POMOC PAŃSTWA – GRECJA

Pomoc państwa nr SA.34824 (2012/C) (ex 2012/NN) – Dokapitalizowanie National Bank of Greece w ramach greckiego funduszu stabilności finansowej, Hellenic Financial Stability Fund

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 TFUE

(Tekst mający znaczenie dla EOG)

(2012/C 359/03)

Pismem z dnia 27 lipca 2012 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Grecję o swojej decyzji w sprawie wszczęcia postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej dotyczącego wyżej wspomnianego środka pomocy.

Mając na względzie stabilność finansową, Komisja postanowiła tymczasowo zatwierdzić środek w postaci pisemnego zobowiązania i dokapitalizowania pomostowego jako pomoc na ratowanie przez okres sześciu miesięcy od daty wydania niniejszej decyzji.

Zainteresowane strony mogą zgłaszać uwagi na temat środka pomocy, w odniesieniu do którego Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i następującego po nim pisma. Uwagi należy kierować do Kancelarii ds. Pomocy Państwa w Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej na następujący adres lub numer faksu:

European Commission
Directorate-General for Competition
State Aid Greffe
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1049 Bruxelles/Brussel
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Przedstawione uwagi zostaną przekazane władzom greckim. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

TEKST STRESZCZENIA

PROCEDURA

W dniu 20 kwietnia 2012 r. grecki fundusz stabilności finansowej, Hellenic Financial Stability Fund („HFSF"), przekazał bankowi National Bank of Greece („NBG" lub „bank") pisemne zobowiązanie do udziału w zwiększeniu jego kapitału zakładowego. W dniu 28 maja 2012 r. miało miejsce dokapitalizowanie pomostowe banku. Podobne pisemne zobowiązania zostały rozesłane do następujących banków: Piraeus Bank (SA. 34826 (2012/NN)), EFG Eurobank (SA. 34825 (2012/NN)) oraz Alpha Bank (SA. 34823 (2012/NN)), które uzyskały dokapitalizowanie pomostowe. Władze greckie powiadomiły o pisemnych zobowiązaniach w dniu 10 maja 2012 r. W związku z tym, że środek zostały już podjęty, służby Komisji zarejestrowały go jako pomoc niezgłoszoną w ramach sprawy SA. 34824 (2012/NN).

OPIS ŚRODKA POMOCY, W ODNIESIENIU DO KTÓREGO KOMISJA WSZCZYNA POSTĘPOWANIE

Po udziale w częściowym umorzeniu długu Grecji przez sektor prywatny (PSI) [1], co zostało zaksięgowane z datą wsteczną w księgach rachunkowych za IV kwartał 2011 r., kapitał NBG osiągnął wartość ujemną. W dniu 20 kwietnia 2012 r. HFSF przekazał pismo, w którym zobowiązał się do udziału na kwotę w wysokości do 6,9 mld EUR w ramach planowanego zwiększenia kapitału zakładowego NBG. […] (*) Współczynnik adekwatności kapitałowej na koniec 2011 r. uwzględniał już moc wsteczną wsparcia kapitałowego, o którym mowa w pisemnym zobowiązaniu HFSF, i wyniósł 8,31% dla Grupy NBG (pro forma). Na podstawie zobowiązania podjętego już w pisemnym zobowiązaniu, w dniu 28 maja 2012 r. HFSF udzielił bankowi NBG pożyczki w wysokości 7,43 mld EUR (kwota ta została ustalona na podstawie danych finansowych za I kwartał 2012 r.) zgodnie z przepisami dotyczącymi dokapitalizowania pomostowego określonymi w ustawie powołującej HFSF w wersji obowiązującej w tamtym czasie. Zarówno kwoty podane w pisemnym zobowiązaniu, jak i w ramach dokapitalizowania pomostowego zostały obliczone przez Bank of Greece w celu zapewnienia przestrzegania przez bank ówczesnych wymogów z zakresu adekwatności kapitałowej. W związku z powyższym w bilansie z dnia 31 marca 2012 r. Grupa NBG wykazała współczynnik adekwatności kapitałowej na poziomie 8,1% oraz kapitał podstawowy Tier 1 na poziomie 6,4% (odpowiednio 11,7% i 10,7% dla banku). Kwota dokapitalizowania pomostowego stanowiła około 11,6% aktywów ważonych ryzykiem będących w posiadaniu Grupy NBG według stanu na dzień 31 marca 2012 r. Po zasileniu akcjami uprzywilejowanymi w maju 2009 r. i grudniu 2011 r. kwota pomocy uzyskanej przez NBG, w formie innej niż gwarancje i wsparcie płynności, wynosi około 13,6% aktywów ważonych ryzykiem należących do Grupy NBG.

[1] Udział sektora prywatnego (PSI): negocjacje między władzami greckimi i prywatnymi wierzycielami mające na celu uzyskanie częściowego umorzenia długu publicznego Grecji przez wierzycieli prywatnych na zasadzie dobrowolności. PSI ma charakter nadzwyczajny i wywarł znaczny wpływ na greckie banki: wiele banków odnotowało straty wynikające z PSI.

(*) Informacje poufne, również oznaczone w dalszej części tekstu za pomocą [...].

OCENA ŚRODKA POMOCY

W swoim pisemnym zobowiązaniu z dnia 20 kwietnia 2012 r. HFSF zdecydowanie zobowiązuje się dokapitalizować bank. HFSF otrzymuje środki od państwa, a okoliczności, w jakich może udzielać wsparcia instytucjom finansowym, są dokładnie określone i ograniczone przez prawo greckie. Dlatego korzystanie z zasobów państwowych jest przypisane państwu.

W pisemnym zobowiązaniu przyznano już korzyść bankowi […]. Dokapitalizowanie pomostowe sfinalizowane w dniu 28 maja 2012 r. stanowi wykonanie zobowiązania podjętego w pisemnym zobowiązaniu i tym samym kontynuację tej samej pomocy. Dokapitalizowanie pomostowe w formie obligacji Europejskiego Instrumentu Stabilności Finansowej spowodowało wzrost współczynnika kapitałowego NBG do poziomu, który umożliwia jego funkcjonowanie na rynku oraz dostęp do operacji w systemie euro i w związku z tym oznacza również przyznanie korzyści bankowi z zasobów państwowych.

W związku z tym poprawiła się sytuacja beneficjenta, ponieważ uzyskał on środki finansowe pozwalające na dalsze spełnianie wymogów kapitałowych, co doprowadziło do zakłóceń konkurencji. Jako że bank prowadzi działalność na innych europejskich rynkach finansowych, a instytucje finansowe z innych państw członkowskich działają w Grecji, przedmiotowy środek może również wpłynąć na wymianę handlową pomiędzy państwami członkowskimi.

