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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].	PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.34488 (2012/C) (ex 2012 /NN) – Greece;

Aid to Nea Proton Bank through creation and capitalisation of Nea Proton Bank, and initiation of the formal investigation

Sir,

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

1. PROCEDURE

(1) In May 2009, Proton Bank received a capital injection of EUR 80 million from the Greek State under the recapitalisation scheme for credit institutions in Greece[1].

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

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(2) On 1 October 2010, the Greek authorities submitted to the Commission a restructuring plan for Proton Bank.

(3) By letter dated 12 October 2011, the Commission services asked the Greek authorities, under case number SA.31711, to submit information regarding the resolution of Proton Bank.

(4) On 15 December 2011 and 10 January 2012, the Greek authorities submitted information.

(5) On 12 March 2012, the Greek authorities notified to the Commission, under case number SA.34488 (2012 /N), a restructuring plan for Nea Proton Bank. The case number SA.34488 (2012 /N) was administratively transformed into case number SA.34488 (2012 /NN) as Greece already granted parts of the aid to Nea Proton Bank.

(6) On 13 March 2012, the Greek authorities submitted to the Commission further information.

(7) On 30 June 2012, the Commission services asked the Greek authorities to provide additional information.

(8) On 6 July 2012, the Greek authorities informed the Commission services that Greece accepts the adoption of the Decision in the English language.

(9) On 13 July 2012, the Greek authorities submitted additional information.

On 16 July 2012, the Greek authorities submitted an updated restructuring plan for Nea Proton Bank.

(10) On 17 July 2012, the Commission services asked the Greek authorities to provide additional information, which the Greek authorities submitted on the same day.

2. DESCRIPTION

2.1 Proton Bank

(11) Proton Bank, which was a small sized bank based on its share in the total assets of the Greek banking system, was incorporated in 2001 with primary focus on investment banking. In 2005, the bank was listed in the Athens Stock Exchange. Proton Bank had a network of 28 branches across Greece and as of 30 June 2011 employed 562 people. The bank was resolved on 9 October 2011 in order to protect systemic stability and the public interest.

(12) In the last years before it was resolved, the corporate credit portfolio of Proton Bank expanded very rapidly. Part of the credit expansion was extended to companies directly, indirectly or economically interconnected with a major shareholder of the bank. The balance sheet total of Proton Bank Group increased from 1.9 billion EUR at the end of 2008 to 2.9 billion EUR at the end of 2009 and to 4.3 billion EUR at the end of 2010. From the end of 2008 until the end of 2010, the balance sheet total therefore grew by more than 100%. At the end of 2010, the group´s risk weighted assets amounted to 3.1 billion EUR. The amount of client deposits increased rapidly. Nevertheless, the

bank still was a small bank with a market share in the retail deposits segment of approximately 1%.

(13) Proton Bank started to suffer from significant loan impairments and had to rely on high deposit rates in order to maintain deposits and liquidity. There was also a fraud investigation regarding former members of the board of directors and regarding a major shareholder.

(14) Proton Bank received, under the Greek bank support scheme[2], a capital injection of EUR 80 million (corresponding to 4.58% of the bank's risk weighted assets at that time) from the Greek State in May 2009, a State guarantee for issued bonds with a nominal value of EUR 149.4 million, and Greek government securities amounting to EUR 78 million in April 2009. On 1 October 2010, the Greek authorities submitted to the Commission a restructuring plan for Proton Bank.

(15) In the summer of 2011, the four largest banks of Greece offered to support Proton Bank, by purchasing convertible bonds of approximately 50 million EUR issued by Proton Bank.

(16) Proton Bank also received around EUR 900 million in Emergency Liquidity Assistance (ELA) funding from the Bank of Greece[3].

(17) In March 2011, the bank held Greek government bonds amounting to 1.2 billion EUR (including Treasury bills)[4], amounting therefore to more than 25% of the balance sheet total.

