DECISIONS

COMMISSION DECISION

of 19 October 2011

regarding State aid schemes implemented by Greece in the Kastoria, Evia, Florina, Kilkis, Rodopi, Evros, Xanthi and Dodecanese Prefectures, and the islands of Lesbos, Samos and Chios (debt restructuring)

(Nos C 23/04 (ex NN 153/03), C 20/05 (ex NN 70/04) and C 50/05 (ex NN 20/05))

(notified under document C(2011) 7252)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2012/307/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to Article 108(2), first subparagraph of the Treaty [1] and having regard to those comments,

Whereas:

I. PROCEDURE

Aid concerning the Kastoria and Evia Prefectures [2] — *C 23/04*

(1) Having received information indicating that aid had been granted in 1993 and over the subsequent years to firms in the Kastoria and Evia Prefectures in the context of debt re-negotiation, the Commission asked the Greek authorities in a letter dated 27 May 2003 to submit within four weeks the text of the legal basis for this operation, together with any other information necessary for an examination under Articles 87 and 88 of the EC Treaty [3].

(2) By letter dated 10 July 2003, registered as received on 17 July 2003, the Greek Permanent Representation to the European Union forwarded to the Commission a letter from the Greek authorities requesting a one-month extension of the period referred to in recital 1.

(3) By letter dated 4 August 2003, registered as received on 6 August 2003, the Permanent Representation of Greece to the European Union forwarded to the Commission the information requested in its letter of 27 May 2003.

(4) After examination of the information, it was found that the aid had been granted without the approval of the Commission. Accordingly, the Commission decided to open a non-notified aid dossier, registered under number NN 153/03.

(5) By letter dated 21 June 2004 [4], the Commission informed Greece of its decision to open the procedure provided for in Article 88(2) of the EC Treaty (C 23/04) (hereinafter, 'opening of the first procedure').

(6) The Commission's decision to open the procedure was published in the *Official Journal of the European Union* [5]. The Commission invited interested parties to submit their comments on the aid in question.

(7) The Commission did not receive any comments from interested third parties.

(8) By letter dated 13 July 2004, registered as received on 19 July 2004, the Permanent Representation of Greece to the European Union requested a one-month extension of the period granted to the Greek authorities to submit their response to the opening of the first procedure.

(9) By fax dated 6 August 2004, the Commission granted the extension requested.

(10) By letter dated 9 August 2004, registered as received on 10 August 2004, the Permanent Representation of Greece to the European Union forwarded to the Commission the response from the Greek authorities to the opening of the first procedure.

[1] OJ C 52, 2.3.2005, p. 9 for Case C-23/04; OJ C 176, 16.7.2005, p. 13 for Case C-20/05; OJ C 63, 16.3.2006, p. 2 for Case C-50/05.

[2] Ministerial Decision No 69836/B1461, as amended by Decisions Nos 2035824/5887, 2045909/7431/0025, 2071670/11297 and 72742/B1723.

[3] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have been replaced by Articles 107 and 108 of the Treaty on the Functioning of the European Union; the reference to the European Community has been replaced by a reference to the European Union.

[4] Letter SG-Greffe (2004) D/202445.

[5] OJ C 52, 2.3.2005, p. 9.

Aid concerning the Florina and Kilkis Prefectures [6] **— *C 20/05***

(11) During the examination of the information submitted by the Greek authorities in their letter of 4 August 2003, it was found that, in addition to the Kastoria and Evia Prefectures, the aid in question also concerned the Florina and Kilkis Prefectures. Accordingly, the Commission requested additional information on the latter aid schemes from the Greek authorities by fax dated 22 April 2004.

(12) By letter dated 26 May 2004, the Permanent Representation of Greece to the European Union requested a one-month extension of the period granted to the Greek authorities to submit the additional information mentioned above.

(13) By fax dated 7 June 2004, the Commission granted the extension requested.

(14) By letter dated 1 July 2004, registered as received on the same day, the Permanent Representation of Greece to the European Union forwarded to the Commission the information requested in its fax of 22 April 2004.

(15) After examination of the information, it was found that the aid had been granted without the approval of the Commission. Accordingly, the Commission decided to open a non-notified aid dossier, registered under number NN 70/04.

(16) By letter dated 9 June 2005 [7], the Commission informed Greece of its decision to open the procedure provided for under Article 88(2) of the EC Treaty with regard to the aid measures granted in the Florina and Kilkis Prefectures (C 20/05) (hereinafter, 'the opening of the second procedure').

(17) The Commission's decision to open the procedure was published in the *Official Journal of the European Union* [8]. The Commission invited the interested parties to submit their comments on the aid in question.

(18) The Commission did not receive any comments from interested third parties.

(19) By letter dated 24 June 2005, registered as received on 28 June 2005, the Permanent Representation of Greece to the European Union requested a two-month extension of the period granted to the Greek authorities to submit their response to the opening of the second procedure.

(20) By fax dated 13 July 2005, the Commission granted the extension requested.

(21) By letter dated 18 August 2005, registered as received on 24 August 2005, the Permanent Representation of Greece to the European Union forwarded to the Commission the response from the Greek authorities to the opening of the second procedure.

Aid concerning the Rodopi, Evros, Xanthi and the Dodecanese Prefectures, as well as the islands of Lesbos, Samos and Chios [9] **— *C 50/05***

(22) During the examination of the information submitted by the Greek authorities by letter dated 1 July 2004, it was found that aid had also been granted in Prefectures other than those concerned by the openings of the first two procedures. Accordingly, the Commission requested additional information on these aid measures from the Greek authorities by fax dated 12 November 2004.

(23) By letter dated 13 December 2004, registered as received on 15 December 2004, the Permanent Representation of Greece to the European Union requested that the European Commission grant a one-month extension of the period granted to the Greek authorities to submit the additional information referred to above.

(24) By fax dated 6 January 2005, the Commission granted the extension requested.

(25) By letter dated 27 January 2005, registered as received on 1 February 2005, the Permanent Representation of Greece to the European Union forwarded to the Commission the information requested in its letter of 12 November 2004.

(26) After examination of the information, it was found that the aid had been granted without the approval of the Commission. Accordingly, the Commission decided to open a non-notified aid dossier, registered under number NN 20/05.

(27) By letter dated 22 December 2005 [10], the Commission informed Greece of its decision to open the procedure provided for under Article 88(2) of the EC Treaty with regard to the aid granted in the Rodopi, Evia, Xanthi and the Dodecanese Prefectures, and the islands of Lesbos, Samos and Chios (C 50/05) (hereinafter, 'the opening of the third procedure').

[6] Ministerial Decision No 66336/B1398 of 14 September 1993 as amended.

[7] Letter SG-Greffe (2005) D/202557.

[8] OJ C 176, 16.7.2005, p. 13.

[9] Joint Decision No 1648/B.22/13.1.94; Decision No 2003341/683/0025/17.2.94; Joint Decision No 14237/B.664/6.4.1994; Decision No 2022973/3968/0025/18.5.1994; Joint Decision No 235/B.21/4.1.1995; Joint Decision No 44678/B.1145/3.7.1995; Decision No 2043231/6673/0025/11.7.95; Joint Decision No 14946/B.566/30.4.1996; Decision No 2030175/4446/0025/10.6.1996; Joint Decision 44446/B.1613/24.12.1996; Decision No 2087184/49/0025/11.7.1997; Decision No 11362/B.472/7.4.1997; Decision No 32576/B.1282/9.10.1997; Decision No 2016123/2133/0025/6.3.1998; Decision No 40412/B.1677/9.12.1997; Decision No 2090373/11216/0025/1.6.1998; Decision No 42998/B.2026/15.12.1998; Decision No 44247/B.2108/23.12.1998; Decision No 19954/B.957/7.6.1999; Decision No 2/42929/0025/7.10.1999; Decision No 10123/B.507/17.3.1999; Decision No 2/21857/0025/7.10.1999; Decision No 6244/B.270/18.2.2000; Decision No 2/14774/0025/31.5.2000; Decision No 35913/B.2043/24.10.2000; Decision No 2/82257/0025/18.12.2000; Decision No 43407/B.2428/19.12.2000; Decision No 2/7555/0025/25.5.2001; Decision No 33951/B.1498/10.10.2001; Decision No 2/61352/0025/2001/31.1.2002; Decision No 42567/B.1770/4.12.2001; Decision No 75113/B.2455/11.11.2003; Decision No 2/64046/0025/2003/28.1.2004; Decision No 2041901/16.5.1989; 2078809/10.10.1989; Decision No 9034/B.289/10.2.2003; Decision No 80295/B.2631/28.11.2003; Decision No 37497/B.1232/2.6.2003.

[10] Letter SG-Greffe (2005) D/207656.

(28) The Commission's decision to open the procedure was published in the *Official Journal of the European Union* ([11]). The Commission invited the interested parties to submit their comments on the aid in question.

(29) The Commission did not receive any comments from interested third parties.

(30) By letter dated 23 January 2006, registered as received on 25 January 2006, the Permanent Representation of Greece to the European Union requested a three-month extension of the period granted to the Greek authorities to submit their response to the opening of the third procedure.

(31) By fax dated 3 February 2006, the Commission granted the extension requested.

(32) By letter dated 10 May 2006, registered as received on 11 May 2006, the Permanent Representation of Greece to the European Union forwarded to the Commission the response from the Greek authorities to the opening of the third procedure.

(33) After re-examining all the legal bases submitted, the Commission requested, by fax dated 12 January 2011, that the Greek authorities provide further clarifications on the aid in question within one month.

(34) By e-mail dated 7 February 2011, the Permanent Representation of Greece to the European Union asked the Commission to extend the deadline referred to above by a further 40 working days.

(35) By fax dated 17 February 2011, the Commission granted an extension of 20 working days.

(36) By e-mails dated 15 March 2011 and 29 March 2011, the Permanent Representation of Greece to the European Union forwarded the clarifications referred to above to the Commission.

II. **DESCRIPTION**

Aid concerning the Kastoria and Evia Prefectures

(37) Ministerial Decision No 69836/B1461 of 30 September 1993 provides for the conversion of total debts, whether due or not, at 30 June 1993 resulting from loans of all types (for working capital and fixed capital) in drachma or foreign currencies granted to industrial and craft firms established and operating, irrespective of the location of their registered headquarters, in the Kastoria and Evia Prefectures, as well as from bank guarantees in drachma or foreign currencies issued on behalf of the said firms, into a new loan repayable over 10 years in equal six-monthly total payments (principal plus interest) or in equal six-monthly principal payments (simple amortisation) with interest calculated every six months at the rate applied for the restructuring at the time (the rate applicable to the new loan is the rate applied for the latest 12-month Treasury bonds issued prior to the start of each interest-calculation period in respect of the loan, increased by two percentage points, with a reduction of ten percentage points during the first five years charged against the account set up pursuant to Law No 128/75 ([12]).

(38) Alternatively, the firms mentioned above may receive for five years an interest reduction of ten percentage points in respect of their outstanding debts in drachma or foreign currencies at 30 June 1993 and linked to investments in fixed or working capital.

(39) The firms must be viable after the restructuring (which implies that their situation was to some extent difficult); this criterion was verified by the banks.