Podstawą prawną oceny środka pozostaje art. 107 ust. 3 lit. b) TFUE, który przewiduje możliwość uznania pomocy państwa za zgodną z rynkiem wewnętrznym, jeżeli została ona udzielona „w celu zaradzenia poważnym zaburzeniom w gospodarce państwa członkowskiego". Komisja nadal jest zdania, że wymogi dotyczące zatwierdzenia pomocy państwa zgodnie z art. 107 ust. 3 lit. b) TFUE są spełnione w związku z ponownym wystąpieniem napięć na rynkach finansowych i potwierdziła ten pogląd, przyjmując w grudniu 2011 r. komunikat w sprawie przedłużenia z 2011 r. W odniesieniu do greckiej gospodarki Komisja przyznała w swojej kolejnej zgodzie na greckie systemy wsparcia dla instytucji kredytowych, że istnieje ryzyko wystąpienia poważnych zakłóceń w gospodarce Grecji i że wsparcie państwa udzielone bankom jest odpowiednie, by wyeliminować takie zakłócenia. Takie ryzyko jest jeszcze wyższe z uwagi na fakt, że NBG jest jednym z największych banków w Grecji.

Na tym etapie Komisja ma jednak wątpliwości, czy środek pomocy jest zgodny z ogólnymi kryteriami zgodności, tj. kryterium „stosowności", „konieczności" i „proporcjonalności".

Odnośnie do kryterium „stosowności" środka, Komisja uważa, że środek, który był konieczny głównie w wyniku PSI, ma na celu zagwarantowanie, że bank będzie spełniać ustawowe wymogi kapitałowe i nadal kwalifikować się do uzyskania płynności banku centralnego. Ze względu na fakt, że NBG jest bankiem o znaczeniu systemowym w Grecji oraz że środek ma na celu zwiększenie stabilności finansowej w tym kraju, środek ten wydawałby się z początku odpowiedni. Komisja ma jednak wątpliwości i nie może na obecnym etapie stwierdzić, czy podjęte zostały niezwłocznie wszystkie środki, aby uniknąć w przyszłości sytuacji, w której bank ponownie będzie potrzebować pomocy. Na tym etapie nie jest jasne, kto będzie kontrolował bank w momencie zastąpienia dokapitalizowania pomostowego stałym dokapitalizowaniem. Bank może znaleźć się pod kontrolą państwa bądź też prywatni właściciele mniejszościowi mogą sprawować kontrolę i posiadać wysoki poziom dźwigni. W każdym przypadku Komisja pragnie zagwarantować, że jakość zarządzania bankiem, a w szczególności jakość jego procesu udzielania pożyczek, nie ulegnie pogorszeniu. Na przykład, jeśli bank znajdzie się pod kontrolą państwa, nie powinien on borykać się z problemem złego zarządzania lub nieprawidłowej wyceny bądź udzielać pożyczek, które nie są ukierunkowane na wyniki. Na obecnym etapie Komisja ma wątpliwości, czy obecne ramy ładu korporacyjnego mogą ograniczyć publiczną ingerencję i koordynację. Jeśli natomiast większość praw głosu NBG będzie należeć w przyszłości do inwestora, który zainwestował jedynie niewielką kwotę pieniędzy i zyskał także opcje na zakup akcji będących w posiadaniu państwa, taki inwestor może mieć skłonność do podejmowania nadmiernego ryzyka. Podsumowując, istnieje ryzyko pogorszenia się sposobu zarządzania bankiem, co może stanowić zagrożenie dla procesu przywracania rentowności i utrzymania stabilności finansowej. Ponieważ nie jest jasne, do kogo bank będzie należeć i kto go będzie kontrolował w przyszłości, Komisja ma wątpliwości na tym etapie, czy środek pomocy jest stosowny, i zwraca się do władz greckich, do banku i zainteresowanych osób trzecich o przekazywanie uwag oraz informacji.

Nawet jeśli kwota pomocy została obliczona w celu zapewnienia zgodności banku z obecnymi wymogami w zakresie adekwatności kapitałowej, ma ona miejsce po wydłużonym okresie poprzednich dokapitalizowań. Komisja ma wątpliwości, czy podjęte zostały wszelkie możliwe środki w celu uniknięcia sytuacji, w której bank będzie potrzebował w przyszłości większej pomocy w postaci dokapitalizowania, między innymi w celu wypełnienia zobowiązań zawartych w memorandum dotyczącym polityki gospodarczej i finansowej drugiego programu dostosowawczego dla Grecji (zgodnie z którymi banki są zobowiązane do uzyskania wskaźnika kapitału podstawowego Tier 1 na poziomie 9 % do września 2012 r. oraz 10% do czerwca 2013 r.). Jeżeli chodzi o wynagrodzenie z tytułu pomocy, wynagrodzenie, jakie otrzyma HFSF, kształtuje się poniżej przedziału od 7% do 9% określonego w komunikacie o dokapitalizowaniu. Jeżeli czas trwania dokapitalizowania pomostowego jest dostatecznie krótki, Komisja może wziąć pod uwagę szczególne właściwości dokapitalizowania pomostowego i kontekst, w jakim zostało ono przyznane, a tym samym zaakceptować niższe wynagrodzenie. Biorąc jednak pod uwagę fakt, że na obecnym etapie, głównie z powodu niekorzystnej sytuacji gospodarczej, czas trwania dokapitalizowania pomostowego nie jest znany, Komisja ma wątpliwości, czy jego wynagrodzenie jest wystarczające. Ponadto dokapitalizowanie pomostowe nie powoduje osłabienia obecnej struktury akcjonariatu banku. Bank pozostaje właścicielem gospodarczym i prawnym do czasu przejścia na ostateczne dokapitalizowanie. Dlatego też środek ten nie byłby zgodny z zasadami wynagrodzenia i podziału obciążeń w ramach reguł pomocy państwa, gdyby dokapitalizowanie pomostowe miało się przedłużać w czasie. Komisja zaprasza do składania uwag dotyczących wspomnianych wyżej kwestii.