2.2 Nea Proton Bank

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[2] See Commission decision of 19 November 2008 in State Aid N 560/2008 "Support Measures for the Credit Institutions in Greece", OJ C 125, 05.06.2009, p. 6. and the respective prolongation and amendment decisions: Commission decision of 18 September 2009 in State Aid N 504/2009 "Prolongation and amendment of the Support Measures for the Credit Institutions in Greece ", OJ C 264, 06.11.2009, p. 5.; Commission decision of 25 January 2010 in State Aid N 690/2009 "Prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 57, 09.03.2010, p. 6.; Commission decision of 12 May 2010 in State Aid N 163/2010 "Amendment to the Support Measures for the Credit Institutions in Greece", OJ C 166, 25.06.2010, p. 2.; Commission decision of 30 June 2010 in State Aid N 260/2010 "Extension of the Support Measures for the Credit Institutions in Greece", OJ C 238, 03.09.2010, p. 3.; Commission decision of 21 December 2010 in State Aid SA.31998 (2010/N) "Fourth extension of the Support Measures for the Credit Institutions in Greece", OJ C 53, 19.02.2011, p. 2.; Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "Amendment to the Support Measures for the Credit Institutions in Greece", OJ C 164, 02.06.2011, p. 8.; Commission decision of 30 June 2011 in State Aid SA.33153 (2011/N) "Fifth prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 274, 17.09.2011, p. 5.; Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "Sixth prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 101, 04.04.2012, p.2-3.; Commission decision of 6 July 2012 in State aid case SA.35002 (2012/N) "Seventh prolongation of the Support Scheme for Credit Institutions in Greece", not yet published.

[3] The ELA funding provided by the Bank of Greece is covered by an "umbrella" State guarantee. That means that the guarantee is not earmarked to cover the ELA funding received by any particular bank; it rather covers the total amount of ELA funding provided to the whole banking sector and it aims to cover potential future losses of the Bank of Greece.

[4] Short-term notes issues by the Greek state for raising funds.

(18) On 9 October 2011, upon proposal of the Bank of Greece, and following the decision of the Ministry of Finance, Nea Proton Bank was created. The sole shareholder of Nea Proton Bank is the Hellenic Financial Stability Fund (HFSF). The size of the opening balance sheet of Nea Proton Bank is approximately EUR 3 billion. The license of the "old" Proton Bank was recalled by the Bank of Greece and it was put under liquidation.

(19) Equity claims, subordinated debt, deferred taxes and high-risk loans remained with "old" Proton Bank. All deposits (retail, bank and government), the branch network and selected assets (loans and securities portfolios) were transferred to Nea Proton Bank. Loans and securities were transferred at fair value. The Greek government bonds were transferred at 50% of their nominal value (contributing therefore significantly to the funding gap).

(20) At the end of 2011, Nea Proton Bank's risk weighted assets amounted to EUR 1.2 billion.

(21) According to the current resolution framework in Greece, the HFSF needs to dispose of its shares in Nea Proton Bank within two years from the date of the Ministerial decision establishing the new bank and that period may be extended by two more years by decision of the Minister of Finance following a recommendation from the Bank of Greece for reasons of financial stability. In the event that the HFSF does not succeed in disposing of its shares in Nea Proton Bank, or at any time by decision of the Minister of Finance following a recommendation from the Bank of Greece, Nea Proton Bank will be put into liquidation.

2.3 Nea Proton Bank´s restructuring plan

(22) On 12 March 2012, the Greek authorities notified to the Commission a restructuring plan for Nea Proton Bank (dated 30 January 2012).

(23) The strategic objectives of Nea Proton Bank are inter alia:

(i) To improve the bank's investor attractiveness and financial results with the aim of selling it to a third party within two to three years, as per the resolution framework

(ii) To strengthen customer relationships

(iii) To strengthen the selling capabilities of the branch network to effectively change the culture from a deposit-taking mechanism into a relationship/cross-selling banking facility

(iv) To dispose of certain activities

(v) To drastically enhance the risk management and internal control framework capabilities

(vi) To reduce the headcount by […]%* from 521 FTEs (Full Time Equivalents) to […].

* Parts of this text have been omitted to ensure that confidential information is not disclosed. Those parts are indicated by three full stops enclosed in square brackets and marked with one asterisk.

