at which those coefficients and increments were set in the regulation.
- (152) On the other hand, even if the methodology laid down by the Regulation on basic prices initially resulted in market prices for the swapped forest land, *quod non*, the average prices, the coefficients and the increments were never updated during the period under review to adequately reflect the fluctuations in market prices that subsequently occurred. According to the case-law⁽⁸⁸⁾, where prices for land are rising sharply, administrative methods for calculating the price of land sold by public authorities must provide for the continuous updating of those prices, so that the price actually paid by the purchaser reflects, in so far as is possible, the market value of that land. During the preliminary examination phase, the Bulgarian authorities explained that pursuant to Articles 7.1 and 32 of the Regulation on basic prices, the coefficients contained in that regulation for the calculation of administrative prices should have been updated on a yearly basis. Moreover, according to information provided by the Bulgarian authorities, during the period under review the market prices for forest land were increasing sharply. Nevertheless, the update foreseen in that regulation was never carried out during that period. The Bulgarian authorities only updated the average prices, the coefficients and the increments used for setting administrative prices in 2010 on the basis of recent market developments.

⁽⁸⁸⁾ Case C-239/09 *Seydaland*, cited above, paragraph 54.

- (153) Accordingly, the Commission concludes that the swap transactions conferred an economic advantage on the beneficiaries of the land swaps in those cases where the administrative prices used did not adequately reflect the market price for the land swapped.

6.1.4. *De minimis* aid

- (154) As a final matter, it should be observed that in cases where the individual beneficiary of the swap transaction received an advantage not exceeding the thresholds specified in Commission Regulation (EU) No 1407/2013⁽⁸⁹⁾, that advantage will not be considered State aid and thus not fall within the prohibition of Article 107(1) of the Treaty, provided all the other conditions laid down by that regulation are fulfilled.
- (155) On the basis of the quantitative data provided by the Bulgarian authorities, it would appear that in many cases⁽⁹⁰⁾ the amount of aid received by the beneficiaries of the swap transaction is below the *de minimis* threshold of EUR 200 000.

6.1.5. Conclusion on the existence of aid

- (156) In light of the foregoing, the Commission concludes that the swap transactions carried out by the Republic of Bulgaria during the period under review constitute State aid within the meaning of Article 107(1) of the Treaty in those cases in which the counter-party to that transaction is an undertaking within the meaning of that provision, the administrative prices used for that transaction did not reflect market prices and the conditions for *de minimis* aid laid down in Regulation (EC) No 1407/2013 are not fulfilled.

6.2. LEGALITY OF THE MEASURE

- (157) By failing to notify those swap transactions before their implementation, the Republic of Bulgaria did not fulfil its obligation under Article 108(3) of the Treaty. Those swap transactions thus constitute unlawfully implemented State aid.

6.3. COMPATIBILITY OF THE AID

- (158) Although the Bulgarian authorities were asked to provide information on the possible compatibility of those swap transactions with the internal market, they maintained their line of argumentation that those transaction had no effect on intra-Union trade and, hence, did not constitute State aid within the meaning of Article 107(1) of the Treaty.
- (159) In this regard, the Commission notes that the burden of proof of the compatibility of aid with the internal market, by way of derogation from Article 107(1) of the Treaty, is borne principally by the Member State concerned, which must show that the conditions for that derogation are satisfied⁽⁹¹⁾.
- (160) In any event, the Commission notes that there do not appear to be any *prima facie* grounds to deem the swap transactions compatible with the internal market, either on the basis of Article 107(3)(a) and (c) of the Treaty directly or on the basis of Guidelines based on those provisions.
- (161) Thus, the Community Guidelines for State aid in the agricultural and forestry sector ('Forestry Guidelines') cannot be used as a compatibility basis for the scheme of swaps, because they only apply to living trees and their natural environment in forests and other wooded land, including measures to maintain and enhance the ecological and protective functions of forests and measures to promote the recreational use and social and cultural dimensions of

⁽⁸⁹⁾ Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1). The *De minimis* Regulation was adopted by the Commission pursuant to Article 2 of Council Regulation (EC) No 994/98 (OJ L 142, 14.5.1998, p. 1), as amended by Regulation (EC) No 733/2013 (OJ L 204, 31.7.2013, p. 11).

