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**Subject: State aid SA.48400 (2017/N) – Greece – Prolongation of the Greek State Guarantee Scheme for banks (Art. 2 law 3723/2008)**

Sir,

## 1. PROCEDURE

- (1) On 19 November 2008, the Commission approved the support measures for the credit institutions designed to ensure the stability of the Greek financial system ("the Original Decision")<sup>1</sup>. The support measures included a recapitalisation scheme, a guarantee scheme ("the Guarantee Scheme") and a bond loan scheme ("the Bond Loan Scheme").
- (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<sup>2</sup>. On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010<sup>3</sup>. On 12 May 2010, the Commission approved an amendment to the Guarantee Scheme<sup>4</sup>. On 30 June 2010, the Commission approved a number of amendments to the support measures and an

<sup>1</sup> 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. A detailed description of the measures is provided in the Original Decision, in particular recitals 2 to 5 concerning their legal basis and objectives as well as recitals 10 to 37 containing the description of the measures.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

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extension until 31 December 2010<sup>5</sup>. On 21 December 2010, the Commission approved the extension of the support measures until 30 June 2011<sup>6</sup>.

- (3) On 4 April 2011, the Commission approved an amendment to the support measures in the form of an increased ceiling of the Guarantee Scheme with an additional tranche amounting to EUR 30 billion<sup>7</sup>. On 30 June 2011, the Commission approved a prolongation of the support measures until 31 December 2011<sup>8</sup>. On 6 February 2012, the Commission approved an amendment to the support measures and a prolongation of the support measures until 30 June 2012<sup>9</sup>. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012<sup>10</sup>. On 22 January 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2013<sup>11</sup>. On 25 July 2013, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 31 December 2013<sup>12</sup>. On 14 January 2014, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2014<sup>13</sup>. On 26 June 2014, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 31 December 2014<sup>14</sup>. On 14 January 2015, the Commission approved a prolongation of the Guarantee Scheme and the Bond Loan Scheme until 30 June 2015<sup>15</sup>. On 29 June 2015, the Commission approved a prolongation of the Guarantee Scheme until 31 December 2015<sup>16</sup>. On 18 December 2015, the Commission approved a prolongation of the Guarantee Scheme until 30 June 2016<sup>17</sup>. On 29 June 2016, the Commission approved a prolongation of the Guarantee Scheme until 31 December

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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", OJ C 280, 22.08.2014, p. 18.

<sup>14</sup> See Commission decision of 26 June 2014 in State aid case SA.38857 (2014/N) "Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece", OJ C 348, 03.10.2014, p. 27.

<sup>15</sup> See Commission decision of 14 January 2015 in State aid case SA.40030 (2014/N) "Prolongation of the Guarantee Scheme and the Bond Loan Scheme for Credit Institutions in Greece", OJ C 79, 06.03.2015, p. 13.

<sup>16</sup> See Commission decision of 29 June 2015 in State aid case SA.42215 (2015/N) "Prolongation of the Greek financial support measures (Art. 2 law 3723/2008)", OJ C 277, 21.08.2015, p. 11.

<sup>17</sup> See Commission decision of 18 December 2015 in State aid case SA.43825 (2015/N) "Prolongation of the Greek financial support measures (Art. 2 law 3723/2008)", OJ C 85, 04.03.2016, p. 2.

2016<sup>18</sup>. On 19 December 2016, the Commission approved a prolongation of the Guarantee Scheme until 30 June 2017<sup>19</sup>.

- (4) On 13 June 2017, the Greek authorities notified a prolongation of the State Guarantee Scheme until 30 November 2017.
- (5) By letter dated 19 June 2017, Greece agreed exceptionally to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958<sup>20</sup> and to have the present decision adopted and notified in English.

## **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) In the context of its notification of 13 June 2017, Greece seeks approval of the prolongation of the Guarantee Scheme for debt instruments with a maturity of between three months and three years in return for a fee.
- (8) The total budget of the Guarantee Scheme is currently EUR 93 billion<sup>21</sup>.
- (9) On 7 October 2016 the Commission authorised liquidity aid of EUR 380 million to Attica bank. Although the Greek authorities granted the support using the same national legal basis that applies to the Guarantee Scheme, *i.e.* Article 2 Law 3723/2008, the support to Attica bank is not covered by the present decision. The present decision concerns state aid approval of liquidity support to banks which have no capital shortfall, as reflected in commitment recital (15)(vii) of this decision. Following the Comprehensive Assessment conducted by the Bank of Greece in 2015, Attica bank had a remaining capital shortfall. Therefore the liquidity support of EUR 380 million was authorized in an individual decision<sup>22</sup>.

