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Subject: State aid SA.38857 (2014/N) - Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece

Sir,

1. PROCEDURE

- (1) On 19 November 2008¹, the Commission approved the support measures for the credit institutions designed to ensure the stability of the Greek financial system (hereinafter referred to as the "Original Decision"). 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 2009². On 25 January 2010³, the Commission approved a second prolongation of the support measures until 30 June 2010. On 12 May 2010, the Commission approved an amendment to the Guarantee Scheme⁴. On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010⁵. On 21 December 2010, the Commission approved the extension of the support measures until 30 June 2011⁶. On 4 April 2011, the Commission approved an

¹ 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.

² See Commission decision of 18 September 2009 in State Aid N 504/2009 "Prolongation and amendment of the Support Measures for the Credit Institutions in Greece", OJ C 264, 06.11.2009, p. 5.

³ See Commission decision of 25 January 2010 in State Aid N 690/2009 "Prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 57, 09.03.2010, p. 6.

⁴ See 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.

⁵ See Commission decision of 30 June 2010 in State Aid N 260/2010 "Extension of the Support Measures for the Credit Institutions in Greece", OJ C 238, 03.09.2010, p. 3.

⁶ See Commission decision of 21 December 2010 in State Aid SA.31998 (2010/N) "Fourth extension of the Support Measures for the Credit Institutions in Greece", OJ C 53, 19.02.2011, p. 2.

amendment to the support measures in the form of an increased ceiling of the Guarantee Scheme with an additional tranche amounting to EUR 30 billion⁷.

- (2) On 30 June 2011, the Commission approved a prolongation of the support measures until 31 December 2011⁸. On 6 February 2012, the Commission approved an amendment to the support measures and a prolongation of the support measures until 30 June 2012⁹. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012¹⁰. On 22 January 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2013¹¹. On 25 July 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until December 2013¹².
- (3) On 14 January 2014, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2014¹³.
- (4) On 4 June 2014, the Greek authorities officially notified a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 31 December 2014.
- (5) For reasons of urgency, Greece accepts that exceptionally the present decision is adopted in the English language.

2. FACTS

2.1. Description of the scheme

- (6) In November 2008, Greece brought forward a package of measures designed to ensure the stability of the Greek financial system. The purpose of those measures was to restore confidence and encourage healthy inter-bank lending, through i) the provision of liquidity, ii) the recapitalisation of the financial sector and iii) provision of a State guarantee to new debt issuance.

⁷ See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "Amendment to the Support Measures for the Credit Institutions in Greece", OJ C 164, 02.06.2011, p. 8.

⁸ See 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.

⁹ See Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "Sixth prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 101, 04.04.2012, p. 2.

¹⁰ See Commission decision of 6 July 2012 in State Aid SA.35002 (2012/N) "Seventh prolongation of the Support Measures for the Credit Institutions in Greece", OJ C 77, 15.03.2013, p. 14.

¹¹ See Commission decision of 22 January 2013 in State aid case SA.35999 (2012/N) "Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece", OJ C 162, 07.06.2013, p. 6.

¹² See Commission decision of 25 July 2013 in State aid case SA. 36956 (2013/N), "Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece", OJ C 141, 09.05.2014, p. 3.

¹³ See Commission decision of 14 January 2014 in State aid case SA. 37958 (2013/N), "Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece", not yet published.

- (7) A detailed description of the schemes is provided in the Original Decision, in particular recitals 2 to 5 concerning the legal basis and the objective of the schemes, and recitals 10 to 37 on the description of the measures¹⁴.
- (8) In the context of the notification of 4 June 2014, Greece seeks approval of under EU State aid rules of the prolongation of two schemes: i) a Wholesale Funding Guarantee Scheme for debt instruments with a maturity of between three months and three years in return for a fee ("the Guarantee Scheme"); and ii) support through the lending of Greek State special purpose securities to credit institutions, in return for a fee, to be used to obtain liquidity from the central bank and the interbank markets ("Bond Loan Scheme").
- (9) The budgets for the Guarantee Scheme and the Bond Loan Scheme ("Schemes") stay respectively at EUR 84.9 billion and EUR 8.1 billion¹⁵.