Jeśli chodzi o proporcjonalność środka, bank otrzymuje dużą kwotę pomocy, co może prowadzić do poważnych zakłóceń konkurencji, wziąwszy również pod uwagę dokapitalizowanie między innymi pozostałych trzech dużych banków w Grecji przez HFSF. Ze względu na znaczną kwotę otrzymanej pomocy oraz przedłużający się okres ratowania Komisja ma wątpliwości na tym etapie, czy zabezpieczenia przewidziane w ramach obecnie zatwierdzanych programów, np. zakaz dywidend, zakaz korzystania z opcji kupna bez uprzedniej konsultacji z Komisją itp., są wystarczające w związku z rozważanym

dokapitalizowaniem pomostowym. Komisja wzywa władze greckie, beneficjenta i osoby trzecie do przedstawienia uwag w tej kwestii. Komisja zauważa ponadto, że HFSF wyznaczył już przedstawiciela we wszystkich czterech bankach będących przedmiotem dokapitalizowania pomostowego, ale nie obowiązują jeszcze przepisy, które uniemożliwiałyby HFSF wymianę informacji między tymi podmiotami oraz koordynowanie działań między nimi. W celu ścisłego monitorowania banku właściwym wydaje się, aby Komisja mogła polegać na pełnomocniku ds. monitorowania, który byłby fizycznie obecny w banku i obserwowałby wszelkie niekorzystne zmiany w praktykach handlowych tego banku, takich jak nieprawidłowa wycena, udzielanie pożyczek, które nie jest ukierunkowane na biznes lub oferowanie nadmiernego oprocentowania depozytów. Komisja zwraca się do beneficjenta i osób trzecich o przedstawienie uwag również w tej kwestii.

Zgodnie z art. 14 rozporządzenia Rady (WE) nr 659/1999 można wystąpić do beneficjenta o zwrot wszelkiej bezprawnie przyznanej pomocy.

TEKST PISMA

„The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to temporarily approve the measure in the form of a commitment letter and bridge recapitalisation as rescue aid and to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU") in regard to that measure.

1. **PROCEDURE**

(1) In May 2009, National Bank of Greece ('NBG' or 'the bank') was recapitalised under the recapitalisation scheme, which is part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 ([2]).

(2) Recital 14 of the decision of 19 November 2008 provided that a restructuring plan needed to be notified to the Commission for the beneficiaries of that recapitalisation scheme. The extent of the restructuring plan for each bank depended on that bank's individual situation.

(3) A plan was submitted to the Commission by the Greek authorities on 2 August 2010 describing the bank's programme for ensuring long-term viability under the macro-economic assumptions which were relevant at that point in time. That plan, its subsequent updates as well as additional information submitted by the Greek authorities, were administratively registered by the Commission services under case SA. 30342 (PN 26/2010) and then SA. 32788 (2011/PN).

(4) On 22 December 2011, the Commission approved a second recapitalisation for NBG under the recapitalisation scheme ([3]).

(5) NBG has also benefited from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece" approved by the European Commission on 19 November 2008 and subsequently prolonged and amended ([4]).

(6) On 20 April 2012, the Hellenic Financial Stability Fund provided NBG with a commitment letter to participate in the share capital increase of the bank. On 28 May 2012, a bridge recapitalisation of NBG was implemented.

(7) Similar commitment letters have been sent and bridge recapitalisations granted to Alpha Bank (SA. 34823 (2012/NN)), Piraeus Bank (SA. 34826 (2012/NN)) and EFG Eurobank (SA. 34825 (2012/NN)). On 10 May 2012, the Greek authorities formally notified to the Commission the commitment letters

([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. It was attributed the number SA.26678 (N 560/2008). That scheme was subsequently prolonged and amended (see below under footnote 4).

([3]) See Commission Decision of 22 December 2011 in State aid SA.34064 (2011/N) "*Second rescue recapitalisation of NBG under the Greek recapitalisation scheme*", OJ C 99, 03.04.2012, p. 4.

([4]) On 2 September 2009, Greece notified a number of amendments to the support measures and a prolongation until 31 December 2009 that were approved on 18 September 2009 (See Commission decision of 18 September 2009 in State Aid N 504/2009 "*Prolongation and amendment of the Support Measures for the Credit Institutions in Greece*", OJ C 264, 06.11.2009, p. 5). On 25 January 2010, the Commission approved a second prolongation of the support measures until 30 June 2010 (See Commission decision of 25 January 2010 in State Aid N 690/2009 "*Prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 57, 09.03.2010, p. 6). On 30 June 2010, the Commission approved a number of amendments to the support measures and an extension until 31 December 2010 (See Commission decision of 30 June 2010 in State Aid N 260/2010 "*Extension of the Support Measures for the Credit Institutions in Greece*", OJ C 238, 03.09.2010, p. 3.). On 21 December 2010 the Commission approved a prolongation of the support measures until 30 June 2010 (See Commission decision of 21 December 2010 in State aid SA 31998 (2010/N) "*Fourth extension of the Support measures for the credit Institutions in Greece*", OJ C 53, 19.02.2011, p. 2). On 4 April 2011 the Commission approved an amendment (See Commission decision of 4 April 2011 in State Aid SA.32767 (2011/N) "*Amendment to the Support Measures for the Credit Institutions in Greece*", OJ C 164, 02.06.2011, p. 8). On 27 June 2011 the Commission approved a prolongation of the support measures until 31 December 2011 (See Commission decision of 27 June 2011 in State aid SA.33153 (2011/N) "*Fifth prolongation of the Support measures for the credit Institutions in Greece*", OJ C 274, 17.09.2011, p. 6). On 6 February 2012, the Commission approved a prolongation of the support measures until 30 June 2012 (See Commission decision of 6 February 2012 in State aid SA.34149 (2011/N) "*Sixth prolongation of the Support Measures for the Credit Institutions in Greece*", OJ C 101, 04.04.2012, p. 2. On 6 July 2012, the Commission approved a prolongation of the support measures until 31 December 2012 (See Commission decision of 6 July 2012 in State Aid case SA.35002 (2012/N) - Greece "*Seventh prolongation of the Support Scheme for Credit Institutions in Greece*", not yet published.

provided to NBG (and the other banks), in line with recital 43 of the Commission decision of 6 February 2012 ([5]). As the measure had already been taken, the Commission services registered as a non-notified aid under case SA 34824 (2012/NN).

(8) The Commission notes that Greece accepts that the decision be adopted in the English language.

2. DESCRIPTION

2.1. General context of the Greek banking sector

(9) As regards the performance of their assets and resulting capital needs, the Greek banks face the double challenge of high losses on their holding of Greek government bonds (GGBs) and a deep and protracted recession which has given rise to a rapidly raising default rate on the loans to Greek household and companies ([6]).

(10) Greek banks have participated in the private sector bond exchange, known as Private Sector Involvement – PSI. The first decision on the PSI envisaging a 21 % write down on GGBs, was taken in the European Council of 21 July 2011. PSI-II was put forward by the Euro area Member States on 26 October 2011 and envisaged a bond exchange with a nominal discount of around 50 % on notional Greek debt by private investors. In February 2012, Greece put in place PSI-II and announced the results on 9 May 2012. The debt exchange resulted in significant additional losses and capital needs for the Greek banks. At that time, Euro area Member States decided that additional financing to Greece would include the recapitalisation of Greek banks ([7]).