(40) Ministerial Decisions No 2035824/5887 of 1 June 1994, 2045909/7431/0025 of 26 August 1994, 2071670/11297 of 9 November 1994 and 72742/B1723 of 8 December 1994 modulate the grace periods and interest reductions linked to the new loans and cover the latter by means of a State guarantee.

Aid for firms in the Florina and Kilkis Prefectures

(41) Ministerial Decision No 66336/B1398 of 14 September 1993 provides for the same aid measures and conditions as described under recital 37. It also provides for the granting of a State guarantee on the principal and interest of the restructured debt of industrial and craft firms in the Florina and Kilkis Prefectures, as well as the coverage by the State of the arrears interest applicable at 31 December 1992 in respect of loans granted for the working or investment capital of those firms, within the budgetary limits pursuant to Law No 128/75.

(42) Decision No 66336/B1398 of 14 September 1993 was amended by Decision No 30755/B1199 of 21 July 1994, Decision No 60029/B1541 of 23 September 1994, Decision No 72742/B1723 of 8 December 1994, Decision No 236/B22 of 4 January 1995, Decision No 8014/B285 of 28 February 1995, Decision No 44678/B1145 of 3 July 1995, Decision No 44446/B1613 of 24 December 1996, Decision No 40410/B1678 of 9 December 1997, Decision No 10995/B546 of 24 March 1999, Decision No 12169/B736 of 22 March 2000 and Decision No 35913/B2043 of 24 October 2000. These various Decisions amend the duration of the loans, the grace periods and interest rate reductions linked to the new loans, and also extend the period after which outstanding instalments become payable.

([11]) OJ C 63, 16.3.2006, p. 2.

([12]) Open at the Bank of Greece, this account is funded by levies on loans granted by commercial banks. Any overdraft in respect of the account is charged to the State (according to the information available to the Commission, the account has long been overdrawn and is, therefore, funded by the State). In Case C-57/86 *Hellenic Republic* v *Commission* [1988] ECR, p. 2855, the Court of Justice of the European Communities (now the Court of Justice of the European Union) found that the management and transactions of the Bank of Greece were subject to direct State control.

(43) The firms must be viable after the restructuring (which implies that their situation was to some extent difficult); this criterion was verified by the banks.

Aid concerning the Rodopi, Evros, Xanthi and the Dodecanese Prefectures, and the islands of Lesbos, Samos and Chios

(44) Ministerial Decision No 1648/B.22/13.1.1994 provides as follows:

(a) for new working capital loans granted from 1 April 1993 onwards to industrial, craft and mining firms, industrial livestock firms, hotel firms and shipping firms, established irrespective of the location of their registered headquarters, in the Prefectures of Xanthi, Rodopi and Evros, an interest reduction of 10 (ten) percentage points charged against the account set up pursuant to Law No 128/75, up to a rate of 20 % of the firm's turnover for the previous year or 50 % of orders for the year in progress, in respect of interest booked from 1 April 1993 to 31 March 1996, with a State guarantee up to a total amount of GRD 100 000 000 (EUR 293 470);

(b) the total debts, whether due or not, at 31 December 1993 resulting from loans for working capital and fixed capital granted to industrial, craft and mining firms, industrial livestock firms, hotel firms and shipping firms in the Thrace Region will be converted into a new loan, repayable over 10 years in equal six-monthly total payments (principal plus interest), from the account set up pursuant to law No 128/75, with a State guarantee;

(c) inclusion in the restructured debt of arrears interest due at 31 December 1992 in respect of loans for fixed or working capital.

(45) The firms must be viable after the restructuring (which implies that their situation was to some extent difficult); this criterion was verified by the banks.

(46) A number of amendments were made to Ministerial Decision No 1648/B.22/13.1.1994 by means of the following Ministerial Decisions: Nos 14237/B.664/6.4.1994, 235/B.21/4.1.1995, 44678/B.1145/3.7.1995, 14946/B.566/30.4.1996, 44446/B.1613/24.12.1996, 32576/B.1282/9.10.1997 ([13]), 11362/B.472/7.4.1997, 40412/B.1677/9.12.1997 ([14]), 42998/B.2026/15.12.1998, 19954/B.957/7.6.1999, 10123/B.507/17.3.1999, 6244/B.270/18.2.2000 and 35913/B.2043/24.10.2000 ([15]). All these texts modulate the technical parameters such as interest reductions, grace periods, duration of loans and duration of periods after which outstanding instalments become payable.

([13]) Amended by Decision No 43407/B.2428/19.12.2000, in turn amended by Decision No 33951/B.1498/10.10.2001, in turn amended by Decision No 75113/B.2455/11.11.2003.

([14]) Amended by Decision No 44247/B.2108/23.12.1998.

([15]) Amended by Decision No 42567/B.1770/4.12.2001.

(47) Decision No 2003341/683/0025/17.2.94 confers a State guarantee for working capital loans granted from 1 April 1993 onwards to industrial, craft and mining firms, industrial livestock firms, hotel firms and shipping firms established, irrespective of where their registered headquarters are located, in the Xanthi, Rodopi and Evros Prefectures, up to a total amount of GRD 100 000 000 (EUR 293 470) per firm, as well as for debts (capital and interest) resulting from the restructuring outstanding at 31 December 1993 of debts resulting from old loans granted in accordance with the provisions of Joint Decision No 1648/G.G.54/B.22/13.1.94.

(48) A number of amendments were made to Decision No 2003341/683/0025/17.2.94 by means of the following Decisions: Nos 2022973/3968/0025/18.5.94, 2043231/6673/0025/11.7.95, 2030175/4446/0025/10.6.1996, 2087184/49/0025/11.7.97, 2016123/2133/0025/6.3.1998, 2090373/11216/0025/1.6.98 ([16]), 2/21857/0025/7.10.1999, 2/14774/0025/31.5.2000, 2/82257/0025/18.12.2000, 2/7555/0025/25.5.2001, 2/61352/0025/31.1.2002 and 2/64046/0025/2003/28.1.2004. All these texts confer the State guarantee in case of application of the measures provided for by the different Decisions amending Ministerial Decision No 1648/B.22/13.1.1994 (cf. recital 46).

(49) On the aforementioned list, Ministerial Decision No 2/82257/0025/18.12.2000 stipulates that, in order for its provisions to be applicable, firms must be viable in the absolute (and not after the restructuring, as is the case with regard to the other Ministerial Decisions referred to in this Decision), which presupposes the absence of a state of difficulty.

(50) Ministerial Decision No 2041901/16.5.1989 grants an interest reduction of three percentage points, charged against the joint account set up pursuant to Law No 128/75, on outstanding balances payable in respect of working capital loans granted from 1 April 1989 onwards to trade and craft firms with their registered headquarters in the Evros, Lesbos, Samos, Chios and Dodecanese Prefectures.

(51) Decision No 2078809/10.10.89 grants an interest reduction of three percentage points, charged against the joint account set up pursuant to Law No 128/75, on outstanding balances payable in respect of working capital loans issued from 1 April 1989 onwards to trade and craft firms with their registered headquarters in the Rodopi, Xanthi and Samos Prefectures.

(52) Ministerial Decisions Nos 9034/B.289/10.2.2003 and 37497/B.1232/2.6.2003 extend the provisions of the Decisions referred to under recitals 50 and 51 by specifying the scope and certain technical parameters relating to the interest reductions provided for.

([16]) In turn amended by Decision No 2/42929/0025/7.10.1999.

III. REASONS FOR INITIATING THE INVESTIGATION PROCEDURE

(53) With regard to the aid schemes in question, the Commission had doubts as regards not only the absence of State aid, but also the compatibility of the aid, which in the opinion of the Commission actually exists, with the internal market.

(a) *Justification of opening of the first procedure*

(54) The first procedure was opened for the following reasons:

(a) when asked to provide explanations in relation to the aid in question, the Greek authorities stated that the Ministerial Decisions constituting the legal basis for the aid measures were not notified because they considered that the aid which they implemented did not constitute State aid within the meaning of Article 87(1) of the EC Treaty; they also stated that, although they did not know the exact number of beneficiaries, the amounts of the aid measures in question likely fell under the *de minimis* rule;

(b) since the *de minimis* rule was not applicable in the agricultural sector at the time when the aid measures was granted and that the Decisions constituting the legal basis of the aid measures in question were intended to assist firms experiencing liquidity problems, the Commission considered that the aid should be analysed in the light of the different rules applicable to the rescuing and restructuring of firms in difficulty from the entry into force of the first of the aforementioned Decisions; however, the information available did not make it possible to ascertain to what extent these rules had been followed;

(c) again with regard to the agricultural sector, the information available did not make it possible to determine whether the State guarantee had been granted in accordance with the various rules applicable to State aid in the form of guarantees from the entry into force of the first of the aforementioned Decisions;

(d) in the industrial and craft sectors, the *de minimis* rule did, of course, apply, but as the Greek authorities did not know the number of beneficiaries of the measures introduced by these Ministerial Decisions and as the *de minimis* aid ceilings are calculated for a three-year period, not for a one-off measure, it was impossible to tell whether the aid provided for by the Decisions in question could in fact fall under the *de minimis* rule; in this context, the aid measures also had to be analysed on the basis of the rules on the rescuing and restructuring of firms in difficulty which had been applicable since the entry into force of the first of the Decisions referred to; however, the information available did not make it possible to ascertain to what extent these rules had been followed;

(e) with regard to these sectors, the information available did not make it possible to determine whether the State guarantee had been granted in accordance with the different rules applicable to State aid in the form of guarantees applicable from the entry into force of the first of the aforementioned Decisions.

(b) *Justification of the opening of the second procedure*

(55) The second procedure was opened for the following reasons:

(a) when asked to provide explanations in relation to the aid in question, the Greek authorities stated that, although they did not know the exact number of beneficiaries, the amounts of aid in question probably fell under the de minimis rule; however, quite apart from the fact that the *de minimis* rule did not apply to the agricultural sector until 1 January 2005, the Commission did not have any data which would have allowed it to ascertain the extent to which the amounts received by agricultural firms in application of Ministerial Decision No 66336/B.1398 could have fallen under the scope of Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture sector ([17]), which introduced a *de minimis* rule in the agricultural sector;

(b) given that these Decisions were intended to assist firms in difficulty, the aid had to be analysed in the light of the various rules applicable to the rescuing and restructuring of firms in difficulty since the entry into force of the first of the above Decisions, that is to say, since 21 September 1993; however, the information available did not make it possible to determine to what extent these rules had been followed;

(c) again with regard to the agricultural sector, the information available did not make it possible to determine whether the State guarantee had been granted in accordance with the various rules applicable to State aid in the form of guarantees from 21 September 1993;

(d) in the industrial and craft sectors, the *de minimis* rule did, of course, apply, but as the Greek authorities did not know the number of beneficiaries of the measures introduced by these Decisions and as the aid ceilings are calculated for a three-year period, not for a one-off measure, it was impossible to tell whether the aid provided for by the Decisions in question could in fact fall under the *de minimis* rule; in this context, the aid measures also had to be analysed on the basis of the rules on the rescuing and restructuring of firms in difficulty which had been applicable since 21 September 1993; however, the information available did not make it possible to ascertain to what extent these rules had been followed;

(e) in these sectors, the information available did not make it possible to determine whether the State guarantee had been granted in accordance with the various rules applicable to State aid in the form of guarantees from 21 September 1993.