⁽⁹⁰⁾ On the basis of the preliminary calculations performed by the Commission on the quantitative data provided by the Bulgarian authorities, it would seem that in only 45 out of 104 cases where an advantage was granted to a private party as a result of a swap, that advantage exceeded the *de minimis* threshold. However, these calculations neither exclude those cases in which the beneficiary of the swap was not an undertaking (which would reduce the number of swaps constituting aid) nor do they account for those cases in which the same beneficiary benefitted from multiple swap transactions, the advantage of which exceed EUR 200 000 in total (increasing the number of swaps constituting aid). More precise calculations should be carried out by the Bulgarian authorities in the context of recovery.

⁽⁹¹⁾ Case T-68/03 *Olympiaki Aeroporja Ypiresies/Commission* [2007] ECR II-2911, paragraph 34.

forests. Additionally, the costs covered by the aid granted in the context of the swaps do not comply with the definition of the eligible costs of the Forestry Guidelines ⁽⁹²⁾, as no statutory or contractual obligation was imposed on the private parties to use the land obtained through swaps as nature protection areas. On the contrary, all parties had the right to ask for the change of the use of the forest land into constructible land, and some of them indeed did.

- (162) Nor do the Guidelines for national Regional Aid 2007-2013, provide a compatibility basis. The Commission notes in this respect that the swaps were not undertaken by the Bulgarian authorities specifically to contribute to regional development. Furthermore, the eligible costs were not defined, nor was it determined how the incentive effect of the aid would be controlled and how the respect of the applicable regional aid ceilings would be ensured.
- (163) Finally, in discussions prior to the adoption of the opening decision the Bulgarian authorities claimed that the swaps pursued a public policy objective of consolidating the ownership of forest land. Even if the consolidation of forest land could be found to constitute a common interest objective, *quod non*, the Bulgarian authorities did not demonstrate that the aid granted was necessary to achieve that objective nor that the means chosen were the most appropriate.
- (164) They also failed to demonstrate that means chosen ensured that the aid granted was limited to the minimum necessary to incentivise private parties to undertake the swap transactions. This is, amongst others, evident from the strong fluctuations of the administrative prices obtained by using the prescribed methodology. When compared to the market prices that were provided by the Bulgarian authorities, these administrative prices do not appear systematically to be for a similar percentage higher or lower than market prices. If the transactions of 2007 are taken as an example, the difference between the market prices and administrative prices for privately owned plots ranged from -503,97 % to +89,91 % ⁽⁹³⁾.
- (165) Finally, the Bulgarian authorities failed to demonstrate that the swaps transactions did not distort competition to an extent contrary to the common interest. Accordingly, the swap transactions cannot be deemed compatible with the internal market on the basis of Article 107(3)(c) of the Treaty directly.
- (166) Consequently, the Commission concludes that the aid granted in the context of the swap transactions cannot be considered compatible with the internal market.

7. RECOVERY

- (167) Pursuant to Article 14(1) of Regulation (EC) No 659/1999, where unlawfully granted State aid is found to be incompatible with the internal market, that aid should be recovered from the recipients, unless this would be contrary to a general principle of law. Article 14(2) of that Regulation establishes that the aid is to be recovered, including interest, from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its effective recovery. Finally, Article 14(3) of that Regulation provides that recovery shall be effectuated without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow for the immediate and effective execution of the Commission decision.
- (168) The purpose of recovery is achieved once the unlawful aid in question, together with appropriate default interest, has been repaid by the undertakings which benefited from it. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to the grant of the aid is restored ⁽⁹⁴⁾. While the Member State may choose the means to fulfil its obligation to recover illegal aid, the measures chosen may not adversely affect the scope and effectiveness of Union law. A Member State can fulfil a recovery obligation only if the means chosen are suitable to re-establish the normal conditions of competition which were distorted by the grant of the illegal aid and are consistent with the relevant provisions of Union law ⁽⁹⁵⁾.

⁽⁹²⁾ Paragraph 175(g) of the Forest Guidelines defines eligible costs as: 'the costs of purchase of forest land used or to be used as nature protection areas. The forest land in question must be entirely and permanently secured for nature protection purposes by the means of a statutory or contractual obligation.' The remaining categories of eligible costs defined in paragraph 175 of the Forest Guidelines are not appropriate in the case at hand.