(11) As regards the liquidity position of the Greek banks, it has continued to tighten. Domestic deposits decreased markedly in 2011 (- 18 %) due to recession and political uncertainty. As Greek banks are shut out from wholesale funding markets, they are entirely dependent on Central bank financing, a growing portion of which is in the form of emergency liquidity assistance.

(12) Since the Greek banks were expected to face substantial capital shortfalls as a result of the PSI-II and the continuing recession, the Memorandum of Economic and Financial Policies of the Second Adjustment Programme for Greece between the Greek Government, the European Union, the International Monetary Fund and the European Central Bank dated 11 March 2012 has made available funds for the banks' recapitalisation. Total bank recapitalisation needs and resolution costs to be financed under that programme are estimated at EUR 50 billion ([8]). An amount of EUR 25 billion was made available upfront to deal with recapitalisation needs arising from PSI and the estimated funding gap due to resolutions ([9]). The funds are available through the Hellenic Financial Stability Fund.

(13) According to the Memorandum of Economic and Financial Policies, "banks submitting viable capital raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimizes the burden for taxpayers" ([10]). The recapitalisation of the Greek banking sector has to be carried out by the end of September 2012, in order for banks to comply with a 9 % Core Tier 1 ratio by September 2012 and 10 % by June 2013.

2.2. Description of the Schemes put in place by greece during the financial crisis

2.2.1. *Description of the Support Measures for the Credit Institutions in Greece introduced in 2008*

(14) On 19 November 2008, the Commission approved the "Support Measures for the Credit Institutions in Greece" ([11]) designed to ensure the stability of the Greek financial system. The Greek package of State aid measures for credit institutions included (i) a recapitalisation scheme, (ii) a guarantee scheme, and (iii) a government bond loan scheme. The Commission subsequently approved amendments to those measures and prolonged them several times ([12]).

2.2.2. *Description of the recapitalisation scheme for credit institutions in Greece under the Hellenic Financial Stability Fund*

(15) The Memorandum of Understanding on Specific Economic Policy Conditionality between the Greek Government, the

([5]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "*Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 101, 04.04.2012, p. 2. Recital 43 of the decision provides that the Greek authorities will 'notify individually any recapitalisation of a bank which has already received a recapitalisation from the State in the current crisis. The Commission notes that commitment will allow it to assess individually recapitalisation of banks which receive successive aid. It is important, as, in such cases, it has to be assessed more in detail whether an additional recapitalisation of the bank is the best option to preserve financial stability and limit distortions of competition. In such cases of successive aid, it has also to be verified whether the recapitalisation instrument and remuneration to be used by the HFSF are still appropriate'.

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

([7]) See the Euro Summit Statement of 26 October 2011, point 12, available online at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf.

([8]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 106.

([9]) International Monetary Fund, *Greece: Request for Extended Arrangement Under the Extended Fund Facility - Staff Report*, IMF Country Report No. 12/57, 16 March 2012, p. 28, available online at http://www.imf.org/external/pubs/ft/scr/2012/cr1257.pdf.

([10]) European Commission - Directorate General Economic and Financial Affairs. *The Second Economic Adjustment Programme for Greece - March 2012*, p. 104.

([11]) 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.

([12]) See footnote 4.

European Union, the International Monetary Fund and the European Central Bank dated 3 May 2010 provided for the establishment of the Hellenic Financial Stability Fund (HFSF). The objective of the HFSF is to safeguard the stability of the Greek banking system by providing equity capital to credit institutions ([13]). On 3 September 2010, the Commission approved the HFSF as a recapitalisation scheme in line with the rules on support schemes for the financial sector during the crisis ([14]) and prolonged it several times ([15]). The Commission approved the most recent prolongation of the HFSF recapitalisation scheme on 6 February 2012 until 30 June 2012 ([16]). The HFSF Law has subsequently been amended as regards the recapitalisation scheme. The provisions referred to below were in place when the commitment letter was sent and the bridge recapitalisation took place. Since the later amendments were adopted after the date of the Commission's most recent decision on the HFSF recapitalisation scheme, they were not part of the Commission's approval at the time.

Provisions of the HFSF Law

(16) A credit institution whose viability has been confirmed by the Bank of Greece may submit a request to the HFSF for capital support, following an instruction from the Bank of Greece.

(17) A credit institution's request for the provision of capital support must necessarily be accompanied by the following documents:

a) a business plan, that shows how the credit institution will ensure viability for the next three to five years under conservative/prudent assumptions and that has been assessed as sustainable and credible by the Bank of Greece, establishing the amount of the required capital support and detailing the measures that the credit institution intends to take so as to safeguard and strengthen its solvency as soon as possible, in particular by increasing its capital (including through capital support from the HFSF), sale of parts of the credit institution, and/or restoring its profitability through cost-cutting, reducing risks or securing support from other companies within its group; and

b) a detailed timetable for the implementation of the measures described in the business plan.

(18) Following the finalisation of the terms and conditions of the share capital increase, the HFSF will provide capital support in compliance with the EU State aid legislation.

(19) The credit institution must prepare a detailed restructuring plan or amend the plan already submitted to the European Commission, in accordance with the applicable EU State aid rules. The restructuring plan will be approved by the HFSF. Within three months from the provision of capital support, the Ministry of Finance must submit the restructuring plan to the European Commission for approval.

(20) The implementation period of the restructuring plan may not exceed three years. An extension of up to two years may be granted by decision of the HFSF, following consultation with the Bank of Greece and subject to approval by the European Commission.

(21) Until the share capital increase is finalised, the relevant HFSF legal framework specifies that the HFSF may provide two temporary solutions as capital support:

I. A commitment letter;

II. A bridge recapitalisation.

I. ***Commitment letters provided by the HFSF***

(22) The HFSF, upon a decision of the Bank of Greece, may provide a credit institution with a letter stating that it will participate in that bank's share capital increase (hereinafter "commitment letter"). That credit institution (i) has to be assessed as viable by the Bank of Greece and (ii) has to submit a request for capital support to the HFSF.

(23) The HFSF provides the commitment letter on condition that:

a) the business plan of the credit institution has been assessed as viable and credible by the Bank of Greece,

b) the request for capital support has been approved by the Bank of Greece,

c) the Bank of Greece has considered that the provision of that letter is necessary for the credit institution:

i. to continue operating on a going concern basis;

ii. to meet the current capital adequacy requirements set up by the Bank of Greece ([17]); and

iii. to maintain the financial stability of the Greek banking system.