([17]) OJ L 325, 28.10.2004, p. 4. Regulation (EC) No 1860/2004 was repealed and replaced by Commission Regulation (EC) No 1535/2007 on 1 January 2008.

(c) ***Justification of the opening of the third procedure***

(56) The third procedure was opened for the following reasons:

(a) as had been the case for the opening of the first and second procedures, the Greek authorities indicated in the information they provided that the amounts in question likely fell under the *de minimis* rule; however, quite apart from the fact that the *de minimis* rule did not apply to the agricultural sector until 1 January 2005, the Commission did not have any data which would have allowed it to ascertain the extent to which the amounts received by agricultural firms in application of the Decisions constituting the legal basis of the aid scheme in question could have fallen under the scope of Regulation (EC) No 1860/2004;

(b) given that these Ministerial Decisions were intended to assist firms in difficulty, the aid had to be analysed in the light of the various rules which had applied to the rescuing and restructuring of firms in difficulty since the entry into force of the first of the above Decisions; however, the information available did not make it possible to determine to what extent these rules had been followed;

(c) in the industrial, hotel and craft sectors, the *de minimis* rule did, of course, apply, but as the Greek authorities did not indicate the number of beneficiaries of the aid and as the *de minimis* aid ceilings are calculated for a three-year period, not for a one-off measure, it was impossible to tell whether the aid provided for by the Decisions in question could in fact fall under the *de minimis* rule; in this context, the aid measures also had to be analysed on the basis of the rules on the rescuing and restructuring of firms in difficulty which had been applicable since the entry into force of the first of the Decisions referred to; however, the information available did not make it possible to ascertain to what extent these rules had been followed;

(d) in the coal and shipping sectors, the *de minimis* rule had only applied since the entry into force of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* [18] aid; however, for the reasons given under point (c), the aid measures also had to be analysed on the basis of the various rules applicable to the rescuing and restructuring of firms in difficulty from the entry into force of the first of the above Decisions; however, the information available did not make it possible to ascertain to what extent these rules had been followed;

(e) in the maritime transport sector, no *de minimis* rule applied; the aid measures therefore had to be analysed on the basis of the rules that had applied since the entry into force of the first of the above Decisions to the rescuing and restructuring of firms in difficulty; however, the information available did not make it possible to ascertain to what extent these rules have been followed;

(f) in none of the above sectors did the information available make it possible to determine whether the State guarantee was given in accordance with the various rules that had applied since the first of the above Decisions entered into force to State aid in the form of guarantees;

(g) Decision No 2041901/16.5.1989 and those referred to under recitals 51 and 52 above provided for aid in Prefectures other than Rodopi, Evros and Xanthi and it was not possible to ascertain whether the system of aid they introduced was an extension of that applied in the above three Prefectures or was a separate system; whatever the case, it was not possible to ascertain, on the basis of the information available, whether the rules on State aid (rules on regional aid or the *de minimis* rule) had been followed;

(h) if the Ministerial Decisions referred to under point (g) had constituted an extension of the system of aid applied in the Rodopi, Xanthi and Evros Prefectures, it was not possible to determine whether the planned aid measures could fall under the *de minimis* rule or be considered compatible with the provisions governing the granting of aid for rescuing and restructuring firms in difficulty;

(i) if the Ministerial Decisions referred to under point (g) had constituted an independent aid system, it was necessary, in the absence of details in this regard in their provisions, to examine the compatibility of its application to healthy firms and firms in difficulty; the analysis resulted in the following conclusions:

(i) for firms in difficulty, it was not possible to determine whether the planned aid measures could fall under the *de minimis* rule or be considered compatible with the provisions governing the granting of aid for rescuing and restructuring firms in difficulty,

(ii) for healthy firms, it was not possible to determine whether the working capital constituted by means of a loan together with the interest reduction granted had served to finance eligible investments within the meaning of Union rules on regional aid.

[18] OJ L 10, 13.1.2001, p. 30.

IV. **OBSERVATIONS OF THE GREEK AUTHORITIES ON THE FORMAL OPENING OF THE PROCEDURE**

(a) ***Observations of the Greek authorities on the opening of the first procedure***

(57) In their letter of 9 August 2004, the Greek authorities made the following statements:

(a) the consolidation of the loans is an administrative instrument not resulting in high costs for the public authorities;

(b) the calculation of interest per six-month period has already been upheld in the case-law of the national Supreme Court, which declared quarterly compounding to be illegal and abusive, and responsible for imposing an excessive burden on debtors;

(c) the granting of the State guarantee cannot be considered as aid since its use is contingent on particularly stringent measures for the principal debtor;

(d) during the reference period, interest rates in Greece were much higher than the average rates in the rest of the Union and remained thus despite the reductions; there was therefore no distortion of competition, not least since the beneficiary firms had to be viable; moreover, the reductions were financed by a special account, separate from the State budget;

(e) the granting of periods of grace cannot be considered as an aid measure, given that the debt and interest remain: this merely constitutes restructuring of repayment over time, justified on the grounds of the economic situation;

(f) Ministerial Decision No 72742/B1723 (cf. recital 42 above) did not give rise to any additional costs in relation to those introduced by the original Decision which constitutes the basis of the scheme in question;

(g) the release of securities by means of Ministerial Decision No 2071670/11297 cannot be considered an aid measure in respect of firms, since they are adapted to the level of the restructured loans; moreover, the guarantee from the Greek State does not cover all types of charges imposed on lenders by the banks;

(h) Ministerial Decision No 69836/B1451 and its amendments concerned processing firms in general and did not refer specifically to processing firms in the agriculture sector, which were covered by Council Regulations (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products [19], (EC) No 951/97 of 20 May 1997 on improving the processing and marketing conditions for agricultural products [20] and (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [21]; these Regulations were applied by means of the implementation of operational programmes under the second and third Community Support Frameworks; firms which had made investments and received aid from the Ministry of Rural Development and Food to this end were not eligible for debt restructuring, since this had not been provided for; the *de minimis* rule was not applied either since, in order to obtain a subsidy, operators had to have carried out work and borne the cost;

(i) the reference to the *de minimis* rule served exclusively to illustrate the fact that most of the aid measures granted were below the *de minimis* ceiling, without specific reference to the agricultural sector;

(j) the criterion of 'viability after restructuring' has no bearing on the overall assessment of the viability of the firm prepared by the credit body, since eligibility for restructuring is determined immediately after the viability study;

(k) the restructuring concerned old loans and did not constitute financing for new investments;

(l) as regards the overall grant equivalent for the restructuring, the vast majority of the aid measures constituted small amounts, the areas for which the measures were intended (Kastoria and Evia) were all less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming in certain less-favoured areas [22], and the country as a whole falls under Objective 1;

(m) the interest rate applied to new loans was that which applied to the latest issue of Greek Treasury bonds; the reduction does not concern the entire duration of the restructured loan, but only the first critical years; the difference between the rates was not very high (1 to 2 points);

(n) the scheme existed from 30 June 1993 to 30 June 2003.

(b) ***Observations of the Greek authorities on the opening of the second procedure***

(58) By letter of 18 August 2005, the Greek authorities set out the following arguments, most of which had already been presented in their reply to the first opening of the procedure (cf. previous recital):

(a) the consolidation of the loans is an administrative instrument which does not result in high costs for the public authorities (the authorities add here that the intention of this instrument is not the selective granting of aid);

(b) the calculation of interest per six-month period has already been upheld in the case-law of the national Supreme Court, which declared quarterly compounding to be illegal and abusive, and responsible for imposing an excessive burden on debtors;

[19] OJ L 91, 6.4.1990, p. 1.
[20] OJ L 142, 2.6.1997, p. 22.
[21] OJ L 160, 26.6.1999, p. 80.
[22] OJ L 128, 19.5.1975, p. 1.

(c) during the reference period, interest rates in Greece were much higher than in the rest of the Union and remained thus despite the reductions applied;

(d) the granting of the State guarantee cannot be considered as aid since, even if it is used, it is contingent on particularly stringent conditions for the principal debtor;

(e) the arrears interest and the interest-rate reductions were financed by a special account (account set up pursuant to Law No 128/75), separate from the State budget;

(f) the granting of periods of grace cannot be considered as an aid measure, given that the debt and interest remain: this merely constitutes restructuring of repayment over time, justified on the grounds of the economic situation;

(g) the provisions of Ministerial Decision 66336/B.1398/1993 and its amendments provided for the possibility of aid for firms established in the Florina and Kilkis Prefectures without high costs for the public authorities and on the condition that the firms in question were considered viable; they did not therefore distort competition within the meaning of Article 87 of the EC Treaty; moreover, it should be recalled that the Florina and Kilkis Prefectures share borders with the former Yugoslav Republic of Macedonia and that, during the reference period (1990s), they suffered greatly as a result of the war and instability in the region;

(h) lastly, the aforementioned Decision refers to industrial and craft firms; according to the Greek authorities, no agricultural firms are concerned by these provisions.

(c) ***Observations of the Greek authorities on the opening of the third procedure***

(59) By letter of 10 May 2006, the Greek authorities submitted the following arguments:

(a) the Prefectures concerned by the Decisions in question were experiencing a difficult economic situation characterised by low levels of economic activity and a higher unemployment rate than in the rest of the country; this situation was compounded by the state of war in neighbouring countries (for example, Kosovo); competition could not therefore be distorted and the aid measures granted in the form of debt restructuring and reductions could therefore benefit from the derogation provided for in Article 87(3)(a) and (c) of the EC Treaty;

(b) the aid measures were focused on resolving problems such as the lack of dynamism of local markets, the contraction of the labour market and falling demand, as well as long-term economic development;

(c) with regard to the Commission's argument that the conditions of Community trade could be distorted given the high level of competition in the agricultural sector, only Decision 1648/B22/13.1.1994, among all those examined, concerns industrial livestock firms; moreover, over the period 1995-2004, meat production in the Evros, Rodopi and Xanthi Prefectures only accounted for a small proportion of agricultural production in the Prefectures in question, and, although the gross domestic product (GDP) of these Prefectures rose over that period (both in absolute terms and per capita), it remained well below the national average;

(d) Ministerial Decisions Nos 2041901/16.5.1989 and 2078809/1989, which provide for interest reductions in respect of working capital loans for firms in Lesbos, Samos, Chios and the Dodecanese Prefectures, also stipulate that the firms must be viable before and after the restructuring of their debts;

(e) the competent authorities in Greece were asked to collect data on the beneficiaries and the aid actually granted, but said they were unable;

(f) the interest-rate reductions are financed by an account set up pursuant to Law No 128/75 which does not constitute a State resource, since it is an account intended primarily for the redistribution of funds.