⁽⁹³⁾ For publicly owned forest land the difference between the market price and the administrative price ranges from - 6 130,00 % to +74,98 %. It should be noted, however, that the administrative price for such plots was higher than their market price only in 2 out of 23 cases.

⁽⁹⁴⁾ Case C-277/00 *Germany v Commission* [2002] ECR I-11695, paragraphs 74-76

⁽⁹⁵⁾ Case C-209/00 *Germany v Commission*, cited above, paragraph 57-58.

- (169) Thus, given that the Republic of Bulgaria has been found to have unlawfully implemented State aid through the swap transactions, it should be required to recover that aid from the beneficiaries of those transactions.

7.1. IDENTIFICATION OF THE BENEFICIARIES FROM WHICH TO RECOVER

- (170) The unlawful and incompatible aid must be recovered from the undertakings that actually benefited from it ⁽⁹⁶⁾. However, where the Commission is not in a position to identify, in the decision itself, all the undertakings that have received unlawful and incompatible aid, this will have to be done at the start of the implementation process by the Member State concerned, who will have to look at the individual situation of each undertaking concerned ⁽⁹⁷⁾.
- (171) In the present case, the potential beneficiaries of the incompatible State aid are those natural and legal persons who participated in the 132 swap transactions with the Bulgarian authorities during the period under review. From this group, the Bulgarian authorities should subtract those natural and legal persons that do not qualify as ‘undertakings’ within the meaning of Article 107(1) of the Treaty, as well as those persons that obtained a total advantage from swap transactions in which they took part not exceeding the thresholds laid down in the *De minimis* Regulation, so long as those transactions also comply with the other conditions laid down in that Regulation. The remaining natural and legal persons who participated in swap transactions should be considered the beneficiaries of the unlawfully implemented State aid from which the Bulgarian authorities are required to recover the advantage received as a result of those transactions.

7.2. QUANTIFICATION OF THE AID

- (172) The Commission is not legally required to fix the exact amount to be recovered, especially where it lacks the necessary data to do so. Instead, it is sufficient for the Commission’s decision to include information enabling the Member State to determine the recoverable amount without overmuch difficulty ⁽⁹⁸⁾.
- (173) As explained at recital 147, the Commission considers that the following methodology should be used as a starting point by the Member State to determine the amount of incompatible aid to be recovered from each beneficiary:
- (i) determine the difference between the real market price of the privately owned plot of forest land and the administrative price for that plot, determined in line with the prescriptions of the Regulation on basic prices; and
 - (ii) determine the difference between the real market price of the publicly owned plot of forest land and the administrative price for that plot, determined in line with the prescriptions of the Regulation on basic prices.

The initial amount of State aid received as a result of the swap transaction is equal to the value of (ii) less the value of (i).

A correction to this initial amount should be made for those cases where a publicly owned plot of land of a superior administrative value was swapped with a privately owned plot of land of an inferior administrative value. According to the Bulgarian authorities, in those cases the beneficiary had to pay compensation to the State to cover the difference in value between the plots in those cases. Consequently, the initial amount of aid should be decreased by the amount of compensation paid by the beneficiary to the Bulgarian authorities. The resulting amount should then be recovered by the Bulgarian authorities from that beneficiary to account for the advantage obtained as a result of the swap transaction.

- (174) For the determination of the market prices of a plots concerned, the economic value of that land at the moment of the swap should be fully reflected. From the information contained in the submission of the Bulgarian authorities

⁽⁹⁶⁾ Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 57; Case C-277/00 *Germany v Commission* (‘SMI’), [2004] ECR I-3925, paragraph 75.

⁽⁹⁷⁾ Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 91.

⁽⁹⁸⁾ Case C-480/98 *Spain v Commission* [2000] ECR I-8717, paragraph 25 and Joint Cases C-67/85, C-68/85 and C-70/85 *Kwekerij van der Kooy BV and others v Commission* [1988] ECR 219.

dated 29 August 2008, it appears that in certain cases buildings and infrastructure had already been constructed on forest plots belonging to the State before the swap was carried out, even if the plot was not previously reclassified as land available for construction. In such cases, the Commission is of the opinion that the value of such buildings and/or infrastructure should also be fully reflected in the plot's market value.