### **2.2. Operation of the Guarantee Scheme until 13 June 2017**

- (10) On 13 June 2017, the Greek authorities submitted a report dated 13 June 2017 on the operation of the Guarantee Scheme.
- (11) According to the report, on 13 June 2017 the outstanding guarantees amounted to EUR 3,18 billion. This amount includes the EUR 380 million liquidity support to

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<sup>18</sup> See Commission decision of 29 June 2016 in State aid case SA.45629 (2016/N) "Prolongation of the Greek financial support measures (Art. 2 law 3723/2008)", OJ C 284, 05.08.2016, p. 6.

<sup>19</sup> See Commission decision of 19 December 2016 in State aid case SA.46955 (2016/N) "Prolongation of the State Guarantee Scheme (Art. 2 law 3723/2008)", OJ C 20, 20.01.2017, p.1

<sup>20</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>21</sup> See recital 8 of the Commission decision of 18 December 2015 in State Aid SA.43825 (2015/N) "Prolongation of the Greek financial support measures (Art. 2 law 3723/2008)", OJ C 85, 04.03.2016, p. 2.

<sup>22</sup> See Commission decision of 7 October 2016 in State aid case SA.46558 (2016/N) "Liquidity Support to Attica Bank" (not yet published in the Official Journal)

Attica bank authorized in an individual Commission decision as explained in recital (9). When this amount is deducted, the outstanding guarantees under the scheme amount to 2,80 billion.

### **3. POSITION OF GREECE**

- (12) Greece requests a prolongation of the Guarantee Scheme until 30 November 2017.
- (13) Greece submits that the Guarantee Scheme constitutes 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.

Greece submitted a letter by the Central Bank of Greece confirming the need for the proposed prolongation of the support scheme to safeguard the stability of the financial system in Greece. According to the Bank of Greece, the effective management of non-performing loans (NPL) still represent the most significant challenge for the Greek banking sector. The Bank of Greece, to deal with the problem of non-performing loans, conducted a troubled asset review and enhanced the supervisory and regulatory framework helping banks to enrich their policies and practices to deal with large-scale resolution of troubled assets. The banks have to follow specific guidelines regarding NPL management. The State, for its part, updated the law on over indebted households, amended the Code of civil Procedure, enhanced the efficiency and infrastructure of the judicial system and developed a framework for a secondary market for bank loans and non-bank credit servicing and credit acquiring firms. Addressing the problem of non-performing loans, in an efficient manner, is important from both micro and macro-prudential perspective since it would not only improve the financial soundness of banks but also release resources that could be directed to other more productive sectors of the economy, resulting in an increase of productivity and growth. Following Bank of Greece's request, the Governing Council of the European Central Bank (ECB) has been reducing the Emergency Liquidity Assistance mechanism (ELA) ceiling for Greek banks. This reduction reflects developments in their liquidity situation, despite the fact that private sector deposits slightly fell during the first quarter of 2017. Delays in the completion of the second review of the third adjustment programme and the inclusion of Greece in the ECB's asset purchase programme may become sources of uncertainty affecting the Greek economy and the banking system. Hence, the Bank of Greece recommends the prolongation of the scheme for an additional five-month period.

- (14) Greece submitted the following commitments relating to the Guarantee Scheme:
- (i) to grant the guarantees only for new issuance of credit institutions' (banks') senior debt (subordinated debt is excluded);
  - (ii) to provide guarantees only on debt instruments with maturities from three months to three years (this three year-limit applies also in the case of covered bonds);
  - (iii) to determine the minimum level of State guarantee remuneration 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 crisis<sup>23</sup>;

- (iv) 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;
  - (v) to submit individual restructuring or wind-down plans<sup>24</sup> within two months after the guarantee has been activated for credit institutions which cause the guarantee to be called upon;
  - (vi) to impose a ban on advertising referring to the State support on the beneficiaries of the scheme and to prevent them from employing any aggressive commercial strategies which would not take place without the State support;
  - (vii) to grant aid measures under the Guarantee Scheme only to credit institutions which have no capital shortfall<sup>25</sup> and, where a credit institution with a capital shortfall is in urgent need of liquidity, to submit an individual notification to the Commission; also, for banks under resolution and bridge banks, an individual notification will be submitted, and no liquidity support will be provided until and unless the Commission authorizes it;
  - (viii) to report to the Commission on i) the operation of the scheme, ii) the guaranteed debt issues, and iii) the actual fees charged, by 15 October 2017 (for the period 1 July 2017 to 30 September 2017) and by 15 December 2017 (for the period 1 October 2017 to 30 November 2017) at the latest; and
  - (ix) to supplement its reports on the operation of the Guarantee Scheme with available updated data on the cost of comparable non-guaranteed debt issuances (as regards nature, volume, rating, currency).
- (15) In line with the requirements of the 2011 Prolongation Communication<sup>26</sup>, Greece provided an indicative fee (estimation) for each financial institution eligible to benefit from the guarantees. The estimation was based on an application of the Guarantee 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 1 July 2017 will be 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 will be 111 bp or 86 bp if the credit institution had eligible collateral<sup>27</sup>. Those fees are applicable to all credit institutions in Greece as, according to the Greek

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<sup>23</sup> OJ C 356, 06.12.2011, p. 7.