(d) ***Letters from the Greek authorities of 15 and 29 March 2011***

(60) By letters dated 15 and 29 March 2011, the Greek authorities firstly stated the expiry dates for the initial Ministerial Decisions governing the schemes in question. The dates are as follows:

(a) 30 June 2003 for Decision No 69836/B1461 (Kastoria and Evia Prefectures);

(b) 30 June 2000 for Decision No 66336/B/398/14-9-1993 (Florina and Kilkis Prefectures);

(c) 31 December 2005 for Decision No 1648/B.22/13.1.94 (Xanthi, Rodopi and Evros Prefectures);

(d) 31 December 2004 for Decision No 2041901/16-5-1989 (Rodopi, Evros, Xanthi and Dodecanese Prefectures; islands of Lesbos, Samos and Chios).

(61) The Greek authorities then indicated that the criterion regarding the viability of the firms after the restructuring did not constitute the only factor considered; rather, there was an overall assessment of the viability of the firms before and after restructuring.

(62) The letters also contain tables indicating the grant equivalent of the aid measures in question received by each beneficiary firm, with the objective of illustrating the percentage of firms for which the aid measures could fall under a *de minimis* scheme. The Greek authorities indicate, however, that, with regard to the aid measures granted under Ministerial Decisions 2041901/16-5-1989 (Xanthi, Rodopi and Evros, Samos, Lesbos, Chios and the Dodecanese Prefectures) and 1648/B.22/13.1.94 (Xanthi, Rodopi and Evros), the data available relates to the period 2004-07 only. The data provided in respect of aid measures granted under

Ministerial Decision No 69836/B1461 (Kastoria and Evia Prefectures) relate to the period 1993-1998 and in respect of that granted under Ministerial Decision No 66336/B/398/14-9-1993 (Florina and Kilkis Prefectures) relate to the period 1993-2001. These data were requested from the credit institutions, some of which did not reply. The Greek authorities consider, however, that the data collected are close to the total amount of aid granted, since the banks which did reply are the main lenders to the Prefectures in question. According to the Greek authorities, analysis of the data demonstrates that the aid in question falls below the *de minimis* ceiling in 73,55 % to 99,46 % of cases, depending on the three-year period and the Decision considered.

(63) Lastly, the Greek authorities state that agricultural product production, processing and marketing firms were not eligible for the aid and that the expression 'mining firms' actually designates marble and stone extraction firms.

V. **EVALUATION**

V.I. *EXISTENCE OF AID*

(64) In accordance with Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the internal market. In absolute terms, the aid measures in question correspond to this definition in the sense that they are granted by the State or through State resources, are intended for certain firms (firms in the agriculture, craft, industrial, hotel, extraction — cf. recital 63 — and shipping sectors in the aforementioned Prefectures) and favour those firms by means of measures such as restructuring their loans, reducing the size of instalments by extending the repayment period, interest-rate reductions and the granting of guarantees, and may affect trade ([23]) and distort competition ([24]).

(65) The Greek authorities sought to demonstrate that the aid measures in question could fall under a *de minimis* scheme and did not therefore constitute State aid within the meaning of Article 107(1) TFEU. However, quite apart from the fact that the *de minimis* rule was not applicable in all the sectors concerned over the validity period of the Ministerial Decisions constituting the legal basis of the schemes in question (this was indeed one of the reasons for the opening of the procedures in question), the data is incomplete, as acknowledged by the Greek authorities themselves (cf. recital 62). Moreover, the amounts of *de minimis* aid vary between the sectors (they are not the same in the industrial and agricultural sectors) and the tables provided suggest that the Greek authorities were not sufficiently aware of this difference. Lastly, the Commission notes that, despite the Greek authorities' claims that agricultural production, processing and marketing firms were not eligible for the aid schemes in question, the tables mentioned above clearly demonstrate that some firms in those sectors did receive aid considered to fall under a *de minimis* scheme even though they clearly exceed the permissible ceiling.

(66) The Commission recalls that, any individual aid granted under an aid scheme that at the time it was granted satisfied the conditions laid down in an applicable *de minimis* regulation is deemed not to constitute State aid within the meaning of Article 107(1) of the Treaty.

(67) When the Greek authorities first granted the aid measures in question in the agricultural sector, no Union provisions existed on *de minimis* aid.

(68) The first provisions adopted in this respect were those of Regulation (EC) No 1860/2004 ([25]).

(69) In accordance with Regulation (EC) No 1860/2004, which relates to both primary agricultural production and the processing and marketing of agricultural products, aid not exceeding a ceiling of EUR 3 000 per beneficiary over any period of three years does not affect trade between Member States, does not distort or threaten to distort competition and therefore does not fall under Article 107(1) of the Treaty.

(70) Pursuant to Article 5 of Regulation (EC) No 1860/2004, the same applies in respect of aid granted before the entry into force of that Regulation, subject to compliance with the conditions laid down in Articles 1 and 3 thereof.

(71) On 1 January 2008, Regulation (EC) No 1860/2004 was replaced by Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector

([23]) Any aid measure conferring an advantage on a firm in a sector which is open to trade (such as the agricultural or industrial sectors) or liable to attract consumers from other Member States (such as the hotel sector) has an impact on commercial flows. In the agricultural sector, Greece's share in intra-Community trade stood at EUR 13,684 billion in imports and EUR 19,31 billion in exports.

([24]) According to the case-law of the Court of Justice of the European Union, the very fact that the competitive situation of the firm is improved by granting an advantage which it would not have been able to obtain under normal market conditions and from which other competitive firms do not benefit is sufficient to demonstrate a distortion of competition (Case 730/79, *Philip Morris* v *Commission* [1980] ECR 2671, Greek Special Edition 1980/III, p. 13).

([25]) See footnote 17.

of agricultural production ([26]), which raises the amount of *de minimis* aid to EUR 7 500 per beneficiary over a period of three fiscal years, irrespective of the form of the aid or the objective pursued, within the limits of the maximum amount per Member State corresponding to 0,75 % of annual output.

(72) Article 6(1) of Regulation (EC) No 1535/2007 stipulates that 'this Regulation shall apply to aid granted before 1 January 2008 to undertakings in the sector of agricultural production, provided that such aid fulfils all the conditions laid down in Articles 1 to 4, except for the reference requirement clearly set out in this Regulation in the first subparagraph of Article 4(1)'. The Regulation only applies to primary agricultural production, however.

(73) With regard to the processing and marketing of agricultural products, the *de minimis* rule applicable with effect from 1 January 2007 is set out in Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid ([27]).

(74) Article 2(2) of Regulation (EC) No 1998/2006 sets at EUR 200 000 per beneficiary over a period of three fiscal years the amount up to which aid does not affect trade between Member States, does not distort or threaten to distort competition and does not therefore fall under Article 107(1) of the Treaty.

(75) Article 5(1) of Regulation (EC) No 1998/2006 stipulates that 'the Regulation shall apply to aid granted before its entry into force to undertakings active in the transport sector and undertakings active in the processing and marketing of agricultural products if the aid fulfils all the conditions laid down in Articles 1 and 2….'.

(76) Consequently, the Commission will not consider aid granted under the Ministerial Decisions analysed as State aid if it does not exceed the following levels per beneficiary:

(a) in the case of primary agricultural production: EUR 3 000 per three-year period, if, at the time of granting, the aid was in accordance with the provisions of Regulation (EC) No 1860/2004, or EUR 7 500 per period of three fiscal years if, at the time of granting it was in accordance with the provisions of Regulation (EC) No 1535/2007;

(b) in the case of the processing and marketing of agricultural products: EUR 3 000 per three-year period, if, at the time of granting, the aid was in accordance with the provisions of Regulation (EC) No 1860/2004, or EUR 200 000 per period of three fiscal years if, at the time of granting it was in accordance with the provisions of Regulation (EC) No 1998/2006.

(77) The Commission recalls, however, that firms in difficulty are not eligible for the provisions of Regulations (EC) No 1998/2006 and (EC) No 1535/2007.

(78) In sectors other than the agricultural sector (that is to say, in this case, the different sectors mentioned in this Decision, with the exception of the shipping sector, which will be addressed in recitals 80 and 81 below ([28])), the *de minimis* rule set out in the Commission's Communication of 20 May 1992 — Community guidelines on State aid for small and medium-sized enterprises ([29]) (hereinafter, 'the 1992 Guidelines') was applicable at the time when the aid measures in question were granted. The Communication stipulated that 'one-off payments of aid of up to ECU 50 000, in respect of a given type of expenditure and schemes under which the amount of aid a given firm may receive in respect of a given type of expenditure over a three-year period is limited to that figure, will no longer be considered notifiable under Article 93(3) [of the EC Treaty] ([30]), provided that it is an express condition of the award or scheme that any further aid the same firm may receive in respect of the same type of expenditure from other sources or under other schemes does not take the total aid the firm receives above the ECU 50 000 limit.' This rule was subsequently amended in the 1996 Commission notice on the *de minimis* rule for State aid ([31]) (hereinafter 'the 1996 Notice'), which set the amount of *de minimis* aid at ECU 100 000 for the same period, and thereafter in Regulation (EC) No 69/2001, which set the amount at EUR 100 000 for the same period.

(79) On account of the expiry dates for the schemes analysed (the last being 31 December 2005) and the non-retroactive applicability of the regulations in respect of the sectors mentioned under recital 78, the Commission will not consider as State aid aid granted under the Decisions analysed which does not exceed the following amounts per beneficiary:

(a) ECU 50 000 per three-year period between 19 August 1992 and 5 March 1996, if, at the time of granting, the aid was in accordance with the provisions of the 1992 Guidelines;

(b) ECU/EUR 100 000 per three-year period between 6 March 1996 and 1 February 2001, if, at the time of granting, the aid was in accordance with the relevant provisions of the 1996 Notice;

([26]) OJ L 337, 21.12.2007, p. 35.
([27]) OJ L 379, 28.12.2006, p. 5.
([28]) The maritime transport sector cannot fall under the *de minimis* rule in this case, as it is excluded from all texts governing *de minimis* aid, with the exception of Regulation (EC) No 1998/2006, but that Regulation does not apply to firms in difficulty.
([29]) OJ C 213, 19.8.1992, p. 2.
([30]) Now Article 108(3) of the Treaty.
([31]) OJ C 68, 6.3.1996, p. 9.

(c) EUR 100 000 per three-year period between 2 February 2001 and 31 December 2005, if, at the time of granting, the aid was in accordance with the relevant provisions of Regulation (EC) No 69/2001.

(80) Lastly, in the shipbuilding sector, the *de minimis* rule has only been applicable since the entry into force of Regulation (EC) No 69/2001.

(81) Consequently, the Commission will not consider as State aid aid granted under the Ministerial Decisions analysed which do not exceed EUR 100 000 per beneficiary and per three-year period over the period 2 February 2001-30 June 2007, if, at the time of granting, the aid was in accordance with the relevant provisions of Regulation (EC) No 69/2001.