- (175) The Commission notes that the information on the administrative prices used in the swap transactions as well as the market prices of all plots concerned by those transactions at the moment of the swaps are already in the possession of the Bulgarian authorities⁽⁹⁹⁾, so that the Bulgarian authorities should not encounter overmuch difficulty in determining the recoverable amounts on the basis of the methodology described in recital 173⁽¹⁰⁰⁾.
- (176) However, in cases where the Bulgarian authorities can raise legitimate concerns that that methodology cannot be implemented or leads to an amount that manifestly does not adequately reflect the amount of State aid received by the beneficiary, it may decide to carry out an evaluation of the market prices of the swapped plots at the time of the transaction by using an independent expert, qualified to perform such valuations, and chosen through an open public tender procedure. When establishing the procedure for choosing that expert, even in cases where the contract does not exceed the thresholds of the Union public procurement directives, the principles of transparency and equal treatment should be respected. In particular, the tender procedure should be: (i) adequately advertised; (ii) based on objective selection criteria known in advance; and (iii) include the information that, after the pre-selection stage, the final decision will be taken under the participation of representatives of the Commission's services. In those exceptional cases, the Bulgarian authorities must: (i) indicate the plot(s) concerned; (ii) indicate the justification for the need of an independent expert evaluation in that particular case; and (iii) submit to the Commission a proposal for an independent expert (selected by public tender) to be agreed on by both the Commission and the Republic of Bulgaria.
- (177) Finally, since the purpose of recovery is to restore the status quo *ante* as existed prior to date on which the swap transaction was carried out, the Commission considers that, in light of the exceptional nature of swap agreements in relation to forest land that has not been commercially exploited, the Republic of Bulgaria would comply with its obligation to recover the unlawfully implemented aid by undoing the contested swap transactions by swapping back the plots concerned. This would only lead to adequate recovery, however, where no material alterations have been made to both the publicly owned and privately owned forest land concerned since the date of the swap transaction. In such cases, the Commission must be informed of the plots concerned within two months from the notification of this decision to the Republic of Bulgaria, the corresponding swaps should be undone and proof of that operation should be provided within four months from the date of the notification of this decision.
- (178) In all cases where recovery is required, that recovery shall be put into effect from the time when the advantage accrued to the beneficiaries, that is, from the date of the legal act granting the beneficiaries right to swap their privately owned forest land for the publicly owned forest land.
- (179) The sums to be recovered should bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery. The interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004⁽¹⁰¹⁾ and to Commission Regulation (EC) No 271/2008⁽¹⁰²⁾ amending Regulation (EC) No 794/2004.
- (180) The timing for the recovery of State aid amounts from individual beneficiaries should as much as possible follow those specified in the Recovery Notice⁽¹⁰³⁾. In any event, the deadlines should not go beyond those specified in the Table 5,

⁽⁹⁹⁾ This information was submitted by Bulgaria in a spreadsheet sent to the Commission by e-mail of 21 January 2014 (hereinafter: submission 2014/032997).

⁽¹⁰⁰⁾ I.e. the (i) market price for forest plot concerned; and (ii) administrative price for the forest plot concerned as determined in application of the Regulation on basic prices and effectively used for the purpose of the swap transaction, in the amounts stated in submission 2014/032997.

⁽¹⁰¹⁾ 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).

⁽¹⁰²⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

⁽¹⁰³⁾ Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (OJ C 272, 15.11.2007, p. 4).

Table 5

Recovery Schedule

Timing	Action
1. within two months following the notification of this decision to the Republic of Bulgaria:	The Republic of Bulgaria must inform the Commission of the measures planned or taken to implement the decision, and in particular: (i) submit to the Commission a list of all swaps concerned by the recovery, indicating the following information: — the administrative and market prices for the privately owned and publicly owned forest plots being swapped (based on the information provided by the Republic of Bulgaria in its submission 2014/032997), information on the additional compensation payments involved in each transaction, and the resulting State aid amount to be recovered, — the name of the private party involved in each transaction and an indication of reasons why this beneficiary is or is not considered to be an undertaking. (ii) identification of cases in which the recovery will be conducted based on an expert evaluation of the market prices of the forest plots at the moment the swap occurred (recital 177); (iii) identification of cases in which recovery will be carried out by undoing the swap transaction (recital 178).
2. within four months following the notification of this decision to the Republic of Bulgaria:	For the plots indicated under point 1(ii) above the Republic of Bulgaria should have appointed an independent expert to perform the valuation of these plots. That expert should be selected by open public tender and appointed in agreement with the Commission, upon a prior proposal from the Republic of Bulgaria.
3. within seven months following the notification of this decision to the Republic of Bulgaria:	The Republic of Bulgaria should present to the Commission the valuation report from the independent expert for the plots identified under point 1(ii) above.
4. within eight months following the notification of this decision to the Republic of Bulgaria:	The Republic of Bulgaria should have sent the recovery orders to all beneficiaries concerned specifying the exact aid amounts to be recovered.
5. within 12 months following the notification of this decision to the Republic of Bulgaria:	The Republic of Bulgaria must have implemented recovery for all swap transactions concerned.

HAS ADOPTED THIS DECISION:

Article 1

The State aid, granted to undertakings in the context of swap transactions of publicly owned forest land in return for privately owned forest land in the period from 1 January 2007 until 27 January 2009, unlawfully put into effect by the Republic of Bulgaria in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 2

Individual aid granted under the swap transactions referred to in Article 1 does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by a regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98 which is applicable at the time when the aid is granted.

Article 3

Individual aid granted under the swap transactions referred to in Article 1 which, at the time it is granted, fulfils the conditions laid down by a regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the internal market, up to maximum aid intensities applicable to that type of aid.

Article 4

1. The Republic of Bulgaria shall recover the incompatible aid granted under the swap transactions referred to in Article 1 from the beneficiaries.
2. By way of derogation from paragraph 1, the incompatible aid may be recovered from the beneficiaries by undoing the swap transactions, in cases where no material alterations have been made to both the publicly owned and privately owned forest land concerned by the transaction since the date of that transaction.
3. 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.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and with Regulation (EC) No 271/2008.
5. The Republic of Bulgaria shall cancel all outstanding payments of aid under the swap transactions referred to in Article 1 with effect from the date of adoption of this decision.

Article 5

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.
2. The Republic of Bulgaria shall ensure that this Decision is fully implemented within 12 months following the date of notification of this Decision.

Article 6

1. Within four months following notification of this Decision, the Republic of Bulgaria shall submit to the Commission the following information:
 - (a) a list of all swap transactions, indicating the following information:
 - the administrative and market prices for the privately owned and publicly owned forest plots swapped, information on the additional cash amounts involved in each transaction, and the resulting State aid amount,
 - the name of the private party, i.e. the beneficiary of the swap transaction, involved in each transaction and an indication of the reasons why that party is or is not considered to be an undertaking.
 - (b) identification of the cases in which recovery will be conducted on the basis of the market prices at the moment of the swap transactions specified in submission 2014/032997 of the Republic of Bulgaria;
 - (c) identification of the cases in which recovery will be effectuated by undoing the swap transaction;
 - (d) identification of the cases in which recovery will be implemented on the basis of amounts determined by an independent expert evaluator and documents demonstrating that such an independent expert, selected by public tender and agreed to by the Commission, has been appointed.
2. Within eight months following notification of this Decision, the Republic of Bulgaria shall submit to the Commission the following information:
 - (a) the list of beneficiaries that have received aid under the swap transactions referred to in Article 1 and the total amount of aid received by each of them as a result of those transactions;
 - (b) the total amount (principal and recovery interests) to be recovered from each beneficiary;
 - (c) a detailed description of the measures already taken and planned to comply with this Decision;
 - (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

3. Within 12 months following notification of this Decision, the Republic of Bulgaria shall submit documents demonstrating that the aid has fully been recovered from the beneficiaries concerned.

4. The Republic of Bulgaria shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the recovery of the aid granted under the swap transactions referred to in Article 1 has been completed by submitting reports on a two-monthly basis. 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 beneficiaries.

Article 7

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 5 September 2014.

For the Commission

Joaquín ALMUNIA

Vice-President

CORRIGENDA

Corrigendum to Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part*(Official Journal of the European Union L 261 of 30 August 2014)*

Page 145 should be replaced by this page:

'Suomen tasavallan puolesta
För Republiken Finland



För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Za Europsku uniju
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen'



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