<sup>24</sup> 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).

<sup>25</sup> "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.

<sup>26</sup> 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, 06.12.2011, p. 7.

<sup>27</sup> With regard to the minimum guarantee fee that can be requested under the Pricing Formula as laid down in "2011 Prolongation Communication", Greece has decided to increase the fee by 25 bps when the State guarantee is covering uncollateralised debt.

authorities, the individual credit default swap ("CDS") spreads observed are still not representative. 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).

#### **4. ASSESSMENT**

##### **4.1. Existence of State aid**

- (16) 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.
- (17) For the reasons indicated in the Original Decision, the Commission considers that the Guarantee Scheme constitutes State aid within the meaning of Article 107(1) TFEU because it concerns the provision of State resources to a certain sector, *i.e.* the financial sector, which is open to international competition. Under the Guarantee Scheme, participating banks obtain guarantees 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 credit institution affects intra-Union trade and therefore threatens to distort competition. The measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

##### **4.2. Compatibility assessment**

###### **4.2.1 Legal basis**

- (18) Under the Guarantee Scheme, Greece intends to provide aid in the form of guarantees in favour of credit institutions.
- (19) 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 Communication<sup>28</sup>, to examine the measure under Article 107(3)(b) TFEU.
- (20) Article 107(3)(b) TFEU, in particular, 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 Communication<sup>29</sup> and the Restructuring Communication<sup>30</sup>. The Commission still

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<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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.

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 Communication<sup>31</sup>.

- (21) The Commission does not dispute the position of the Greek authorities regarding the stressed liquidity position of the banks. The Commission observes that the deposit outflows that Greek banks have experienced since December 2014 have weakened their liquidity position. The Commission remarks that banks' liquidity position was further deteriorated by the application of a bank holiday on 28 June 2015 and the subsequent maintenance of capital controls since banks reopened on 20 July 2015. Banks' dependency on ELA has been gradually reduced since then, reflecting improving liquidity conditions. However, as a result of the uncertainty related to the closure of the second review of the third assistance programme for Greece<sup>32</sup>, Greek banks experienced deposit outflows in the first quarter of 2017. Even after a successful conclusion of the second review, ECB has recently stated that it will not consider including Greece in its bond purchase programme. At the same time, the level of non-performing exposures in the Greek banking system remains high, increasing thus the uncertainty. The prolongation of the scheme is, therefore, necessary for an additional five-month period. Hence, the Commission finds that the Guarantee Scheme aims at ensuring financial stability and, thus, remedying a serious disturbance in the Greek economy.
- (22) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.
- (23) The Commission has found the aid granted to the four Greek systemic banks in the form of underwriting and/or recapitalisation, *i.e.* Alpha Bank<sup>33</sup>, Eurobank<sup>34</sup>, Piraeus Bank<sup>35</sup> and National Bank of Greece<sup>36</sup>, as compatible with the internal market on the basis of Article 107(3)(b) TFEU.
- (24) In order for an aid to be compatible with the internal market, it must comply with the general principles for compatibility under Article 107(3) TFEU, viewed in the light of the general objectives of the Treaty. Therefore, according to the

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<sup>31</sup> See points 4-6 of the 2013 Banking Communication.

<sup>32</sup> Greece has been receiving financial support from euro area Member States and the International Monetary Fund to cope with its financial difficulties and economic challenges since May 2010. In August 2015 a third assistance programme was launched under the European Stability Mechanism (ESM) framework.

[http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/greek\\_loan\\_facility/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm).

<sup>33</sup> See Commission decision of 26 November 2015 in State aid case SA.43366 (2015/N), "Amendment of the restructuring plan approved in 2014 and granting of new aid to Alpha Bank", OJ C 129, 12.4.2016, p. 2.

<sup>34</sup> See Commission decision of 26 November 2015 in State aid case SA.43363 (2015/N), "Amendment of the restructuring plan approved in 2014 and granting of new aid to Eurobank", OJ C 142, 22.4.2016, p. 10.

<sup>35</sup> See Commission decision of 29 November 2015 in State aid case SA.43364 (2015/N), "Amendment of the restructuring plan approved in 2014 and granting of new aid to Piraeus Bank", OJ C 104, 18.3.2016, p. 8.

<sup>36</sup> See Commission decision of 4 December 2015 in State aid case SA.43365 (2015/N), "Amendment of the restructuring plan approved in 2014 and granting of new aid to National Bank of Greece", OJ C 220, 17.6.2016, p. 6..