(82) The other arguments put forward by the Greek authorities to justify the absence of State aid cannot be accepted by the Commission for the following reasons, valid in every case in which those arguments were cited:

(a) by claiming that the loan consolidation does not result in high costs for the public authorities (cf. recitals 57(a) and 58(a) in particular), the Greek authorities recognise that the operation imposes a cost on the State, or in other words uses State resources;

(b) until the entry into force of the Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ([32]) (hereinafter 'the 2000 Notice'), all guarantees were considered to include an element of State aid (cf. recital 105(a)); the 2000 Notice states that a guarantee may be deemed not to constitute State aid within the meaning of Article 107(1) of the Treaty where the beneficiaries are not borrowers in financial difficulty and would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State, the guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80 % of the outstanding loan or other financial obligation (except for bonds and similar instruments) and is not open-ended, the terms of the scheme are based on a realistic assessment of the risk so that the premiums paid by the beneficiary enterprises make it, in all probability, self-financing, the scheme provides for the terms on which future guarantees are granted and the overall financing of the scheme to be reviewed at least once a year, and the premiums cover both the normal risks associated with granting the guarantee and the administrative costs of the scheme, including, where the State provides the initial capital for the start-up of the scheme, a normal return on that capital; however, no documentation has been submitted by the Greek authorities demonstrating the applicability of this scenario in this case;

(c) with regard to competition, the granting of grace periods (cf. recitals 57(e) and 58(f)) does not constitute simply a restructuring of repayment over time, since it reduces the repayment burden at a specific time and therefore provides temporary financial relief for the beneficiary;

(d) even if, as the Greek authorities state, the account set up pursuant to Law No 128/75 used to finance interest-rate reductions (cf. recitals 57(d), 58(e) and 59(f)) does not form part of the budget of the Greek State, it nevertheless constitutes a State resource ([33]);

(e) the granting of an interest-rate reduction in respect of loans confers an advantage on the beneficiary firms, even if interest rates are high in the country in question;

(f) the release of securities provided for the purposes of obtaining the guarantee (cf. recital 57(g)), while it may not involve any direct expenditure for the Greek State in accordance with Ministerial Decision No 2071670/11297, comprises an element of aid since, in providing this possibility, the State not only offers beneficiary firms the opportunity to obtain capital, but also waives one of the prerequisites for the obtention of its guarantee;

(g) the fact that interest rates were high in Greece (cf. recital 57(d)) does not imply the absence of aid, in the sense that, irrespective of the economic context in which the restructuring with reductions was carried out, the granting of the aid in itself had the effect of relieving the beneficiaries of a burden which they would normally have had to bear in the exercise of their activity.

(83) In the light of all these elements, the Commission can only conclude that aid measures which do not fall within the scope of and comply with the prerequisites for the granting of *de minimis* aid defined under recitals 68 to 81 do indeed fall within the scope of Article 107(1) of the Treaty.

V.II. *COMPATIBILITY OF THE AID*

(84) However, in the situations provided for in Article 107(2) and (3) of the Treaty, certain types of aid may, by way of derogation, be deemed compatible with the internal market.

(85) In the case under consideration, it is necessary to examine, in the context of each procedure opened, which exemption might apply in each of the sectors concerned (whilst differentiating between the agricultural and other sectors).

([32]) OJ C 71, 11.3.2000, p. 14.

([33]) See footnote 11.

V.II.1. AID TO THE PREFECTURES OF KASTORIA AND EVIA, ADDRESSED WHEN THE FIRST PROCEDURE WAS OPENED

(a) ***Agricultural sector***

(86) In view of the nature of the aid granted, the only exemption which may be relied on to demonstrate its compatibility with the internal market is that provided for in Article 107(3)(c) of the Treaty pursuant to which aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market.

(87) Since the aid in question is non-notified aid, it is essential in order for this exemption to apply that it complies with the rules on State aid in place at the time the aid was granted. According to information provided by the Greek authorities, the scheme in question ran from 30 June 1993 to 30 June 2003. The compatibility of the scheme in question with the internal market will therefore be examined in the light of the rules on State aid applicable during this period.

(88) One of the reasons on which the Commission's decision to initiate the procedure provided for in Article 108(2) of the Treaty was based is that the aid was apparently intended for firms in difficulty. In this regard, the Greek authorities indicated in their letter of 9 August 2004 that the 'viability after restructuring' criterion had absolutely no bearing on the overall assessment of the firm's viability carried out by the credit institution, since the decision regarding eligibility for restructuring was made immediately after the viability study was carried out. This argument was reiterated in the letters of 15 and 29 March 2011 (see recital 61).

(89) The Commission considers that this explanation does not enable it to exclude the possibility that aid was granted to firms in difficulty, because even if the decision regarding eligibility for restructuring was made immediately after the viability study had been carried out as the Greek authorities claim, the study itself focused on the viability prospects of the beneficiaries post-restructuring. This implies that it is possible that applicants could have been in difficulty at the time of the study but may nevertheless have been admitted to the scheme because the institution carrying out the study predicted a potential return to viability after debt restructuring (the Commission had also highlighted this evidence in point 23 of its decision to initiate the procedure provided for in Article 108(2) of the Treaty because reference was made in the preamble to Ministerial Decision No 2045909/7931/0025 to the need to support firms experiencing cash-flow problems in the Prefectures of Kastoria and Evia).

(i) **Rules applicable to rescue and restructuring aid to firms in difficulty during the period in question**

I. *From 1 October 1993 to 31 December 1997*

(90) Aid to firms in difficulty is subject to a number of rules. At the time of entry into force of Ministerial Decision No 69836/B1461, it was Commission policy to consider this type of aid in the agricultural sector to be operating aid which could be considered compatible with the internal market only if the following three conditions were satisfied:

(a) such aid had to concern financial charges on loans taken out to finance investments that had already been made;

(b) the overall grant equivalent of any aid granted when the loan was taken out and the aid in question could not exceed the percentage generally authorised by the Commission, i.e.:

(i) for investments in primary agricultural production: 35 % or 75 % in less-favoured areas within the meaning of Directive 75/268/EEC;

(ii) for investments in the processing and marketing of agricultural products: 55 % or 75 % in Objective 1 regions for projects complying with the sectoral programmes or one of the objectives of Article 1 of Regulation (EEC) No 866/90 ([34]) and 35 % (or 50 % in Objective 1 regions) for other projects not excluded on the basis of the selection criteria under point 2 of the Annex to Commission Decision 90/342/EEC of 7 June 1990 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products ([35]) (or Commission Decision 94/173/EC ([36]) which replaced it);

(c) the aid in question could be paid only following changes in the rates for the new loans taken out, so as to take account of variations in the interest rates (in such cases, the amount of aid had to be less than or equal to the difference in interest rates on the new loans) or had to concern agricultural holdings providing guarantees of viability, particularly in the event that the financial burdens resulting from the existing loans were such as to threaten the viability of the holdings or put them at risk of bankruptcy.

([34]) OJ L 91, 6.4.1990, p. 1. Regulation (EEC) No 866/90 was repealed and replaced by Council Regulation (EC) No 951/97 (OJ L 142, 2.6.1997, p. 22).
([35]) OJ L 163, 29.6.1990, p. 71.
([36]) OJ L 79, 23.3.1994, p. 29.

(91) In their letter of 9 August 2004, the Greek authorities argued that Decision No 69836/B1451 and its subsequent amendments concerned processing firms in general and made no specific reference to agricultural processing firms covered by Regulations (EEC) No 866/90, (EC) No 951/97 and (EC) No 1257/1999, that all of Greece is an Objective 1 region, and that the firms which had invested and had therefore received aid from the Ministry of Rural Development and Food were unable to benefit from debt restructuring as this had not been provided for. Furthermore, they added that, with regard to the overall grant-equivalent of the restructuring, only small amounts of aid had been granted in most cases, and that the restructuring related to previous loans and thus investments which had already been made.

(92) Above all, the explanations offered by the Greek authorities are not sufficient to permit the Commission to rule out the possibility that certain agricultural processing firms received aid under Ministerial Decision No 69836/B1451 and its subsequent amendments because the fact no specific reference was made to the aforementioned firms does not necessarily indicate that they did not belong to the generic category of processing firms (industrial firms) falling within the scope of the Decision.

(93) In terms of compliance with the conditions referred to in recital 90, the Commission finds that Decision No 69836/B1451 and its subsequent amendments concerned the restructuring of either investment or working capital loans.

(94) With regard to the restructuring of investment loans, on the basis of the information provided by the Greek authorities, the Commission finds that the condition referred to in recital 90(a) has been satisfied, because these loans concerned investments which had already been made.

(95) Moreover, the Commission finds that the second alternative condition referred to in recital 90(c) has been complied with, since beneficiary firms must be deemed viable after restructuring on the basis of an assessment by the financial institutions.

(96) However, the information at the Commission's disposal is not sufficient to establish beyond doubt that the condition referred to in recital 90(b) has been complied with, because the Greek authorities explained in their letter of 9 August 2004 that enterprises engaged in processing and marketing agricultural products were covered by, inter alia, the provisions of Regulations (EEC) No 866/90 and (EC) No 951/97 and that these Regulations were applied in compliance with the provisions thereof, which implies that aid could already have been granted at the maximum intensity provided for in the aforementioned Regulations (75 % for Objective 1 regions, which applies to all of Greece) and that it is possible that the operation of the scheme in question could, as a result of the cumulation of aid, have resulted in this intensity being exceeded.

(97) With regard to the restructuring of working capital loans, the scheme could not have been applied in compliance with all the conditions set out in recital 90, as the first condition (point (a)) explicitly states that loans must be linked to investments.

II. *From 1 January 1998 to 30 June 2000*

(98) In 1997, the conditions set out in recital 90 were replaced by the provisions of Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'the 1997 Guidelines') ([37]). Point 4.4 of the aforementioned Guidelines stipulates that: 'As regards the agricultural sector, these Guidelines will enter into force on 1 January 1998 for new State aids. For existing ones, entry into force will be on the same date or, in the event that the Commission has opened the procedure pursuant to Article 93(2) of the [EC] Treaty against one more or more Member States in this context, once the Commission has adopted a final decision vis-à-vis the Member State(s) concerned pursuant to Article 93(2) of the [EC] Treaty.'

(99) The 1997 Guidelines, entirely new for the agricultural sector provided for, inter alia:

(a) rescue aid: liquidity measures, warranted on the grounds of serious social difficulties and consisting of loan guarantees or loans bearing normal commercial interest rates, restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies), paid only for the time needed to devise the necessary and feasible recovery measures, and having no undue adverse effects on the industrial and agricultural situations in other Member States;

(b) restructuring aid: the granting of aid linked to a restructuring plan entailing a capacity reduction or irreversible closure of production capacity where there is structural excess capacity in the sector (the capacity reduction must be supplementary to any applicable in the absence of restructuring aid), the only exemption to this being in cases where the totality of decisions taken in favour of all beneficiaries over any consecutive 12-month period does not involve a quantity of product which exceeds a certain percentage of the total annual production of that product in that country (3 % for measures targeted on a particular category of products or operators and 1,5 % for non-targeted measures).

([37]) OJ C 283, 19.9.1997, p. 2.

(100) The Member States were permitted to ask for these agricultural provisions to be applied instead of those in the 1997 Guidelines for sectors other than agriculture (stringent conditions applied to these sectors, particularly in respect of the restructuring plan and the beneficiary's contribution to restructuring — see recitals 109 to 121 of section (b) below, 'Non-agricultural sector').