([13]) HFSF operates in parallel with the Recapitalisation Scheme. The other new role of the HFSF is to provide capital support to transitional credit institutions established under the resolution framework in Greece (Article 63 of Law 3601/2007). The HFSF's role in the resolution process was not subject to the Commission's approval.

([14]) See Commission Decision of 3 September 2010 in State aid Case N 328/2010, *"Recapitalisation of Credit Institutions in Greece under the Financial Stability Fund (FSF)"*, OJ C 316, 20.11.2010, p. 7.

([15]) See Commission Decision of 14 December 2010 under State aid case SA.31999 (2010/N), *"Prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)"*, OJ C 62, 26.02.2011, p. 16. See Commission decision of 27 June 2011 in State Aid case SA.33154 (2010/N), "*Second prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 244, 23.08.2011, p. 2.

([16]) See Commission decision of 6 February 2012 in State Aid SA.34148 (2011/N) "*Third prolongation of the Recapitalisation of credit institutions in Greece under the Financial Stability Fund (FSF)*", OJ C 101, 04.04.2012, p. 2.

([17]) The current capital adequacy requirements of the Bank of Greece are set at 8 %.

(24) For a credit institution for which the HFSF has issued a commitment letter and until the completion of the share capital increase, the HFSF:

a) appoints up to two representatives in the Board of Directors of the credit institution;

b) may request from the credit institution any data and information which it considers necessary, e.g. due diligence.

(25) The HFSF's representative in the Board of Directors of the credit institution has the following rights:

a) to call the General Assembly of Shareholders;

b) to veto any decision of the credit institution's Board of Directors:

i. regarding the distribution of dividends and the bonus policy concerning the Chairman, the Managing Director and the other members of the Board of Directors, as well as the general managers and their deputies; or

ii. where the decision in question could seriously compromise the interests of depositors, or impair the credit institution's liquidity or solvency or its overall sound and smooth operation (e.g. business strategy, asset/liability management, etc.);

c) to request an adjournment of any meeting of the credit institution's Board of Directors for three business days, until instructions are given by the HFSF's Executive Board, following consultation with the Bank of Greece;

d) the right to request that the Board of Directors of the credit institution be convened;

e) the right to approve the Economic Director.

(26) In exercising its rights, the HFSF's representative in the Board of Directors must respect the credit institution's business autonomy.

II. ***Bridge recapitalisations provided by the HFSF***

(27) In view of its participation in the future capital increase of a credit institution that has been deemed viable by the Bank of Greece, the HFSF may advance its contribution (hereinafter the "bridge recapitalisation") to such an increase or part thereof, up to the amount specified by the Bank of Greece.

(28) The bridge recapitalisation is paid by the HFSF to the bank in the form of European Financial Stability Fund (EFSF) floating notes with maturities of six and ten years with an issue date of 19 April 2012.

(29) The EFSF notes are deposited into an account of the credit institution with the Bank of Greece exclusively for the purpose of the HFSF participation in the capital increase. The EFSF notes can be used only for the purpose of ensuring liquidity through repurchase transactions with market participants or/and through Euro-system operations.

(30) The terms of the bridge recapitalisation are enshrined into a pre-subscription agreement agreed between the credit institution, the HFSF and the EFSF.

(31) For the period between the date of the bridge recapitalisation and the date of the conversion of the bridge recapitalisation into ordinary shares and other convertible financial instruments (hereinafter "conversion into the final recapitalisation instruments"), the pre-subscription agreement provides that:

a) the bank must pay to the HFSF a 1 % annual fee on the nominal value of the EFSF notes;

b) any coupon payments and accrued interest to the EFSF notes for that period will count as additional capital contribution by the HFSF ([18]).

(32) The HFSF grants the bridge recapitalisation following a decision of the Bank of Greece, provided that:

a) The credit institution has submitted to the HFSF an application for capital support, accompanied by a business plan and a detailed timetable;

b) The application for capital support has been approved by the Bank of Greece, while the business plan has been assessed by the Bank of Greece as being viable and credible;

c) The Bank of Greece considers that the bridge recapitalisation is necessary in order for:

i. the credit institution to meet the capital adequacy requirements set up by the Bank of Greece;

ii. the credit institution to maintain access to the monetary policy operations of the Eurosystem; and

iii. to ensure the stability of the Greek banking system;

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

d) The credit institution has agreed with the HFSF and the EFSF a presubscription agreement for the capital increase.

(33) The Minister of Finance, following an opinion of the HFSF, may decide to provide additional corporate governance safeguards until the conversion into the final recapitalisation instruments.

2.3. **Beneficiary**

(34) NBG was founded in 1841 as a commercial bank and has been listed in the Athens Stock Exchange since 1880. Since October 1999, the bank has been listed on the New York Stock Exchange. The bank's branch and ATM network, the largest in Greece (528 domestic banking units and 1 383 ATMs), effectively covers the entire country. NBG and its subsidiaries ('the Group') provide a wide range of financial services including retail and commercial banking, asset management, brokerage, investment banking, insurance and real estate at a global level. Outside Greece, the Group is active in several countries i.e. Turkey, UK, South East Europe (SEE), Cyprus, Malta, Egypt and South Africa via 1 131 banking units.

(35) NBG participated in the PSI programme with all eligible bonds and other eligible securities, whose nominal value amounted to around EUR 14.8 billion. In that framework, the total PSI impairment charge amounted to EUR 11.8 billion for the Group (EUR 10.6 billion for the bank) entirely booked in its 2011 accounts.

(36) The main financial figures for NBG Group for the first quarter of 2012, December 2011 and December 2010 (consolidated data) are:

Selective Volume figures (EUR million)	31 March 2012	31 December 2011	31 December 2010
Loans and advances to customers (gross)	70,710	72,432	75,105
Deposits	57,419	59,544	68,039
Shareholders' Equity	(965,4)	(253)	10,905
Assets	104,095	106,870	120,745
Operating Income	791	4,372	4,639
Operating Expenses	559	2,541	2,511
Impairment Losses on PSI	—	(11,783)	—
Net attributable profit/loss (before PSI)	(263)	(289)	476
Profit/(Loss) for the period - after tax	(540)	(12,325)	440

Source: *NBG – Financial Results, as at 31 December 2011 and for the period ended 31 March 2012, available online at*:http://www.eurobank.gr/online/home/generic.aspx?id=30&mid=360&lang=en.

2.4. **State recapitalisations already received by the bank**

(37) In May 2009, NBG received a capital injection of EUR 350 million, equivalent to around 0.70 % of its risk weighted assets ('RWA') - at the time - from the Greek State under the recapitalisation scheme.