(24) The key figures (approximate amounts in EUR million) from the Profit and Loss statement forecast (base case) of the restructuring plan which was submitted on 12 March 2012 are listed in Table 1:

Table 1: Key figures from the Profit and Loss statement forecast (base case) of the restructuring plan which was submitted on 12 March 2012

	2011 (9 Oct. – 31 Dec.)	**2012**	**2013**	**2014**	**2015**	**2016**
Net interest income / loss	-2.3	[…]	[…]	[…]	[…]	[…]
Net Fee and Commission Income	0.6	[…]	[…]	[…]	[…]	[…]
Total banking income	-1.6	[…]	[…]	[…]	[…]	[…]
Total operating expenses	-9.9	[…]	[…]	[…]	[…]	[…]
Profit / Loss after tax	-13.3	[…]	[…]	[…]	[…]	[…]

(25) On 16 July 2012, the Greek authorities submitted to the Commission an updated restructuring plan for Nea Proton Bank. The Commission notes that the update does not contain substantial changes regarding restructuring measures. However, the financial forecasts were updated in order to take into account recent developments (inter alia: there was a significant impact of the "Private Sector Involvement"[5] (PSI) exercise, the macroeconomic assumptions had to be changed). The aid amounts were also revised; i.e. Nea Proton Bank will need more aid compared to the aid amounts mentioned in the restructuring plan which was submitted on 12 March 2012.

(26) The key figures (approximate amounts in EUR million) from the Profit and Loss statement forecast (base case) of the restructuring plan update which was submitted on 16 July 2012 are listed in Table 2:

Table 2: Key figures from the Profit and Loss statement forecast (base case) of the restructuring plan update which was submitted on 16 July 2012

	2011 (9 Oct. – 31 Dec.)	**2012**	**2013**	**2014**	**2015**	**2016**
Net interest income / loss	7.1	[…]	[…]	[…]	[…]	[…]
Net Fee and	0.6	[…]	[…]	[…]	[…]	[…]

5 Private Sector Involvement (PSI): Negotiation between the Greek authorities and its private creditors which aimed to achieve a partial waiver of the Greek government debt by its private creditors on a voluntary basis. The PSI is extraordinary in nature and had a considerable impact on Greek banks: A series of banks made losses stemming from PSI.

Commission Income						
Total banking income	5.3	[…]	[…]	[…]	[…]	[…]
Total operating expenses	-11.7	[…]	[…]	[…]	[…]	[…]
Profit / Loss after tax	-244.6	[…]	[…]	[…]	[…]	[…]

2.4 The measures

2.4.1 Intervention by the Resolution scheme of the HDIGF in Nea Proton Bank (measure 1)

(27) The Resolution scheme of the Hellenic Deposit and Investment Guarantee Fund (HDIGF) was called upon by the Bank of Greece to cover the gap in Nea Proton Bank, representing the difference between the value of the transferred assets (valued at their fair value, which was significantly below the value at which those assets were registered in the book of Proton Bank the day before) and the nominal value of the transferred liabilities. That amount was finalized on 19 January 2012 by the Bank of Greece at EUR 1.122 billion[6].

2.4.2 Capital injections by the HFSF into Nea Proton Bank (measure 2)

(28) The HFSF constitutes the sole shareholder of Nea Proton Bank and provided State aid in the form of the initial share capital (common shares) of EUR 250 million.

(29) According to the updated restructuring plan submitted on 16 July 2012, Nea Proton Bank still needs additional capital of EUR [230 – 300] million ([…]), instead of additional capital of EUR 35 million as mentioned in the restructuring plan submitted on 12 March 2012. Nea Proton Bank suffered losses because of PSI[7] in Greece that imposed haircuts on holdings of Greek sovereign debt (impairment losses for 2011 reached EUR 146.5 million related to the Greek government bonds, additional impairments of EUR 22 million were incorporated in the results of the first quarter of 2012). Another reason for the higher amount of capital needed is, that the provision charges for 2011 until 2016 are higher than previously assumed in the restructuring plan that was submitted on 12 March 2012.

3. ASSESSMENT

3.1 Existence of State aid in the meaning of Article 107(1) TFEU and quantity of State Aid

(30) The Commission first has to assess whether the measures constitute State aid within the meaning of Article 107(1) TFEU. According to that provision, State aid is any aid granted by a Member State or through State resources in any

6 The funding gap of EUR 1.122 billion was covered in two tranches: EUR 862 million were paid up by the HDIGF and the remaining EUR 260 million were disbursed by the HFSF which undertook the obligations of the HDIGF according to the Law 3845/2010 (based on Law 4051/2012).