2.2. Actual use of the Schemes according to an update of 31 May 2014

- (10) On 4 June 2014, the Greek authorities submitted a report dated 31 May 2014 on the operation of the Schemes.
- (11) Regarding the functioning of the Guarantee Scheme, an amount of approximately EUR 46.3 billion of guarantees was outstanding, i.e. around 54% of the total amount available of EUR 84.9 billion¹⁶.
- (12) Regarding the functioning of the Bond Loan Scheme, loans of Greek State special purpose securities were outstanding for an amount of approximately EUR 5.5 billion, i.e. around 68% of the total amount available (EUR 8.1 billion).

3. POSITION OF GREECE

- (13) Greece requests a prolongation of the Schemes for a further period of six months until 31 December 2014.

¹⁴ Please note that the measures have been amended by national legislation approved in the following decisions: Commission decision of 18 September 2009 in State Aid N 504/2009, Commission decision of 12 May 2010 in State Aid N 163/2010, Commission decision of 30 June 2010 in State Aid N 260/2010, Commission decision of 21 December 2010 in State Aid SA.31998 (2010/N) and Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N).

¹⁵ See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "Amendment to the Support Measures for the Credit Institutions in Greece", OJ C 164, 02.06.2011, p. 8.

¹⁶ The total budget of the Guarantee Scheme includes the initial budget of the Original Decision (EUR 15 billion), the increase in the budget carried out on 12 May 2010 (EUR 15 billion), the increase in the budget carried out on 30 June 2010 (EUR 25 billion), the increase in the budget carried out on 4 April 2011 (EUR 30 billion), except for the amount of EUR 123 million which has been transferred from the budget of the Guarantee Scheme to the Bond Loan Scheme (see Commission decision of 30 June 2010 in State Aid case N 260/2010, recitals 7-8).

- (14) Greece submits that the Schemes constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (“TFEU”), but is of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary to remedy a serious disturbance in the economy of Greece.
- (15) Greece submitted a letter by the Bank of Greece further supporting the need for the proposed prolongation to safeguard the stability of the financial system in Greece, because prevailing market conditions do not allow for a termination of the Schemes.
- (16) In line with the requirements of the 2011 Prolongation Communication¹⁷, Greece provided an indicative fee (estimation) for each financial institution eligible to benefit from those guarantees. The estimation was based on an application of the scheme's remuneration formula and recent market data. The indicative fee for the guarantees covering debt with a maturity of less than one year as of March 2014 was 115 basis points (“bp”) or 90 bp, if the credit institution had eligible collateral. The indicative fees for guarantees with a maturity of one year or more were 113 bp and 88 bp respectively. Those fees are applicable to all credit institutions in Greece as the individual credit default swap (“CDS”) spreads still observed are no longer representative and therefore the Greek authorities will determine the guarantee fee for all banks on the basis of the CDS of the sample of representative European banks in the lowest rating buckets (“BBB and below”).
- (17) Greece submitted the following commitments relating to the Schemes:
- i. to grant the guarantees under the support scheme only for new issuance of credit institutions' senior debt (subordinated debt is excluded);
 - ii. to provide guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds);
 - iii. to limit the guarantees with a maturity of more than three years to one-third of the total outstanding amount of guarantees granted to the individual credit institution;
 - iv. to determine the minimum level of remuneration for State guarantees and lending of State bonds to the credit institutions in line with the formula set out in the Commission's Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis¹⁸;
 - v. to submit a restructuring plan, within two months of the granting of the guarantees, for every credit institution that is granted guarantees on new liabilities or renewed liabilities for which, at the time of the granting of new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of this decision) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million;

¹⁷ Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2010, p. 7.

¹⁸ OJ C 356, 6.12.2011, p. 7.

- vi. to submit individual restructuring or wind-down plans¹⁹, within two months after the guarantee has been activated for credit institutions which cause the guarantee to be called upon;
- vii. to impose a ban on advertising referring to the State support on the beneficiaries of the Schemes and to prevent them from employing any aggressive commercial strategies which would not take place without the State support;
- viii. to grant aid measures under the support scheme only to credit institutions which have no capital shortfall²⁰ and, where a credit institution with a capital shortfall is in urgent need of liquidity, to submit an individual notification to the Commission;
- ix. to report to the Commission on i) the operation of the Schemes, ii) the guaranteed debt issues, and iii) the actual fees charged, on a three-monthly basis, meaning by 15 October 2014 (for the period 1 July 2014 to 30 September 2014) and by 15 January 2015 (for the period 1 October 2014 to 31 December 2014) at the latest;
- x. to supplement its reports on the operation of the Schemes with available updated data on the cost of comparable non-guaranteed debt issuances (as regards nature, volume, rating, currency).