(38) On 22 December 2011, the Commission approved a second recapitalisation of EUR 1 billion in favour of NBG, equivalent to around 1.52 % of the bank's RWA ([19]) at the time. The total recapitalisation of EUR 1.35 billion was equivalent to around 2.07 % of its RWA at the time. The second recapitalisation was carried out from the Greek State under the recapitalisation scheme and was notified to the Commission in compliance with the obligation to notify any second capital injection.

(39) The recapitalisations took the form of preference shares subscribed by the State which have a fixed remuneration of 10 %.

2.5. **State liquidity support already received by the bank**

(40) NBG has benefited and still benefits from aid measures under the guarantee and the bond loan schemes which are part of the "Support Measures for the Credit Institutions in Greece". As of 22 May 2012 ([20]), the guarantees granted to NBG amounted to around EUR 17.8 billion and the bond loans to about EUR 0.8 billion. The bank has benefited and still benefits also from the emergency liquidity assistance granted by the Bank of Greece.

([19]) See Commission Decision of 22 December 2011 in State aid SA.34064 (2011/N) "*Second rescue recapitalisation of NBG under the Greek recapitalisation scheme*", OJ C 99, 03.04.2012, p. 4.

([20]) According to the mid-term report on the operation of the guarantee and the bond loan schemes submitted by the Ministry of Finance on 27 June 2012. See recital 38 of the 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. DESCRIPTION OF THE AID MEASURE

(41) Following its participation in the PSI, which was booked retrospectively in the account of the fourth quarter of 2011, NBG's capital turned negative.

(42) On 20 April 2012, the HFSF provided a letter committing to participate for an amount of up to EUR 6.9 billion in the planned share capital increase of NBG and cover any amount of unsubscribed share capital and/or convertible bonds. […]. (*) The capital adequacy ratio at end-2011 already included the retroactive effect of the capital support included in the HFSF commitment letter, thus reaching 8.31 % for NBG Group (pro-forma) and 12.7 % for the bank ([21]).

(43) On the basis of the obligation already undertaken in the commitment letter, the HFSF advanced EUR 7.43 billion to NBG on 28 May 2012 ([22]), in line with the provisions for bridge recapitalisations laid down in the HFSF Law. Both the amounts provided in the commitment letter and in the bridge recapitalisation were calculated by the Bank of Greece in order to ensure the bank's compliance with the current capital adequacy requirements. Therefore, in the balance sheet of 31 March 2012, NBG Group registered a capital 8.1 % (11.7 % for the bank) and a Core Tier 1 of 6.4 % (10.7 % for the bank).

(44) The difference of EUR 530 million between the amounts included in the commitment letter and the bridge recapitalisation arises from the fact that the amount in the commitment letter was estimated based on the financial figures of the fourth quarter of 2011, while the amount of bridge recapitalisation was determined based on the financial figures of the first quarter of 2012.

(45) The amount of bridge recapitalisation represents around 11.6 % of NBG Group's RWA as of 31 March 2012 ([23]). With the preference shares injected in May 2009 and December 2011, the amount of aid received by NBG in forms other than guarantees and liquidity assistance stands at around 13.6 % of NBG Group's RWA.

4. THE POSITION OF GREECE

(46) The Greek authorities acknowledged that the commitment to provide capital to NBG contained in the letter provided to the bank constitutes State aid.

(47) The Greek authorities consider that the measures are compatible with the internal market under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU").

5. ASSESSMENT OF THE AID IN THE FORM OF THE COMMITMENT LETTER AND THE BRIDGE RECAPITALISATION

5.1. Existence of aid

(48) As stated in Article 107(3)(b) 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.

(49) The Commission notes that the commitment letter provided by the HFSF on 20 April 2012 firmly commits the HFSF to recapitalise the bank. HFSF receives its resources from the State. The HFSF has a limited duration up to 2017, and so any profit or loss it incurs will eventually be borne by the State. The Commission therefore concludes that the letter commits State resources and that the bridge recapitalisation involves State resources. The circumstances in which the HFSF can grant support to financial institutions are precisely defined and limited by the Law. Accordingly, the use of those State resources is imputable to the State.

(50) As regards the existence of an advantage, the commitment letter already granted an advantage to the bank. […]. The bridge recapitalisation finalised on 28 May 2012 is the implementation of the obligation undertaken in the commitment letter and thus a continuation of the same aid. The bridge recapitalisation in the form of EFSF notes has increased the bank's capital ratio to a level that allows the functioning of the bank on the market and access to Euro-system operations. Therefore, the bridge recapitalisation also granted an advantage to the bank from State resources.

(51) As a result, the position of the beneficiary was strengthened since the bank was provided with the financial resources to continue to comply with the capital requirements, thus leading to competition distortions. As NBG is active in other European financial markets and as financial institutions from other Member States operate in Greece, the bridge recapitalisation by the HFSF is also likely to affect trade between Member States.

(52) The bridge recapitalisation in essence implements the commitment contained in the HFSF letter to NBG. The Commission considers that the commitment letter and the bridge recapitalisation refer to one and the same measure. The Commission will hereafter refer to 'the measure' and only make reference to the bridge recapitalisation when necessary.

(*) Confidential information, also indicated below by […].

([21]) See *National Bank of Greece, Group and Bank Annual Financial Report -31 December 2011*, p. 88, available online at http://www.nbg.gr/wps/wcm/connect/e434c1004afc4402a7e7affe3aaa9284/Financial+Report+NBG+GROUP-BANK+31+12+2011_EN+FINAL.pdf?MOD=AJPERES&CACHEID=e434c1004afc4402a7e7affe3aaa9284.

([22]) See *National Bank of Greece, Group and Bank Condensed Interim Financial Statements for the period ended 31 March 2012*, p.20, available online at http://www.nbg.gr/wps/wcm/connect/6947b9804b6fb139a92aaf277c464667/Financial+Report+NBG+GROUP-BANK+31+03+2012_EN+Final.pdf?MOD=AJPERES&CACHEID=6947b9804b6fb139a92aaf277c464667

([23]) The amount of RWA as of 31 March 2012 stood at around EUR 63.9 billion for the NBG Group. See National Bank of Greece, *Group and Bank Condensed Interim Financial Statements for the period ended 31 March 2012*, p. 20.

5.2. **Compatibility of the aid**

5.2.1. *Application of Article 107(3)(b) TFEU*

(53) Article 107(3)(b) TFEU provides for the possibility that State aid can be regarded as compatible with the internal market where it is granted "*to remedy a serious disturbance in the economy of a Member State*".