(101) In their letter of 9 August 2004 the Greek authorities failed to provide any information which might enable the Commission to establish that the aid scheme had been adapted in order to comply with these provisions and that the aid granted during the period in question was therefore granted in accordance with the relevant conditions laid down in the 1997 Guidelines, meaning either the conditions described under recital 99(b) above or the conditions laid down for the sectors other than agriculture (submission of a restructuring plan to restore viability on the basis of realistic assumptions within a reasonable time-scale, mitigation of the effects on competitors, due regard for the 'one time, last time' principle, capacity reduction in the case of structural excess capacity in the sector concerned and aid in proportion to the restructuring costs and benefit that also the social costs of restructuring).

III. *From 1 July 2000 until 30 June 2003*

(102) The 1997 Guidelines were replaced on 9 October 1999 with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'the 1999 Guidelines') ([38]). Point 6.3 of the 1999 Guidelines states that 'Member States must adapt their existing rescue and restructuring aid schemes which are to remain in operation after 30 June 2000 in order to bring them into line with [the] Guidelines … after that date.' Moreover, 'to enable the Commission to monitor the adaptation process, Member States must let it have a list of all such schemes before 31 December 1999. They must subsequently, and in any event before 30 June 2000, provide it with sufficient information to enable it to check that the schemes have indeed been modified in accordance with [the] Guidelines.'

(103) The 1999 guidelines also included a specific section on restructuring firms in difficulty in the agricultural sector. As compared with the 1997 Guidelines, this section provided a definition of structural excess capacity in the sector, limited the exemption referred to in recital 99(b) to firms in the primary sector (with the result that the sub-sector of the processing and marketing of agricultural products automatically faced a capacity reduction requirement) and introduced the 'one time, last time' condition which meant that restructuring aid could only be granted once.

(104) In their letter of 9 August 2004, the Greek authorities failed to provide any information which might enable the Commission to establish that the aid scheme had been adapted in order to comply with these provisions and that the aid granted during the period in question was therefore granted in accordance with the relevant conditions laid down in the 1999 Guidelines, in other words following the submission of a restructuring plan entailing closure of capacity in the case of structural excess capacity, applying the limited exemption referred to in recital 103 where necessary, and based on the 'one time, last time' principle.

(ii) **Guarantees**

(105) Another factor in the Commission's decision to initiate the procedure laid down in Article 108(2) of the Treaty is the issue of the compatibility of any aid granted in the form of guarantees. The Greek authorities made a number of observations in their letter of 9 August 2004 (see recital 57(c) and (g)). However, the Commission finds it necessary to comment on these observations as follows:

(a) with regard to point (c), the fact that the granting of guarantees is subject to strict conditions does not in itself exclude the existence of State aid — on the contrary, the rules which applied during the life-span of the scheme in question, as set out in the letters to the Member States ref. SG(89) D/4328 of 5 April 1989 and SG(89) D/12772 of 12 October 1989 and in point 38 of the Commission communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector ([39]), clearly state that '… all guarantees given by the State directly or by way of delegation through financial institutions [fall] within the scope of Article 92(1) of the EEC Treaty,' and impose the application of conditions which may include the firm being declared bankrupt. Whilst it is true that the abovementioned letters were replaced in 2000 by the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, which laid down conditions enabling the existence of State aid to be excluded, none of the information provided in the letter from the Greek authorities of 9 August 2004 demonstrates that the guarantees granted met any of these conditions;

(b) even if the Greek authorities had supplied information intended to demonstrate that the guarantees granted fulfilled the conditions for excluding State aid, the Commission would not have been able to accept the justification as, to cite but one example, the exemption only applies if the beneficiary firms are not in financial difficulty;

([38]) OJ C 288, 9.10.1999, p. 2.

([39]) OJ C 307, 13.11.1993, p. 3.

(c) as regards point (g), the fact that the guarantee does not cover certain charges in no way demonstrates that all the conditions under which the aid inherent in the granting of a guarantee can be considered compatible with the internal market have been fulfilled; moreover, it must be acknowledged that none of the other information provided by the Greek authorities in their letter of 9 August 2004 demonstrates that the conditions have been met.

(106) That being clear, the Commission therefore considers that the guarantees constituted, during the life-span of the scheme in question, part of a package of instruments for granting aid to firms in difficulty and that as a result their compatibility is linked to the restructuring process as a whole, for which, as sufficiently indicated in the analysis in recitals 94 to 104, the Greek authorities have not provided sufficient information to remove the doubts expressed by the Commission when it initiated the procedure provided for under Article 108(2) of the Treaty (these findings in respect of guarantees apply equally to the three procedures referred to in this Decision and to all the sectors mentioned, with the exception of the guarantees provided for in Ministerial Decision No 2/82257/0025 of 18 December 2000, which, in view of the viability criterion used — viability prior to debt restructuring — will be examined separately).

(107) None of the other arguments put forward by the Greek authorities in their letter of 9 August 2004 (the rate of interest applied, the issue of the existence or otherwise of additional expenditure arising from Ministerial Decisions which formed an integral part of the legal basis of the scheme, frequency with which interest is calculated) contain any substance which alters the Commission's position as outlined above.

(108) Since the information provided by the Greek authorities does not remove the doubts expressed by the Commission when it initiated the procedure laid down in Article 108(2) of the Treaty, the Commission can only conclude that the scheme in question is incompatible with the common market.

(b) ***Non-agricultural sector***

(109) As in the case of the agricultural sector, the Commission must examine the aid in question in the light of the rules applicable to aid for rescuing and restructuring firms in difficulty.

(110) At the time of entry into force of Ministerial Decree No 69836/B1461, i.e. 1 October 1993, the rules in question were set out in the Eighth Report on Competition Policy, and in particular under points 177, 227 and 228 of the latter.

(111) Point 177 of the Report states that while rescue measures may be needed in order to provide a breathing space during which longer-term solutions to a company's difficulties can be worked out, they should not frustrate any necessary reductions in capacity and should therefore be limited to cases where they are required to cope with acute social problems.

(112) Point 227 of the Report states that rescue aid can be warranted pursuant to the Treaty when linked to restructuring aimed to restore the firm and/or regions concerned to long-term viability and when applied specifically enough to a given region or industry to allow its effects to be assessed.

(113) Point 228 of the Report further clarifies the Commission's position in respect of rescue aid and defines restructuring aid.

(114) Rescue aid must:

(a) consist of liquidity in the form of loan guarantees or loans bearing the normal commercial interest rates;

(b) be restricted to the amount needed to keep a firm in business, to cover wage and salary costs and routine supplies;

(c) be paid only for the time needed (generally six months) to draw up the necessary and feasible recovery measures;

(d) be warranted on the grounds of serious social difficulties and keeping the firm in operation must not have any adverse effects on the industrial situation in other Member States.

(115) Restructuring aid must also be strictly conditional on the implementation of a sound restructuring and/or conversion programme and duly and effectively serve to restore the viability of the production concerned, the intensity and amount of aid must be restricted to the strict minimum for supporting the firm during the inevitable transitional period before such a programme takes effect, and the period involved must therefore be limited and the assistance gradually reduced.

(116) These conditions were replaced by the 1994 Community guidelines on State aid for rescuing and restructuring firms in difficulty ([40]), which entered into force on 23 December 1994 (hereinafter 'the 1994 Guidelines'), and subsequently by the 1997 Guidelines, which entered into force on 1 January 1998, and then by the 1999 Guidelines, which applied from 1 July onwards taking into account the adjustment period extended to Member States with regard to aid schemes (see recitals 98 and 102).

([40]) OJ C 368, 23.12.1994, p. 12.

(117) The 1994 Guidelines confirm Commission policy in respect of rescue aid (see recital 114) and define in more detail the content and implications of the restructuring plans to be submitted (prospect of the restoration of viability on the basis of realistic assumptions within a reasonable time-scale, mitigation of the effects on competitors, due regard for the 'one time, last time' principle, capacity reduction in the case of structural excess capacity in the sector in question and aid in proportion to the restructuring costs and benefit that also covers the social costs of restructuring).

(118) In the non-agricultural sectors, the 1997 Guidelines, which were a result of the regular review of Commission policy on rescuing and restructuring of firms in difficulty, reiterate the content of the 1994 Guidelines.

(119) The 1999 Guidelines apply stricter conditions to the granting of rescue aid by introducing a set time-frame for submitting the restructuring plan. In terms of restructuring, the Guidelines are far more restrictive in respect of SMEs and provide for the possibility of compulsory capacity reduction even in the absence of structural excess capacity in the sector.

(120) Since the explanations provided by the Greek authorities in their letter of 9 August 2004 apply equally to the agricultural and non-agricultural sectors, the Commission can only conclude, as it has done in the case of the agricultural sector, that none of the information provided by the Greek authorities enables the Commission to establish that the various conditions laid down in the 1994, 1997 and 1999 Guidelines were fulfilled (to cite but one example, there is nothing to suggest that the beneficiary firms submitted a restructuring plan including the necessary compensatory measures). This finding applies equally to compliance with the provisions set out in the Eighth Report on Competition Policy.

(121) In the absence of evidence of compliance with the above-mentioned provisions, the Commission is unable to find that the aid was granted following the submission of a restructuring plan which included all the elements required by the various rules referred to above (in particular, the prospect of the restoration of viability on the basis of realistic assumptions within a reasonable time-scale, mitigation of the effects on competitors, due regard for the 'one time, last time' principle, capacity reduction and aid in proportion to the restructuring costs and benefit that also covers the social costs of restructuring). The doubts that the Commission expressed when it initiated the procedure laid down in Article 108(2) of the Treaty therefore persist and the Commission can only conclude that the scheme in question is incompatible with the common market.

V.II.2. AID TO FIRMS IN THE PREFECTURES OF FLORINA AND KILKIS, ADDRESSED WHEN THE SECOND PROCEDURE WAS OPENED

(a) ***Agricultural sector***

(122) In their letter of 18 August 2005, the Greek authorities argued that the basic Decision governing the granting of aid (Ministerial Decision No 66336/B.1398/1993) concerned industrial and craft enterprises and that none of the provisions thereof concerned agricultural firms.

(123) The Commission notes this information and considers it unnecessary, therefore, to examine the scheme in question in the light of the rules applicable to State aid to the agricultural sector at the time the aid was granted.

(b) ***Non-agricultural sector***

(124) The Commission, which considered at the time the procedure was initiated that the scheme was aimed at firms in difficulty because Ministerial Decision No 66336/B.1398/1993 stipulated that the firms must be viable after restructuring (which in itself did not exclude the possibility that the firms were in difficulty when admitted to the aid scheme), must analyse the compatibility of the aid in question in the light of the rules on rescue and restructuring aid to firms in difficulty in place at the time the aid was granted.

(125) The rules on rescue and restructuring aid to firms in difficulty in place at the time the aid in question was granted were, in chronological order, the provisions set out in points 177, 227 and 228 of the Eighth Report on Competition Policy, the 1994 Guidelines and the 1997 Guidelines.