4. ASSESSMENT

4.1. Existence of State Aid

- (18) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (19) For the reasons indicated in the original decision, the Commission considers that the Schemes constitute State aid within the meaning of Article 107(1) TFEU because they concern the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the Schemes, participating banks obtain guarantees or liquidity support under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, any advantage from State resources to a bank affects intra-Union trade and therefore threatens to distort competition. The measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

¹⁹ The plan must be prepared on the basis of the parameters established in the Commission Communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules (Restructuring Communication), OJ C 195, 19.8.2009, p. 9.

²⁰ "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

4.2. Compatibility of the Schemes

4.2.1 Legal basis for the compatibility assessment

- (20) Under the Schemes Greece intends to provide aid in the form of guarantees and liquidity support in favour of banks.
- (21) Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011 and in light of the persisting circumstances and risks, the Commission considers it appropriate, as confirmed by the 2013 Banking Communication²¹, to examine the measure under Article 107(3)(b) TFEU.
- (22) Article 107(3)(b) TFEU 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". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication²² and the Restructuring Communication²³. The Commission still considers that the conditions for State aid to be approved pursuant to Article 107(3)(b) TFEU are present. The Commission confirmed that view by adopting the 2013 Banking Communication²⁴.
- (23) The Commission does not dispute the position of the Greek authorities, which is also confirmed by the Bank of Greece, that the prolongation of the Schemes for an additional six-month period remains an important supplementary element for progressively strengthening the medium-term extension of credit to the real economy. The Commission also notes that notwithstanding the return of the State and some banks²⁵ to the market for medium and/or long term debt, the volume of such issuances remains limited and its cost high. In addition, banks in Greece still rely significantly on Central Bank funding. Therefore, the Commission cannot conclude that market access conditions for the Greek banking system as a whole have been fully restored given that some adverse effects of the sovereign crisis still persist. Hence, the Commission finds that the scheme aims at remedying a serious disturbance in the Greek economy.
- (24) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

²¹ 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.

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

²³ Commission Communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

²⁴ See points 4 to 6.

²⁵ Two of the four Greek pillar banks issued debt notes in March and April 2014, one for EUR 500 million and the other for EUR 750 million with maturity dates in 2017 and 2019 respectively.

- (25) In order for an aid to be compatible under Article 107(3)(b) TFEU, it must comply with the general principles for compatibility under Article 107(3), viewed in the light of the general objectives of the Treaty. Therefore, according to the Commission's case practice²⁶ any aid or scheme must comply with the following conditions: (i) appropriateness (ii) necessity and (iii) proportionality.
- (26) The 2013 Banking Communication and the Restructuring Communication formulate assessment criteria which reflect those general principles and their requirements in light of the specific policy context.

4.2.2 Compatibility assessment of the Schemes

Appropriateness

- (27) The Schemes should be appropriate to remedy a serious disturbance in the Greek economy. The objective of the Schemes is to temporarily offer appropriate measures to establish backstops for the financial system in a timely and efficient manner, where banks face difficulties in obtaining sufficient funding. The Commission observes that the crisis has eroded confidence in the creditworthiness of the banks, which results in difficulties in obtaining necessary funding on the financial markets. Hence, a backstop mechanism by the Member State, which in case of urgency ensures that banks would have access to funding, is an appropriate means to strengthen banks and thus to restore market confidence.
- (28) Points 23 and 60(a) of the 2013 Banking Communication explain that the Schemes will continue to be available in order to provide liquidity to banks but that such schemes should be limited to banks without a capital shortfall. The Commission observes that Greece has committed to restrict the Schemes only to banks without a capital shortfall as certified by the competent supervisory authority.
- (29) Moreover, the Commission notes that Greece has committed to grant guarantees only for new issues of banks' senior debt, as prescribed in point 59(a) of the 2013 Banking Communication.

Necessity

- (30) With regard to the scope of the measure, the Commission notes positively that Greece has limited the size of the Guarantee Scheme by setting its maximum budget at EUR 84.9 billion and that of the Bond Loan Scheme at EUR 8.1 billion and that the Schemes apply until 31 December 2014.
- (31) The Commission notes that, under the Guarantee Scheme, Greece has committed to grant guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds) and limit guarantees with a maturity

²⁶ See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka", OJ C 314, 29.10.2013, p. 1 and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka", OJ C 314, 29.10.2013, p. 2.

of more than three years to one-third of the total outstanding amount of guarantees granted to the individual bank, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.

- (32) Regarding the remuneration level, the Commission observes that Greece, in line with point 59(c) of the 2013 Banking Communication, has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication which requires, in particular, the application of a pricing method based largely on market data.
- (33) Since the beginning of the sovereign debt crisis the CDS of Member States in difficulty have skyrocketed. The CDS of the large banks located in those Member States have increased in line with those of their sovereign. The very high CDS of large banks in programme countries do not seem to primarily reflect their intrinsic risk profile, but are mainly driven by the sovereign risk. That link can lead to a situation in which the application of the guarantee pricing formula based on the individual CDS spread of the bank results in an excessively expensive guarantee, which is not justified by the risk profile of the bank. Therefore, it seems appropriate to consider the CDS spreads of individual banks located in the countries subject to a financial assistance programme as temporarily non-representative of the intrinsic risk of those banks.
- (34) On that basis, the Commission does not object to Greece's intention to determine the guarantee fee for banks which still have a traded CDS on the basis of the CDS of the sample of Union banks in the "BBB- and lower" rating category. The Commission will review its assessment of the macro-economic situation and appropriateness of that exceptional pricing mechanism whenever a further prolongation of the scheme is notified.

Proportionality

- (35) As regards proportionality, the Commission notes, first, that Greece, in line with point 59(d) of the 2013 Banking Communication, has committed to submit a restructuring plan within two months for any bank granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of the decision) exceed both a ratio of 5% of the bank's total liabilities and a total amount of EUR 500 million. That commitment ensures that the use of the Guarantee Scheme will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments.
- (36) Second, the Commission notes that Greece has committed, in line with point 59(f) of the 2013 Banking Communication, to a number of behavioural safeguards such as a ban on advertisements referring to the State support and a ban on any aggressive commercial strategies which would not take place without the State support. Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.
- (37) Finally, the Commission welcomes that Greece undertakes to submit individual restructuring or liquidation plans, within two months, for banks which cause the guarantee to be called upon, in line with point 59(e) of the 2013 Banking Communication.

- (38) As regards the combination of the Schemes with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.
- (39) Furthermore, based on point 16 of the Restructuring Communication, the Commission recalls that, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, such additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. All State aid measures received by a bank as individual aid or under the scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

Monitoring

- (40) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Greece undertakes to present every three months a report on the operation of the Schemes, on guaranteed issuances and on the actual fees charged and to supplement it with updated available data on the cost of comparable non-guaranteed debt issuances (nature, volume, rating and currency).

Conclusions on the compatibility of the aid measure

- (41) On the basis of the above, the Commission finds the notified prolongation to be in line with the 2013 Banking Communication and the Restructuring Communication. The prolongation of the Guarantee Scheme and Bond Loan Scheme remains an appropriate, necessary and proportionate measure to remedy a serious disturbance of Greek economy and does not alter the Commission's previous assessment in the original decision of 19 November 2008 and the prolongation or amendment decisions of 18 September 2009, 25 January 2010, 12 May 2010, 30 June 2010, 21 December 2010, 4 April 2011, 30 June 2011, 6 February 2012, 6 July 2012, 22 January 201, 25 July 2013 and 14 January 2014.
- (42) In line with the Commission's decisional practice, the Schemes can therefore be prolonged until 31 December 2014. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the Schemes' effectiveness.

5. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the Schemes.

Greece exceptionally accepts that the present decision be adopted in the English language, for reasons of urgency.

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Yours faithfully,
For the Commission

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Vice-President