(54) 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. The Commission explained its approach in the Banking Communication ([24]), the Recapitalisation Communication ([25]) and the Restructuring Communication ([26]). The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2011 Prolongation Communication in December 2011 ([27]).

(55) In respect to the Greek economy, the Commission has acknowledged in its successive approval of the Greek support schemes for credit institutions that there is a threat of serious disturbance in the Greek economy and that State support of banks is suitable to remedy that disturbance. Such a threat is even greater here as NBG is one of the largest banks in Greece. Therefore, the legal basis for the assessment of the aid measure should be Article 107(3)(b) TFEU.

5.2.2. *Compatibility of the aid measure with Article 107(3)(b) TFEU*

(56) In line with point 15 of the Banking Communication, in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with the general criteria for compatibility ([28]):

a) *Appropriateness:* The aid has to be well targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.

b) *Necessity:* The aid measure must, in its amount and form, be necessary to achieve the objective. Therefore it must be of the minimum amount necessary to 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.

(57) The Recapitalisation Communication elaborates further on the three principles of the Banking Communication and states that recapitalisations can contribute to the restoration of financial stability.

(58) The Commission has, at this stage, doubts on the application of all three criteria i.e. the criteria of "'appropriateness'', "*necessity*" and "*proportionality*" in the case at hand.

5.2.3. *Compatibility with the Banking and Recapitalisation Communications*

a. Appropriateness of the measure

(59) The measure aims to help the bank to comply with the current regulatory capital requirements of the Bank of Greece, i.e. a total capital adequacy ratio of 8 %. In addition, in order to be eligible for Central bank financing a bank has to comply with the regulatory capital requirements. In the present case, the measure helps NBG to remain eligible to obtain Central bank liquidity until the final recapitalisation of the bank takes place.

(60) In that respect, the Commission notes that the bank is one of the largest banking institutions in Greece, both in terms of lending and collection of deposits. As such, NBG is a systemically important bank for Greece. Consequently, a default of the bank would create a serious disturbance in the Greek economy. Under the current circumstances where all financial institutions in Greece have difficulties in accessing funding, which limits to a certain extent the provisions of loans to the Greek economy, the disturbance to the economy would be aggravated by such a default. Moreover, the Commission notes that the measure came about mainly as a result of PSI, a highly extraordinary and unpredictable event and not as a result of mismanagement or excessive risk-taking from the bank. The measure thereby aims to mainly deal with the results of PSI and contribute to maintain financial stability in Greece. For those reasons, the measure would at first seem appropriate.

(61) However, the Commission notes that the aid comes after prior recapitalisations and liquidity aid. The Commission can therefore not treat the aid as a genuine rescue aid received for the first time by a company. That context of repeated rescue aid measures requires additional safeguards. The context of a protracted rescue period blurs the distinction between rescue aid - which is normally

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

([25]) 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.

([26]) 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", OJ, C 195, 19.8.2009, p. 9.

([27]) 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, 6.12.2011, p. 7.

([28]) 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.

temporarily approved without the Commission seeking many commitments from the Member State restraining the beneficiary's actions during the rescue period - and restructuring aid which is approved only after a thorough assessment. In particular, the Commission doubts at this stage that all the measures possible have been taken immediately to avoid that the bank again needs aid in the future.

(62) There is no clarity, at this stage, about who will control the bank in the future once the bridge recapitalisation is replaced by a permanent recapitalisation. The bank may come under the control of the State or the minority private owners may enjoy control and high leverage. The Commission would wish to ensure that the quality of the bank's management, and notably its lending process, should not deteriorate in either case.

(63) If the bank comes under State control, the bank should not suffer from poor management or mispricing or carry out lending that was not business-oriented. The bank's assessment of credit applications has to include, inter alia, the quality of collateral, the pricing and the solvency of the borrower. If such decisions were no longer taken on the basis of commercial criteria due to, for instance, State interference, it would increase the bank's need for aid (or reduce the remuneration for the shareholder i.e. the State) and endanger the restoration of viability. In light of the poor track record of some State-controlled banks in Greece, additional safeguards might have to be put in place in order to limit the public interference in the day-to-day management of banks, including regarding pricing and lending decisions. In that respect, lending to public companies should be scrutinised and normal commercial practices should be applied in the assessment of their borrowing capacity. The Commission has doubts, at this stage, whether the current corporate governance framework can limit public interference and avoid coordination (coordination due to the high amounts of State aid provided by the HFSF which thus becomes a shareholder in several banks which may, inter alia, lead to an infringement of the EU rules in mergers and antitrust).

(64) If, conversely, the majority of the voting rights of the bank were held in the future by an investor which had invested only a limited amount of money and enjoyed call options on the shares held by the State, that investor might be tempted to take excessive risks. In such a scenario, in case of success it would earn a large and disproportionate return thanks to the leverage offered by the call options. The Commission notes that the current situation of the bank already presents such a risk as, while the State has provided all the capital to the bank through the bridge recapitalisation, all the shares of the bank are held by its historical shareholders.

(65) In conclusion, there is a risk that the way the bank is managed will deteriorate and it could endanger the restoration of viability and preservation of financial stability. In the absence of clarity about who will own and control the bank in the future, the Commission has doubts at this stage that the aid measure is appropriate. The Commission therefore finds it necessary to open the procedure under Article 108(2) TFEU on that new aid in order to collect all the facts from the Greek authorities and allow interested parties to comment.

b. Necessity – limitation of the aid to the minimum

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

(67) As regards the amount of aid, the Commission notes that it was calculated in order to ensure the bank's compliance with the current capital adequacy requirements of the Bank of Greece. It therefore does not seem to provide the bank with excess capital. However, as indicated above, that aid comes after several other aid measures in the context of a protracted rescue period. In particular, as indicated above, the Commission doubts at this stage that all the measures possible have been taken to avoid that the bank again needs aid in the future.

(68) As regards the remuneration of the aid, the Commission notes that, for the period until the conversion of the bridge recapitalisation into a permanent recapitalisation, the HFSF will receive a fee of 1 % plus the accrued interest on the EFSF notes. It will not receive any shares in the bank. That remuneration is below the range of 7 % to 9 % laid down in the Recapitalisation Communication. At this stage, the duration of the bridge recapitalisation period is uncertain. If it is sufficiently short, the Commission might be able to take into account the specific characteristics of the bridge recapitalisation and the context in which it was granted, and so to accept the lower remuneration. It is indeed recalled that the bridge recapitalisation aims at immediately covering the large capital gap which was the result of the PSI, while leaving some time to the bank to try to raise capital on the market (and thereby reduce the amount of recapitalisation aid which would have to be permanently injected in the bank). Accordingly, the bridge recapitalisation seems acceptable if it is truly a short-term solution to give time to find private investors. However, it would become problematic if it remains in its current form for a long period without being converted. In conclusion, given that at this stage the duration of the bridge recapitalisation is uncertain, the Commission has doubts that its remuneration can be considered sufficient.

(69) The bridge recapitalisation will be converted into a permanent recapitalisation at a later stage. However, as regards the remuneration of the aid once the bridge recapitalisation is converted into a permanent one, the terms of the conversion are still unknown. The Commission can therefore not assess them. The present decision cannot therefore endorse them and the Greek authorities must notify that measure to the Commission once the terms of the final recapitalisation are known.

(70) The Commission notes that the bridge recapitalisation does not trigger the dilution of the bank's current shareholders. Until the conversion into the final recapitalisation instruments, the bank's economic and legal ownership does not change. The State does not receive any shares, despite the large size of the recapitalisation (without the State recapitalisation there would be no capital left in the bank as a result, mainly, of the extraordinary circumstances triggered by the PSI.). While such an arrangement could be acceptable as a temporary measure, to give some time to find private investors, it would not comply with the remuneration and burden-sharing principles under State aid rules if the bridge recapitalisation were to last over a protracted period.

c. Proportionality – measures limiting negative spill-over effects

(71) The Commission notes that the bank receives a very large amount of State aid. It is also the case of the three other large privately owned banks. If one also takes into account the recapitalisations of Agricultural Bank of Greece (ATE) ([29]) and Hellenic Postbank (TT) ([30]), all the domestic large and medium-sized banks in Greece will have received large amount of State aid. That situation may therefore lead to serious distortions of competition. However, it is noted that the need for the bridge recapitalisation stems mainly from the participation in the PSI programme and not from the mismanagement or excessive risk-taking from existing investors.

(72) As indicated above, the repeated rescue aid granted to the bank means that the new aid cannot be considered as a genuine rescue aid and should be scrutinized in more depth. In addition, more safeguards should be required, taking inspiration from what is required for restructuring aid.

(73) Point 38 of the Banking Communication requires that capital injections should not allow the beneficiary to engage in aggressive commercial strategies. Furthermore, point 37 of the Recapitalisation Communication acknowledges that safeguards may be necessary to prevent aggressive commercial expansion financed by State aid. Under the current approved schemes, Greece has committed that the beneficiary banks will suspend dividend and coupon payments on outstanding hybrid instruments unless those payments stem from a legal obligation, will not exercise a call option on the same instruments and will not carry out any other capital management deals (e.g. buy-back) on hybrid instruments or any other equity-like instruments without consulting with the Commission in advance. The Commission doubts at this stage that those safeguards are sufficient in relation to the bridge recapitalisation under consideration. The Commission invites the beneficiary and third parties to comment on that issue.

(74) The Commission notes that the HFSF has already appointed its representatives in all of the four banks which have received a bridge recapitalisation. Although the HFSF representatives are different for each bank and the HFSF does not yet have control in the four banks, the Commission notes that there are no rules in place at this stage that prevent the HFSF's coordination between them. Moreover, adequate safeguards should be in place to ensure that commercially sensitive information is not shared between those undertakings. In order to monitor the bank closely, it seems appropriate that the Commission should be able to rely on a monitoring trustee which would be physically present in the bank. The same monitoring trustee might have in its mandate to observe any detrimental changes in the bank's commercial practices, such as mispricing, carrying out lending that is not business-oriented or offering unsustainable interest rates on deposits. The Commission invites the beneficiary and third parties to comment.

(75) The Commission notes that the restructuring plan/viability review submitted under State aid cases SA. 30342 (PN 26/2010) – "Assessment of the recapitalised Greek banks" and SA. 32788 (2011/PN) – "Viability plan of National Bank of Greece" was based on a much lower amount of aid and outdated macro-economic assumptions. For example, it does not include the effect of PSI. Therefore, the Commission requests the Greek authorities that the updated restructuring plan that Greece has to submit three months from the date of the bridge recapitalisation, as also provided under the amended HFSF law, should take account of the large aid amount received, include the new developments and update the measures envisaged by the bank to cope with the new environment.

5.3. **Conclusion**

(76) The Commission has doubts at this stage that the bridge recapitalisation by the HFSF is appropriate, limited to the minimum and proportionate. On that basis, the Commission has doubts whether the aid can be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. It therefore finds it necessary to open the procedure laid down in Article107 (3) (b) TFEU.

(77) At the same time, the Commission notes that the Greek banks are currently operating under extreme conditions. Their participation in the PSI and the deep recession have wiped out banks' capital. Given those totally exceptional circumstances which are not the result of the banks' own mismanagement or excessive risk-taking, the Commission approves the aid in the form of the commitment letter and the bridge recapitalisation for six months from the date of adoption of the current decision.

([29]) ATE, a State-owned bank was the fifth-largest banking group in Greece in 2011. It has received State aid under the support measures for credit institutions in Greece in the form of recapitalisation, guarantees and bond loans.

([30]) TT was listed on the Athens Stock Exchange in June 2006. It has a network of 146 branches in 65 cities around the country and it operates also in the 850 Hellenic Post offices. The shareholders' structure includes the Greek State which is the biggest shareholder with a participation of 34 % and the Hellenic Post with 10 %. Hellenic Postbank received a State capital injection under the Support scheme for credit institutions in Greece of approximately EUR 225 million.

(78) The Commission recalls that this temporary approval does not cover the conversion of the bridge recapitalisation into the final recapitalisation which the Greek authorities need to notify to the Commission. Upon receipt of the complete notification of that conversion, if it is received by the Commission within six months from the date of this decision, the duration of that approval will be automatically extended until the Commission reaches a final decision on those terms.

(79) The Commission observes that Greece has to submit a restructuring plan for the bank three months after granting the bridge recapitalisation.

6. **DECISION**

The Commission concludes that the commitment to provide capital to the bank in the HFSF commitment letter and the bridge recapitalisation which took place on 28 May 2012 constitutes State aid pursuant to Article 107(1) TFEU.

The Commission temporarily approves that measure as rescue aid for reasons of financial stability for a period of six months from the date of this decision. If within that period, the Greek authorities submit a complete notification of the conversion of the bridge recapitalisation into a final recapitalisation, then the duration of the approval will be automatically extended until the Commission reaches a final decision on those terms.

Moreover, in the light of the foregoing considerations, the Commission, 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 measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to National Bank of Greece immediately.

The Commission notes that Greece accepts for reasons of urgency that the adoption of the decision be in the English language.

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."