7 Explanation of PSI: See footnote 5.

form whatsoever which distorts, or threatens to distort, competition by favoring certain undertakings or the production of certain goods, in so far as it affects trade between Member States.

Intervention by the Resolution scheme of the HDIGF for Nea Proton Bank (measure 1):

(31) The Commission considers the intervention by the Resolution scheme of the HDIGF amounting to EUR 1.122 billion to be State aid within the meaning of Article 107(1) TFEU.

(32) According to case-law[8] even if the Resolution Scheme is financed through private contributions (which are collected from banks), the intervention of the Resolution scheme is considered to involve State resources as the scheme was created by Greek law, which made contributions to the Scheme by the banks compulsory, and the management and use of its resources is decided in accordance with that legislation. It should be noted that, unlike the deposit guarantee part of the HDIGF, which was created following the implementation of an EU Directive, the Resolution scheme of HDIGF was not created to implement EU legislation. When deciding to create the Resolution scheme of HDIGF, Greece was therefore not bound by an obligation originating from EU law. It was an autonomous decision of the Greek authorities. Therefore the set-up of the Resolution scheme and any measures granted by the Resolution scheme are imputable to the Greek State. The Commission considers that the measure is financed through State resources, and is imputable to the State.

(33) Moreover, the measure is selective in nature, since it benefits only banks in difficulty.

(34) The Commission considers that the intervention does not comply with the market economy investor principle[9]. In fact, the HDIGF has no prospect of making a profit on its contribution: in exchange for its contribution, it received no claim against Nea Proton Bank but only a claim against Proton Bank. The latter is a bankrupt entity with nearly no assets remaining in it. Therefore, the HDIGF will almost certainly not recover the money contributed. The Commission considers that, under those circumstances and taking into account the very bad track record of Proton Bank, no private investor would have made such an investment in Nea Proton Bank. As regards the fact that the HDIGF's/the State's contribution would have been lower if Proton Bank had been let to go bankrupt, it is not a valid comparison. Any such payment by the HDIGF or by the State to indemnify depositors would not be made as *a market operator* but would be made as *a public authority*. It is settled case-law[10] that

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8 See Case C-345/02 *Pearle and Others* [2004] ECR I-7139, paragraphs 37 and 38. That approach was applied in Commission decision in the State aid case NN 61/2009 – "Rescue and restructuring of Caja Castilla-La Mancha", Spain, 29.06.2010, C(2010)4453 corr., recitals 96-118, and in Commission decision in the State aid case SA.34115 (2012 /NN) – "Resolution of T Bank", Greece, 16.05.2012.

9 The Greek authorities do not discuss that issue in their submission.

10 As the General Court ruled in Case T-196/04 *Ryanair* v *Commission* [2008] ECR II-3643 at paragraph 85, "*the application of [the MEIP] must be excluded in the event that the State acts as a*

payments made by an entity as a public authority should not be counted in the application of private investor test or private creditor test.

(35) The measure provided the economic activities of Proton Bank with a clear advantage by keeping them alive within a new legal entity, i.e. Nea Proton Bank. Indeed, while the equity, subordinated debt, deferred tax assets and high risk loans of Proton were not transferred, all the key productive banking assets were transferred (employees, branches, deposits, part of the loans and central services and infrastructure). It is therefore an advantage to the economic activity that continues to exist due to the intervention of the HDIGF which allows the transfer of those productive assets to the newly created Nea Proton Bank. Without the intervention of the HDIGF (in combination with the capital provided by the HFSF), Nea Proton Bank would have strongly negative equity and could not operate.

(36) That selective advantage distorts competition by keeping the banking activities alive and allowing them to continue competing on the market[11]. It also affects trade between Member States as several subsidiaries of foreign banking groups are present on the Greek banking market and in direct competition with the banking activities previously operated within the legal entity Proton Bank.

(37) The Commission therefore considers the contribution by the Resolution scheme of the HDIGF to be State aid. The amount of aid is the amount of the contribution, which according to available information is approximately EUR 1.122 billion.

(38) The Commission considers Nea Proton Bank to be the economic beneficiary as Nea Proton Bank harbours the Proton Bank's economic activity which continue to exist because of the aid received.

(39) The Commission regrets that Greece put the aid in question into effect, in breach of Article 108(3) TFEU.