(126) Regarding compliance with the provisions of points 177, 227 and 228 of the Eighth Report on Competition Policy and the 1994, 1997 and 1999 Guidelines, the explanations offered by the Greek authorities in their letter of 18 August 2005 are identical to those put forward to justify the granting of aid in the Prefectures of Kastoria and Evia (the arguments of the Greek authorities detailed in recital 57(a) to (f) are the same as those set out in recital 56(a) to (e)). The Commission's analysis in recitals 110 to 121 therefore applies equally to the case in question, meaning that the doubts expressed by the Commission when it initiated the procedure provided for in Article 108(2) of the Treaty have not been removed and that the Commission can only conclude that the scheme in question is incompatible with the common market.

(127) In their letter of 18 August 2005, the Greek authorities also sought to justify the aid in question on the grounds that the Prefectures of Florina and Kilkis border on the former Yugoslav Republic of Macedonia and that the local firms suffered greatly as a result of the instability and the state of war in that region.

(128) This reference to exceptional occurrences might have permitted the application of Article 107(2)(b) of the Treaty under which aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market. However, the Greek authorities have not supplied any evidence of the difficulties they claim the firms in the two Prefectures experienced or establishing a causal link between those difficulties and the instability in the region caused by events in Yugoslavia. Furthermore, the Commission does not have any information which suggests that the events referred to by the Greek authorities could have had the effects described throughout the life-span of the scheme. Finally, the Commission wonders why the scheme applied only to certain sectors of the economy in the two Prefectures whereas the events referred to would logically have affected all local firms, irrespective of sector.

(129) In view of these factors, the Commission cannot see how Article 107(2)(b) of the Treaty could be applied to the aid scheme in question. Therefore, the Commission can only conclude, once again, that the scheme in question is incompatible with the common market.

V.II.3. AID IN THE PREFECTURES OF RODOPI, EVROS, XANTHI, LESBOS, SAMOS, CHIOS AND THE DODECANESE, ADDRESSED WHEN THE THIRD PROCEDURE WAS OPENED

(130) In view of the fact that the Commission had indicated in the decision to initiate the procedure that, based on the information available, it would be unable to determine whether the two Ministerial Decisions of 1989 and those which followed (detailed in recitals 50 to 52 above) constituted an independent aid scheme or whether they formed an integral part of the overall system which has been analysed in the various procedures opened, and given that the letter of 10 May 2006 from the Greek authorities provided no explanation in this regard, the compatibility with the internal market of the aid provided for in the Ministerial Decisions under scrutiny will be assessed separately. The guarantees provided for in Ministerial Decision No 2/82257/0025 of 18 December 2000 (see recital 49) will also be examined separately since the latter provides that the beneficiary firms must be viable and not viable after restructuring as in the other cases referred to here.

(131) With regard to the Ministerial Decisions referred to in recitals 44 to 52, the analysis will consist of two main parts, an agricultural and a non-agricultural one, as in the case of the schemes examined in the first two procedures, but the non-agricultural part will be divided into several sub-parts — the industrial, hotel and craft sectors on the one hand, and the shipping sector on the other. The coal sector, which was also addressed by the opening of the procedure provided for in Article 108(2) of the Treaty will not be examined here because the Greek authorities explained in their letters of 15 and 29 March 2011 that the relevant extraction activities concerned marble and stone, which means the firms involved fall within the scope of the analysis of the industrial sector.

(a) ***Agricultural sector***

(132) The Commission must examine the scheme in the light of the rules applicable to State aid for rescuing and restructuring firms in difficulty when the aid was granted.

(133) With regard to the agricultural sector, the rules in question have been set out in recitals 90, and 98 to 103. Given that the scheme in question expired on 31 December 2005, the 2004 Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([41]) (hereinafter: '2004 Guidelines') should be added to the list of applicable regulations; the 2004 Guidelines came into force on 10 October 2004 tightening the conditions established in the 1999 Guidelines (notably by reaffirming that the contribution of the beneficiary to the restructuring must be real and free from aid). Moreover, in view of the nature of the beneficiaries (industrial livestock firms and dairy farms), there are grounds for considering that the scheme could have covered both primary production (livestock breeding alone) and processing/marketing (such as farms with a on-site processing line).

(134) In terms of compliance with the conditions themselves, the Commission finds that Ministerial Decision No 1648/B22 of 13 January 1994 and its subsequent amendments provided for the restructuring of loans that could be used for investment or working capital.

(135) Regarding the restructuring of loans linked to investments, the Greek authorities, in their letter of 10 May 2006, provided no information allowing the Commission to confirm that the restructured loans were actually linked to investments that had been already carried out. Consequently, the Commission cannot find that the condition set out in recital 90(a) has been satisfied.

(136) Similarly, the Commission is not able to conclude without any doubt, on the basis of the information available, that there has been full compliance with the condition set out in recital 90(b), since Greece provided no details in this connection in its letter of 10 May 2006.

(137) With regard to the requirement set out in recital 90(c), the Commission finds that the second alternative has been satisfied, since the beneficiary firms had to be viable after restructuring based on an assessment carried out by the banks.

([41]) OJ C 244, 1.10.2004, p. 2.

(138) With regard to the restructuring of loans used to constitute working capital, the scheme in question could not have been applied in compliance with all the conditions set out in recital 90 either, as the first requirement (recital 90(a)) specifically lays down that loans must be linked to investments.

(139) Concerning the aid granted from 1 January 1998 until the date of applicability of the 2004 Guidelines, the analysis carried out in recitals 98 to 104 also applies to the substance of the present case since, in its letter of 10 May 2006, Greece provided no information allowing the Commission to confirm that a restructuring plan together with the obligatory contribution was presented with a view to obtaining the aid in question.

(140) Lastly, with regard to the aid granted from the date of applicability of the 2004 Guidelines, the Commission can but remark that, in its letter of 10 May 2006, Greece provided no facts allowing the Commission to confirm that a restructuring plan together with the obligatory contribution had been presented with a view to obtaining the aid in question. Consequently, it is not in a position to be able to remove all the doubts expressed when it initiated the procedure provided for in Article 108(2) of the Treaty, and therefore is forced to conclude that the scheme in question is incompatible with the common market.

(141) In their letter of 10 May 2006, the Greek authorities sought to justify the aid in question on the grounds of the war in the neighbouring regions. Greece took the view that the context rendered the aid eligible for exemption under Article 107(3)(a) and (c) of the Treaty (cf. recital 59(a)).

(142) The Commission cannot accept this argument for several reasons:

(a) from a regulatory viewpoint, the existence of a conflict is deemed to be an exceptional occurrence that can only be covered by Article 107(2)(b) of the Treaty, according to which aid intended to make good the damage caused by natural disasters or by other exceptional occurrences is compatible with the internal market;

(b) in the agricultural sector, compatibility of the aid measures is assessed in the light of the exemption provided for in Article 107(3)(c) of the Treaty, which lays down that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible with the internal market, and not in the light of the exemption provided for in Article 107(3)(a) of the Treaty, which establishes that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349 ([42]), in view of their structural, economic and social situation may be considered compatible with the internal market;

(c) in order for this derogation to apply, this would have required that the aid be granted in compliance with the rules governing the aid for rescuing and restructuring firms in difficulty; whereas it has been shown above that this was not the case.

(143) The Commission is not able to ascertain the applicability of Article 107(2)(b) of the Treaty on the following grounds:

(a) in its letter of 10 May 2006, Greece rightfully pointed out that the overall and per capita GDP in the Prefectures concerned was very low in relation to other regions in the country during the period covered by the scheme, but it also stated that GDP did record some growth in this same period, which shows that the war in the neighbouring regions did not have a catastrophic impact on the economies of the affected zones;

(b) as the description of the scheme's legal basis shows, some changes were made to the scheme almost 10 years after the end of hostilities in the neighbouring regions; consequently, Greece cannot be considered to have been forced to intervene because of a state of war in the bordering areas and that as a result there existed a relation of cause and effect between this and the difficulties of firms (a sole example is sufficient to bear out this remark: Ministerial Decision No 2/64046/0025/2003 of 28 January 2004 referred to in recital 48 covers loans that could be taken out by industrial businesses — in other words potentially by industrial livestock firms — until 31 December 2004).

(144) With respect to the other comments made by the Greek authorities in their letter of 10 May 2006, the Commission stresses the following (these observations excluding (b) also apply to all the other sectors referred to in the procedure opened):

(a) problems such as the lack of dynamism in local markets or the drop in demand cannot be resolved by aid grants to firms in difficulty without restructuring. Structural measures are a more appropriate means of assistance;

(b) the share of meat production of the Prefectures concerned in Greece's overall production has absolutely no bearing on the risk of distortion of competition arising from aid granted outside the established regulatory framework (in the present case, aid granted to firms in difficulty without a restructuring plan); according to the case-law of

([42]) Island regions.

the Court of Justice, where financial aid granted by a Member State strengthens the position of an undertaking compared with competitors (which is the substance in this present case), this aid may give rise to a competitive advantage over the other undertakings not benefiting from this assistance ([43]);

(c) the question of the viability of the firms within the meaning established in the two Ministerial Decisions issued in 1989 will be dealt with later on in this Decision;

(d) the argument according to which the account set up pursuant to Law No 128/75 did not constitute a State resource was dealt with in recital 82(d).

(145) In view of these considerations, the Commission is forced to conclude that the scheme in question is incompatible with the internal market.

(b) ***Industrial, craft and hotel sectors***

(146) The Commission must examine the scheme in question in the light of the rules governing aid for rescuing and restructuring firms in difficulty.

(147) As in the case of aid referred to in the first two procedures, the rules applicable to rescuing and restructuring firms in difficulty at the time the aid in question was granted were, in chronological order, points 177, 227 and 228 of the Eighth Report on Competition Policy and the 1994, 1997 and 1999 Guidelines. In the case under consideration, as the regime expired on 31 December 2005 in certain Prefectures, the 2004 Guidelines should be added to this list.

(148) The information sent by the Greek authorities in their letter of 10 May 2006 and set out in recital 59 does not include any details with regard to compliance with rules governing the rescuing and restructuring of firms in difficulty. Consequently, the Commission is not in a position to verify if there was compliance with points 177, 227 and 228 of the Eighth Report on Competition Policy and the 1994, 1997, 1999 and 2004 Guidelines.

(149) Therefore, the Commission is not in a position to be able to remove all the doubts it expressed when it initiated the procedure provided for in Article 108(2) of the Treaty, and so it is forced to conclude that the scheme in question is incompatible with the common market.

(c) ***Shipping sector***

(150) The compatibility of the scheme in question with the internal market will be assessed from two viewpoints, reflecting the fact that the term 'shipping sector' covers both shipbuilding and transport by ship.

([43]) Cf. footnote on No 24, Case C-730/79, grounds 11 and 12.

(151) The Commission must examine the scheme in question in the light of the rules governing aid for rescuing and restructuring firms in difficulty.

(152) Regarding shipbuilding, the rules applicable for rescuing and restructuring firms in difficulty following the entry into force of Ministerial Decision No 1648/B.22 of 13 January 1994 have been the following:

(a) until 31 December 1998: Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding ([44]);

(b) from 1 January 1999 to 31 December 2003: Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ([45]);

(c) since 1 January 2004: the Framework on State aid to shipbuilding ([46]).