Commission's decisional practice<sup>37</sup> any aid or scheme must comply with the following conditions: (i) appropriateness, (ii) necessity and (iii) proportionality.

- (25) 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 Guarantee Scheme**

##### *Appropriateness*

- (26) The Guarantee Scheme is appropriate to remedy a serious disturbance in the Greek economy. The objective of the Guarantee Scheme 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.
- (27) Points 23 and 60(a) of the 2013 Banking Communication explain that guarantee 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 Guarantee Scheme only to banks without a capital shortfall as certified by the competent supervisory authority.
- (28) Further 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*

- (29) 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 93 billion and that the scheme applies until 30 November 2017. Furthermore, the Commission notes that the actual use of the Guarantee Scheme has significantly reduced over the past years: the outstanding guarantees reduced from EUR 50,6 billion in June 2015 and 16,24 billion in June 2016 to the current level of EUR 3,18 billion. This highlights that banks reduce the use of the Guarantee Scheme, as soon as banks can find other sources of financing.
- (30) The Commission notes that Greece has committed to grant guarantees only on debt instruments with maturities from three months to three years, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.
- (31) 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

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<sup>37</sup> 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.



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.

- (32) Since the beginning of the sovereign debt crisis the CDS spreads of Member States in difficulty have widened very significantly. 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<sup>38</sup> 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.
- (33) 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 if a further prolongation of the scheme is notified.

#### *Proportionality*

- (34) 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 Guarantee Scheme will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments.
- (35) 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.
- (36) Finally, the Commission welcomes that Greece undertakes to submit individual restructuring or wind-down 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.
- (37) As regards the combination of the Guarantee Scheme with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring

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<sup>38</sup> *i.e.* countries subject to a programme for receiving financial assistance from the ESM, the EFSF, the EFSM, the EU balance of payments assistance facility, other Member States and/or the IMF.

Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

- (38) 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 a scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

#### *Monitoring*

- (39) 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 Guarantee Scheme, 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*

- (40) On the basis of the above, the Commission finds the notified prolongation of the Guarantee Scheme to be in line with the 2013 Banking Communication and the Restructuring Communication. The prolongation of the Guarantee 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 2013, 25 July 2013, 14 January 2014, 26 June 2014, 14 January 2015, 29 June 2015, 18 December 2015, 29 June 2016 and 19 December 2016.
- (41) In line with the Commission's decisional practice, the Guarantee Scheme can therefore be prolonged until 30 November 2017. 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 scheme's effectiveness.

#### **5. COMPLIANCE WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014<sup>39</sup>**

- (42) The Commission notes that the Guarantee Scheme does not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution

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<sup>39</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190.; Regulation (EU) no 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1.

(BRRD)<sup>40</sup> and Regulation (EU) 806/2014 on the Single Resolution Mechanism ('SRM-R'), which in this specific case relate to its Article 32(4)(d)(ii) BRRD and Article 18(4)(d)(ii) SRM-R. The criteria of the Guarantee Scheme ensure that the institutions benefitting from it will not be deemed failing or likely to fail on the sole basis of their participation in the scheme. If the criteria did not ensure that outcome, the Guarantee Scheme could not be deemed appropriate since it would not be apt to remedy the serious disturbance in the Greek economy.

- (43) The first subparagraph of both Article 32(4) BRRD and Article 18(4) SRM-R establishes that an institution shall be deemed to be failing or likely to fail and placed into resolution, (if all the other pre-conditions for resolution are met), where, *inter alia*, extraordinary public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes the form, *inter alia*, of a State guarantee of newly issued liabilities (Article 32(4)(d)(ii) BRRD; Article 18(4)(d)(ii) SRM-R).
- (44) The second subparagraph of Article 32(4) BRRD and Article 18(4) SRM-R provides that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature and must be proportionate to remedy the consequences of the serious disturbance and must not be used to offset losses that the institution has incurred or is likely to incur in the near future.
- (45) The Commission notes that the Guarantee Scheme is limited to solvent institutions. The guarantees granted under the scheme are of a temporary nature since the window of their issuance is limited to five months and their maturity is limited to three years and are of a precautionary nature since they only cover newly issued liabilities. The guarantees granted are also proportionate to remedy the consequences of the serious disturbance as explained in recital (26).
- (46) The Commission therefore concludes that the notified prolongation does neither seem to violate any intrinsically linked provisions of Directive 2014/59/EU nor of Regulation (EU) No. 806/2014. The Guarantee Scheme is in compliance with the requirements of Article 32(4) BRRD and Article 18(4) SRM-R and, therefore, apt to remedy the consequences of the serious disturbance in the Greek economy.

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<sup>40</sup> Transposed into Greek law by Law 4335/2015.

## 6. 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 prolongation of the Guarantee Scheme.

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

If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Member of the Commission