Capital injections by the HFSF into Nea Proton Bank (measure 2):

(40) The Commission considers the capital injection by the HFSF amounting to EUR 250 million and subsequent the capital injections by the HFSF amounting to a total of EUR [230 – 300] million ([…]) to be State aid within the meaning of Article 107(1) TFEU.

(41) The Commission notes that the capital injections were provided by the HFSF, an entity set up and financed by the Greek State, and so was made by using State resources. The Commission also notes that the capital injections provided a selective advantage, enabling Nea Proton Bank to obtain capital it could not have found on the market. Given the difficulties of Proton Bank and given the challenging economic situation in Greece which directly affecta the banking

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public authority. In [that] event, the conduct of the State can never be compared to that of an operator or private investor in a market economy".

11 See Commission decision of 25.01.2010 in the State aid case NN 19/2009 – Restructuring aid to Dunfermline Building Society, recital 51; Commission decision of 25.10.2010 in State aid case N 560/2009 – Aid for the liquidation of Fionia bank, recital 56; Commission decision of 8.11.2010 in State aid case N 392/2010 – Restructuring of CajaSur, recital 52.

sector, it is highly doubtful that any private investor would have injected capital into Nea Proton Bank under those conditions.

(42) Nea Proton Bank is in competition with other banks, inter alia with subsidiaries of foreign banks. Hence, the capital injections have an effect on trade and are capable of distorting competition.

(43) The Commission therefore comes to the conclusion that the capital injections constitute State aid within the meaning of Article 107(1) TFEU.

(44) The Commission regrets that Greece put parts of the aid in question into effect, in breach of Article 108(3) TFEU.

3.2 Compatibility of the aid

4.2.1 Legal basis for the compatibility assessment

(45) Article 107(3)(b) TFEU provides that aid falling within the scope of Article 107(1) TFEU may be compatible with the internal market where it "remedies a serious disturbance in the economy of a Member State".

(46) The Commission has acknowledged in its decisions approving the Greek recapitalisation scheme and its prolongation until now that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. In view of the persistent turbulence that continues to affect the financial markets and institutions, the Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled[12].

(47) For those reasons the Commission accepts that the intervention by the Resolution Scheme of the HDIGF and the capital injection by the HFSF can be analysed as measures taken to avoid a serious disturbance in the economy of Greece.

4.2.2 Compatibility assessment

(48) In line with point 15 of the Banking Communication[13], in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility[14]:

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.

12 See Commission decision of 6 February 2012 in State Aid SA.34149 "Sixth prolongation of the Support Measures for the Credit Institutions in Greece" OJ C 101, 04.04.2012, p. 2.

13 The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8.

14 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.

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

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

(49) The Recapitalisation Communication[15] elaborates further on the level of remuneration required for State capital injections.

(50) Finally, the Commission has explained in the Restructuring Communication[16] how it will assess restructuring plans.

4.2.3 Compatibility with the Banking and Recapitalisation Communications

a. Appropriateness of the measures

(51) The intervention by the Resolution scheme is needed in order to fill the gap between the fair value of Proton Bank's assets and the nominal value of its liabilities which were transferred to Nea Proton Bank.

(52) The Commission considers that the intervention by the Resolution scheme is appropriate because it helps keep alive Proton Bank's economic activities which were transferred to Nea Proton Bank. Without the intervention of the Resolution scheme, those activities would not have been able to continue, as Proton Bank was on the verge of bankruptcy and in current difficult market conditions no bank would have acquired a package having a negative value (i.e. with the fair value of the assets lower than the fair value of the liabilities). The measure thereby ensures that financial stability in Greece is maintained in the short-term. On that basis, the Commission finds that the intervention by the Resolution scheme is appropriate as rescue aid.

(53) The capital injections from the HFSF are needed in order to have capital in Nea Proton Bank and to enable Nea Proton Bank to adhere to the minimum capital adequacy ratio set by the Bank of Greece.

(54) The Commission considers that the capital injection of EUR 250 million is appropriate as rescue aid since it enabled the transfer of the economic activities of Proton Bank to Nea Proton Bank and the creation of Nea Proton Bank. Hence, the economic activities have not been wound-up. An immediate winding-up of Proton Bank's activities could have led to a bank run and could have triggered a serious disturbance on the Greek financial markets. A serious disturbance on the Greek financial markets could be avoided through the

15 Communication from the Commission - The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

16 Commission Communication "The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules" - Official Journal C 195, 19.8.2009, p. 9.

creation of Nea Proton Bank and the transfer of Proton Bank's economic activities into Nea Proton Bank.

(55) As regards the capital injections amounting to a total of EUR [230 – 300] million ([…]), the Commission notes that, based on the restructuring plan update submitted on 16 July 2012, Nea Proton Bank needs that capital in order to adhere to the minimum capital adequacy ratio set by the Bank of Greece.

(56) On that basis, the Commission finds that the capital injections from the HFSF are appropriate as rescue aid.

b. Necessity – limitation of the aid to the minimum

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

(58) As regards the amount of the intervention of the Resolution Scheme, the Commission observes that the amount exactly covered the difference between the fair value of the transferred assets and the nominal value of the transferred liabilities. The Commission concludes that the amount was not excessive. The Commission also notes that Proton Bank's equity and subordinated debt was left in Proton Bank. Therefore, the shareholders and subordinated debt-holders will suffer a full loss and the contribution of the HDIGF is not inflated by the cost of rescuing those investors.

(59) As regards the amount of the capital injections from the HFSF, the Commission has doubts that the amount is limited to the minimum necessary because the Member State envisages that Nea Proton Bank is to be restructured on a stand-alone basis. The Commission doubts that the bank can be viable on a stand-alone basis. Hence, the Commission is of the opinion that State aid is used for an option which is not realistic in the long-term. The Commission is of the opinion that Greece should also assess other options, which might be less expensive than the stand-alone option. At this stage the Commission is of the preliminary view that the stand-alone option might not be the cheapest option available and therefore it doubts that the State aid is limited to the minimum necessary. The Commission invites interested parties to provide comments on that issue.

(60) As regards the remuneration of the intervention of the Resolution scheme of the HDIGF and the capital injections from the HFSF, Nea Proton Bank will most probably not be able to remunerate the State aid it received. The Commission observes that in line with point 44 of the Recapitalisation Communication any rescue recapitalisation should in principle reflect the risk profile of the beneficiary and not fundamentally sound banks should pay higher remuneration than those that are fundamentally sound. If a bank that is not fundamentally sound is unable to sufficiently remunerate the received recapitalisation, it can only be accepted on the condition of either a bank's winding-up or a through and far-reaching restructuring including a change in management and corporate governance where appropriate. In view of the fact that Nea Proton Bank is not able to remunerate the recapitalisation by the

HFSF, the Commission has doubts whether Nea Proton Bank is a fundamentally sound bank.

(61) In conclusion, the intervention of the Resolution scheme of the HDIGF is necessary in both its amount and form to achieve the objectives of limiting the disturbance in the Greek banking system and economy as a whole. The capital injections by the HFSF are also necessary in their form to achieve the objectives of limiting the disturbance in the Greek banking system and economy as a whole. However, at this stage the Commission has doubts that the amount of the capital injections by the HFSF is limited to the minimum. The Commission underlines that the absence of remuneration triggers the need for in-depth restructuring.

c. Proportionality – measures limiting negative spill-over effects

(62) The Commission notes that the legal entity Proton Bank will be liquidated and will exit the market. However, thanks to measure 1 and measure 2, the economic activities of Proton Bank continue to exist in Nea Proton Bank and produce negative spill-over effects. Nea Proton Bank should be subject to measures limiting negative spill-over effects. However, the risk of distortions of competition in the short-term is rather limited given the very small size of Nea Proton Bank and the fact that Nea Proton Bank does not aim to grow in the short-term.

(63) Therefore the Commission considers that the intervention by the Resolution scheme and the capital injections from the HFSF are proportionate as rescue aid.

(64) After having assessed whether the rescue aid measures (measure 1 and measure 2) are compatible with the Banking Communication and the Recapitalisation Communication, the Commission will now assess whether the restructuring envisaged complies with the requirements of the Restructuring Communication.

4.2.4 Compatibility with the Restructuring Communication

Restoration of long-term viability of Nea Proton Bank:

(65) The HFSF has the obligation to sell the shares it owns in Nea Proton Bank. Since the obligation is only to sell the shares, it can be a sale to any type of investor. It means that the sale does not necessarily entail the integration of Nea Proton Bank into a larger banking group; the bank could remain a standalone bank with the only change being that it would have a new shareholder, for instance, a private equity group. Given that uncertainty about the type of the future owner, the notified restructuring plan is based on continuation of the operations of the bank on a stand-alone basis, i.e. not merged in a larger bank.

(66) The Commission doubts that Nea Proton Bank can be viable on a stand-alone basis, as planned in the restructuring plan submitted to the Commission.

(67) The Commission in particular notes that in a stand-alone approach high costs have to be incurred to, for instance, build solid risk management systems and solid IT platforms which did not exist within Proton Bank and which, as the failure of Proton Bank has shown, are necessary for a viable business model.

(68) High synergies could be achieved by integration of Nea Proton Bank into a larger and viable financial services group (e.g. another bank) or by merging it with other small banks to form a larger and viable group. It would allow a significant part of those infrastructures and corporate functions costs to be saved.

(69) In addition, the Nea Proton Bank has little franchise value, as its depositors are primarily attracted by very high interest rates offered on deposits. The bank is structurally unprofitable because its costs of funding are significantly above the level of most of its competitors. Attempts by the new management to reduce the interest rates have resulted in deposit withdrawal, forcing the bank to keep high interest rates. Conversely if the bank was integrated in a larger and solid bank, it would probably give more confidence to depositors and increase the range of services offered to them, such that the bank would not have to continue offering interest rates on deposits which are significantly above the rate offered by most competitors. The bank could thereby offer lower interest rates to depositors without losing them, such that profitability would be higher.

(70) According to the updated restructuring plan submitted on 16 July 2012, Nea Proton Bank plans to increase its net interest income from EUR […]. The Commission doubts that Nea Proton Bank can achieve such strong growth rate, especially if it remains a stand-alone small bank.

(71) The net interest income is an important income driver. If Nea Proton Bank does not manage to achieve the planned strong growth rate, it will not achieve the planned future profits or will generate further losses in the future.

(72) There is therefore a risk of Nea Proton Bank ending up as a bridge bank repeatedly relying on State aid.

(73) The Commission is at this stage of the opinion that the reintegration of Nea Proton Bank into a larger viable financial company might increase the viability prospects of Nea Proton Bank. The Restructuring Communication provides that in case a bank cannot return to viability on a stand-alone basis, viability can be restored through a sale and integration into a larger entity. In that respect, point 17 of the Restructuring Communication clarifies that *the sale of an ailing bank to another financial institution can contribute to restoring long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank and may help restoring market confidence.*

(74) In conclusion, the Commission doubts that the restructuring plan notified on 12 March 2012 and the updated restructuring plan submitted on 16 July 2012 will restore Nea Proton Bank's long-term viability.

(75) The Commission also doubts that the depth of the restructuring is sufficient compared to the depth which is required in the case of absence of remuneration.

Burden-sharing and limitation of the aid to the minimum necessary:

(76) The Commission has doubts that the aid is limited to the minimum. In particular, the Commission doubts that the restructuring costs are limited to the minimum, because Nea Proton Bank is restructured on a stand-alone basis, which inflates the restructuring costs. The Commission doubts that the bank can be made viable on a stand-alone basis without incurring very high costs, notably to develop a viable IT infrastructure and risk management structure. At this stage the Commission considers that the stand-alone option might not be the cheapest option and doubts that the State aid is limited to the minimum.

(77) Concerning burden-sharing of shareholders and subordinated debt holders, the Commission notes that the shareholders and subordinated debt holders were not transferred to Nea Proton Bank but have remained in the entity in liquidation. Therefore, there is a high probability that they will lose their investments. That burden-sharing reduces the aid amount needed. Hence, the Commission considers that sufficient burden-sharing of shareholders and subordinated debt holders is achieved.

(78) There will be no remuneration for the HDIGF. There is a very small probability of recovering much of the amount contributed by the HDIGF. It is therefore highly probable that most aid is lost. The Greek State could expect to recover only part of the capital injections by the HFSF amounting to a total of EUR 550 million. By contrast, the EUR 1.122 billion granted by the Resolution scheme of the HDIGF to cover the gap between assets and liabilities are most probably lost.

(79) Therefore the Commission considers that the burden-sharing, even if it probably represents the maximum of what is feasible for that distressed bank, does not meet the Communication's requirement and that the absence of remuneration triggers the need for in-depth restructuring, both in terms of viability measures and in terms of measures to limit distortions of competition.

Distortion of competition:

(80) Nea Proton Bank will receive EUR 1.672 billion of aid (EUR 1.122 billion intervention by the resolution scheme of the HDIGF, EUR 0.25 billion capital injection by the HFSF and EUR [0.23 - 0.3] billion capital injection by the HFSF), which is a considerable amount of aid. That aid represents more than 50% of Proton Bank's risk weighted assets, respectively more than 130% of Nea Proton Bank's risk weighted assets. The Commission notes that Proton Bank (which is the legal entity which previously performed the activities which are now harboured in Nea Proton Bank) had received considerable aid: Proton Bank received, under the Greek bank support scheme[17], a capital injection of EUR 80 million from the Greek State in 2009 (more than 4% of that bank's risk weighted assets at that time), a State guarantee for issued bonds with a nominal value of EUR 149.4 million, and Greek government securities amounting to

[17] See Commission decision of 19 November 2008 in State Aid N 560/2008 "Support Measures for the Credit Institutions in Greece", OJ C 125, 05.06.2009, p. 6. and the respective prolongation decision.

EUR 78 million. Such amounts of aid normally call for a deep restructuring and reduction of the market presence of the bank. Those requirements are even more acute if there is no remuneration of the aid, most of which will never be recovered.

(81) In terms of market presence, the Commission observes that the creation of the bridge bank is not a real resolution of Proton Bank as the restructuring plan of Nea Proton Bank foresees that Nea Proton Bank remains on the market nearly as Proton Bank was before.

(82) Proton Bank was a very small bank (approximately 1% market share of Greek banks total assets and consequently Proton Bank's assets and liabilities transferred into Nea Proton Bank are relatively small when compared with the size of the Greek banking system, as indicated above. Therefore, despite the exceptionally large aid amount, the distortions of competition caused by the aid to Nea Proton Bank could be considered to be limited.

(83) However, since the bank's market behaviour has been characterised by offering interest rates on deposits which are much higher than the interest rates on deposits of most of the competitors, a price leadership ban may be contemplated for Nea Proton Bank. Such a price leadership ban would decrease the probability that Nea Proton Bank uses the State aid to pay high interest rates and distorts competition on the market for deposits. To ensure that Nea Proton Bank does not continue the unsustainable business model of Proton Bank and to limit the competition distortions, the Commission is of the view that behavioural measures such as an acquisition ban and a ban on strong growth in lending and deposit-taking are necessary.

Conclusion

(84) On the basis of the above, the Commission comes to the preliminary conclusion that the notified measures consisting of measure 1 (EUR 1.122 billion intervention by the Resolution scheme of the HDIGF) and measure 2 (EUR 0.25 billion capital injection by the HFSF and apital injections by the HFSF amounting to a total of EUR [0.23 - 0.3] billion ([…])) for Nea Proton Bank constitute State aid within the meaning of Article 107(1) TFEU. The Commission has at this stage doubts that such aid can be found compatible with the internal market pursuant to Article 107(3) of the Treaty on the Functioning of the European Union.

DECISION

In the light of the foregoing considerations, the Commission has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union with respect to State aid (i.e. the EUR 1.122 billion intervention by the Resolution scheme of the HDIGF, the EUR 0.25 billion capital injection by the HFSF and the capital injections by the HFSF amounting to a total of EUR [0.23 - 0.3] billion ([…])) for Nea Proton Bank and with respect to Nea Proton Bank's restructuring plan and, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Greece to submit its comments and to provide all such information as may help to assess the aid measures, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

In order to preserve financial stability in Greece, the Commission temporarily approves the State aid (i.e. the EUR 1.122 billion intervention by the Resolution scheme of the HDIGF, the EUR 0.25 billion capital injection by the HFSF and the capital injections by the HFSF amounting to a total of EUR [0.23 - 0.3] billion ([…])) for Nea Proton Bank as compatible rescue aid until the Commission adopts a final restructuring decision regarding Nea Proton Bank. The Commission requests Greece to submit a new restructuring plan for Nea Proton Bank which addresses the Commission's doubts expressed in this decision.

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

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

The Commission notes that Greece accepts that the adoption of the Decision be in the English language.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

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Directorate-General for Competition
State Aid Greffe
J70 03/225
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President