(153) In their letter of 10 May 2006, the Greek authorities provided no information that might allow the Commission to find that the aid scheme in question had been applied in compliance with the rules applicable to rescuing and restructuring firms in difficulty in this sector. Therefore, the Commission is not in a position to dispel the doubts it expressed when it initiated the procedure provided for in Article 108(2) of the Treaty and is forced to conclude that the scheme in question is incompatible with the internal market.

(154) Similarly, with regard to maritime transport, the Commission shall examine the scheme in question in the light of the rules governing aid for rescuing and restructuring firms in difficulty.

(155) Since the entry into force of Ministerial Decision No 1648/B.22 of 13 January 1994, the rules governing the rescue and restructuring of firms in difficulty in the shipping industry have been and continue to be the following:

(a) 'Financial and fiscal measures concerning shipping operations with ships registered in the Community' ([47]);

(b) Community guidelines on State aid to maritime transport 1997 ([48]);

(c) Community guidelines on State aid to maritime transport 2004 ([49]).

([44]) OJ L 380, 31.12.1990, p. 27.
([45]) OJ L 202, 18.7.1998, p. 1.
([46]) OJ C 317, 30.12.2003, p. 11. This framework was first extended in 2006 (OJ C 260, 28.10.2006, p. 7) with the second extension in 2008 (OJ C 173, 8.7.2008, p. 3).
([47]) SEC(89) 921 final, 3 August 1989.
([48]) OJ C 205, 5.7.1997, p. 5.
([49]) OJ C 13, 17.1.2004, p. 3.

(156) In their letter of 10 May 2006, the Greek authorities again provided no information that might allow the Commission to find that the aid scheme in question had been applied in compliance with the rules applicable to rescuing and restructuring firms in difficulty in the sector. Therefore the Commission is not in a position to remove the doubts it expressed when it initiated the procedure provided for in Article 108(2) of the Treaty and is forced to conclude that the scheme in question is incompatible with the internal market.

(d) ***Aid granted in the Prefectures of Lesbos, Samos, Chios and the Dodecanese, also referred to in the third procedure***

(157) Within the framework of the procedure provided for in Article 108(2) of the Treaty, the Commission, since it did not have sufficient information, considered two hypotheses:

(a) the aid provided for in Ministerial Decision No 2041901 of 16 May 1989 and Ministerial Decision No 2078809 of 10 October 1989 and their amendments was covered by the same framework as that established by the Decisions referred to in recitals 44 to 48;

(b) the aid was part of a financing system that was not set up on the same bases.

(158) In its letter of 10 May 2006, Greece stated that the two Ministerial Decisions issued in 1989 laid down that firms had to be viable prior to and after the restructuring of their debts. The Commission cannot endorse this statement as, following re-examination, it appears that neither of the two Decisions in question establishes that the firms had to be viable prior to and after the restructuring of the debts. Consequently, the Commission will assess the compatibility of the aid covered by the two Decisions and their amendments, basing itself not only on the two hypotheses set out in recital 157, but also without excluding, in the second hypothesis, that the aid may have been granted to firms in difficulty.

(159) Concerning the first hypothesis set out in recital 157, the Commission is forced to find, if the two Ministerial Decisions issued in 1989 and their amendments fall within the same framework as that established by the Ministerial Decisions referred to in recitals 44 to 48, that the analysis carried out in recitals 146 to 149 remains valid, the explanations given by Greece in its letter of 10 May 2006 do not dispel the doubts expressed when it initiated the procedure provided for in Article 108(2) of the Treaty and that it is forced to conclude that the scheme in question is incompatible with the internal market.

(160) With respect to the second hypothesis, two scenarios must be envisaged: aid was granted to firms in difficulty or aid was granted to viable firms.

(161) In the first scenario, the analysis carried out in recitals 146 to 149 remains valid, and the explanations given by Greece in its letter of 10 May 2006 do not dispel the doubts expressed when the Commission initiated the procedure provided for in Article 108(2) of the Treaty and consequently the Commission is forced to conclude that the regime in question is incompatible with the internal market.

(162) In the second scenario, the Commission also notes that Greece's explanations in its letters of 10 May 2006, 15 March 2011 and 29 March 2011 do not allow it to ascertain if the working capital constituted using subsidised loans financed eligible investment within the meaning of Union rules on regional aid (since the entry into force of Ministerial Decision No 2041901 of 16 May 1989, the applicable rules have been the Commission communication on the method for applying Article 92(3)(a) and (c) to regional aid ([50]), followed by the 1998 Guidelines on national regional aid 1998 ([51])). The Commission must therefore conclude that the scheme in question is incompatible with the internal market.

(163) In the event that this working capital did not finance eligible investments within the meaning laid down by the Union rules on national regional aid, the Commission must check whether the aid granted to constitute that capital, which then qualifies as operating aid, can be declared compatible under the relevant provisions of the Union's rules on national regional aid. In view of this, the Commission wishes to underline that it is up to the Member State concerned to fulfil the duty of cooperation it has towards the Commission by providing all the elements required for the Commission to be able to check the compatibility of the aid in question ([52]). Since the information in the various letters sent by Greece does not allow the Commission to verify compliance with the provisions in the Union's rules on national regional aid, it cannot but conclude that the scheme in question is incompatible with the internal market.

Aid in the form of guarantees granted under Ministerial Decision No 2/82257/0025 of 18 December 2000 (see recital 49)

(164) The guarantee granted under Decision No 2/82257/0025 of 18 December 2000 cannot be considered as an instrument to assist the restructuring of a firm

([50]) OJ C 212, 12.8.1988, p. 2.
([51]) OJ C 74, 10.3.1998, p. 9.
([52]) Judgment of the Court of First Instance (now the General Court) in Case T-171 *Region of Sardinia* v *Commission* [2005] ECR II — 2123, point 129.

in difficulty like that provided for in other Decisions referred to in this Decision because Ministerial Decision No 2/82257/0025 lays down that it can only be awarded to viable firms and not to firms that are viable following debt restructuring. Therefore, it should be examined in the light of the applicable State aid rules.

(165) From the entry into force of Ministerial Decision No 2/82257/0025 of 18 December 2000 until 31 December 2005 (the expiry date of the scheme), guarantees were governed by the 2000 Communication.

(166) The 2000 Communication establishes that the Commission must assess the compatibility of aid linked to the grant of a guarantee on the basis of the rules applied to other aid forms and laid down in the various frameworks and guidelines applicable in the sectors concerned. Moreover, the guarantee can only be accepted if its mobilisation is contractually linked to specific conditions which may go as far as the compulsory declaration of bankruptcy of the beneficiary firm or any similar procedure.

(167) In the present case, the Greek authorities did not submit any information on the guarantees granted. As a result, the Commission is unable to assess it in the light of the various rules applicable in the sectors concerned or ascertain if this aid measure could have exceeded the maximum aid intensities applicable, as appropriate, to firms not in difficulty (moreover Greece did not provide any information on compliance with the various rules in their reply to the third procedure).

(168) In these circumstances, the Commission is unable to conclude that the aid granted in the form of guarantees under Ministerial Decision No 2/82257/0025 of 18 December 2000 is compatible with the internal market.

VI. **CONCLUSION**

(169) The Commission notes that Greece unlawfully implemented the aid measures in question in breach of Article 108(3) of the Treaty. The foregoing analysis shows that the aid cannot be declared compatible with the internal market, as Greece has not provided any information establishing compliance with the various rules mentioned, and therefore the Commission is not in a position to dispel the doubts it expressed when opening the various procedures. In this connection, the Commission recalls that it is the responsibility of the Member State concerned to fulfil the duty of cooperation it has towards the Commission by providing all the elements required for it to check the compatibility of the aid in question.

(170) In accordance with Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([53]), where negative decisions are taken in cases of unlawful aid, the Commission must decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary (in the present case, all the firms that have benefited from the provisions of the Ministerial Decisions examined). Greece must take all necessary measures to recover the incompatible aid granted from the beneficiaries. In accordance with the provisions of point 42 of the notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' ([54]), Greece has a time limit of four months following the notification of this Decision to implement it. The aid to be recovered is to include interest calculated in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([55]).

(171) This Decision must be implemented immediately, notably with regard to the recovery of all individual aid granted under the aid scheme, excluding individual aid granted to specific projects which, at the time the aid was granted, met all the conditions established in the *de minimis* or exemption regulation applicable under Articles 1 and 2 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ([56]), or under an aid scheme approved by the Commission.

(172) However, Article 15 of Regulation (EC) No 659/1999 lays down that the powers of the Commission to recover aid are subject to a limitation period. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period and each interruption shall start time running afresh.

(173) In the present case, the dates to which the Commission may go back for recovery purposes are as follows:

(a) concerning aid referred to in the first procedure: 1 October 1993, in view of the fact that the Commission's first action dates from 27 May 2003 whereas Ministerial Decision No 69836/B1461, adopted on 14 September 1993, was published in the Greek Government Gazette on 1 October 1993 and entered into force on that date;

([53]) OJ L 83, 27.3.1999, p. 1.
([54]) OJ C 272, 15.11.2007, p. 4.
([55]) OJ L 140, 30.4.2004, p. 1.
([56]) OJ L 142, 14.5.1998, p. 1.

(b) concerning aid referred to in the second procedure: 22 April 1994, in view of the fact that the Commission's first action dates from 22 April 2004;

(c) concerning aid referred to in the third procedure: 12 November 1994, in view of the fact that the Commission's first action dates from 12 November 2004,

HAS ADOPTED THIS DECISION:

Article 1

The aid schemes in the form of debt restructuring unlawfully implemented by Greece in breach of Article 108(3) of the Treaty of the Functioning of the European Union in the Prefectures of Kastoria, Evia, Florina, Kilkis, Rodopi, Evros, Xanthi and the Dodecanese, and the islands of Lesbos, Samos and Chios are incompatible with the internal market.

Article 2

Individual aid granted under one of the schemes referred to in Article 1 shall not be qualified as aid if, at the time it was granted, it complied with the conditions established by one of the regulations adopted pursuant to Article 2 of Regulation (EC) No 994/98 applicable at the time the aid was granted.

Article 3

1. Greece shall recover the incompatible aid granted under the schemes referred to in Article 1 from the beneficiaries.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

4. Greece shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of notification of this Decision.

Article 4

Recovery of the aid granted under the schemes referred to in Article 1 shall be immediate and effective.

Greece shall ensure that this Decision is implemented within four months of its notification.

Article 5

1. Within two months of the notification of this Decision, Greece shall send the Commission the following information:

(a) the list of the beneficiaries that have received aid under the schemes referred to in Article 1 and the total amount received by each of them under the scheme concerned;

(b) the total amount (capital and interest) to be recovered from each beneficiary in the case of aid which cannot be covered by the *de minimis* rule;

(c) a detailed description of the measures already taken and those planned to comply with this Decision;

(d) the documents showing that the beneficiaries have been ordered to repay the aid.

2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and those planned to comply with this Decision It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.

Article 6

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 19 October 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission