II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 12 June 2012

on the measures SA. 27420 (C 12/2009) (ex N 19/2009) implemented by Finland for Osuuskunta Karjaportti

(notified under document C(2012) 3249)

(Only the Finnish and the Swedish versions are authentic)

(Text with EEA relevance)

(2013/8/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) 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 the provisions cited above and having regard to their comments [1],

Whereas:

1. PROCEDURE

(1) By letter dated 15 January 2009, Finland notified the Commission of a rescue aid consisting of a guarantee and debt rescheduling to Osuuskunta Karjaportti (hereinafter referred to as 'Karjaportti'; at the time of notification it was known as Järvi-Suomen Portti Osuuskunta). By letters dated 5 February 2009, 11 February 2009, 16 February 2009 and 20 February 2009, Finland provided the Commission with further information.

(2) By letter dated 8 April 2009, the Commission informed Finland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) [2] in respect of the notified measures and several measures granted in the past. Following that opening Decision, Finland submitted further information to the Commission by letter dated 13 May 2009.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the aid measures.

(4) The Commission received comments from one interested party. It forwarded them to Finland, which was given the opportunity to comment. Those comments were received by letter dated 28 August 2009. Finland provided further information by e-mail dated 3 November 2009.

(5) By letter dated 15 December 2009, the Commission informed Finland that it had decided to extend the procedure laid down in Article 108(2) of the TFEU in respect of additional aid measures granted in the past. Finland submitted further information by letter dated 12 February 2010.

(6) The Commission decision to extend the procedure was published in the *Official Journal of the European Union* [4]. The Commission invited interested parties to submit their comments on the aid measures. The Commission received no further comments from interested parties.

[1] OJ C 134, 13.6.2009, p. 16; OJ C 58, 10.3.2010, p. 4.

[2] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of Articles are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

[3] OJ C 134, 13.6.2009, p. 16.

[4] OJ C 58, 10.3.2010, p. 4.

(7) On 1 March 2010, Finland informed the Commission that it had withdrawn the notification concerning the guarantee in favour of Karjaportti. By letter dated 26 March 2010 the Commission informed Finland that it would deal with the withdrawal of the notification of the guarantee in the final decision, together with the other measures under assessment. In addition, the Commission addressed questions to Finland, to which Finland replied by letter dated 22 April 2010. The Commission sent an information request to Finland on 15 July 2010, to which Finland replied on 20 August 2010. Another information request was sent by the Commission on 28 September 2010, to which Finland replied on 29 November 2010. Lastly, the Commission asked for additional information by letter dated 16 November 2011. Finland submitted that information on 16 December 2011.

2. BENEFICIARY

2.1. The co-operative Karjaportti

(8) Karjaportti is a co-operative company located in Mikkeli, with production facilities in Mikkeli and Kouvola, both in Eastern Finland (Itä-Suomi), a region eligible for regional aid under Article 107(3)(c) of the TFEU. The co-operative was originally established in 1914. In 1950 it was named Osuusteurastamo Karjaportti; from 31 December 2002 it was known as Järvi-Suomen Portti Osuuskunta and since 14 December 2010, it has been known as Karjaportti. To date, Karjaportti employs 300 people permanently and an additional 100 to 120 seasonal workers during spring and summer.

(9) Karjaportti is active in the manufacturing of food, namely in the field of processing meat into products such as meatballs and sausages. In addition, the co-operative sells packed meat, pieces of meat and carcases. Karjaportti exports little to other Member States.

2.2. Financial situation of Karjaportti

(10) Since 1 December 2004, Karjaportti is subject to court-supervised restructuring proceedings under the Restructuring of Enterprises Act 47/1993 ([5]) (hereinafter referred to as 'court-supervised restructuring proceedings'; for more detailed information on the court-supervised restructuring see recitals 31-43).

(11) Details on the financial situation of Karjaportti before and during the court-supervised restructuring proceedings are provided in the following Table:

Table I

Karjaportti's key financial data in EURO

Year	Turnover	Operating result	Net result (profit/ losses)	Deficit for previous accounting periods	Share capital / Reserves and contingency	Equity balance
2000	139 620 882	8 682	– 1 169 091		7 681 411/ 10 247 107	8 893 097
2001	139 748 861	2 082 662	549 865		7 812 809/ 9 078 473	9 442 963
2002	135 781 234	2 259 488	14 382		7 783 428/ 9 559 942	17 357 751
2003	128 354 480	– 3 299 914	– 6 009 055		7 585 778/ 9 506 525	11 083 248
2004	125 849 631	– 3 972 464	– 10 686 420		7 234 608/ 3 497 953	46 141
2005	101 507 619	– 6 629 915	– 9 235 908	– 7 404 955	7 772 913/ 216 662	– 8 651 289
2006	99 802 293	– 3 485 054	4 277 565	– 16 640 864	8 141 610/ 216 662	– 4 005 028
2007	86 962 069	– 8 916 539	– 7 943 878	– 12 363 299	6 244 277/ 216 662	– 13 846 239
2008	80 901 753	– 3 791 985	– 2 770 037	– 20 307 178	5 768 185/ 216 662	– 17 092 368
2009	64 793 763	305 936	– 2 124 435	– 23 077 214	5 077 160/ 216 662	– 19 907 828

([5]) Laki yrityksen saneerauksesta 25.1.1993/47, Lag om företagssanering 25.1.1993/47.

(12) In the year 2008, the Finnish Tax authorities filed twice for bankruptcy proceedings against Karjaportti. At the first filing, on 7 October 2008, they presented an injunction to pay EUR 461 579. The filing was then withdrawn by the tax authorities. A re-filing took place on 1 December 2008 with an injunction to pay EUR 981 658. The bankruptcy proceedings against Karjaportti have been closed since June 2009 as the co-operative has paid outstanding debt to the tax authorities.

3. DESCRIPTION OF THE MEASURES

(13) The measures under consideration consist of measures granted by the City of Mikkeli, where Karjaportti is located, and measures granted by Finnvera Oyj (hereinafter referred to as 'Finnvera'). Finnvera is a specialised financing company owned by the state of Finland and it is the official Export Credit Agency of Finland ([6]). In the following, the measures granted by the City of Mikkeli are first described (Section 3.1.), and thereafter the measures granted by Finnvera (Section 3.2.).

3.1. Measures granted by the City of Mikkeli

3.1.1. *Guarantee granted on 12 June 2000 (measure 1) and Assignment of land (measure 2)*

(14) Measure 1: By decision of 12 June 2000, the City Council of Mikkeli granted an absolute guarantee ("takaus") to Karjaportti, covering 100 % of a future loan amounting to FIM 25 million (approximately EUR 4,2 million ([7]). The loan was provided to Karjaportti in September 2000 at a fixed interest rate of 5,35 % and for a duration of 10 years by the bank Tapiola Pankki Oy ('Tapiola'). At the same time, the guarantee was implemented by the City Board of Mikkeli, signing the guarantee agreement. The guarantee was provided without a guarantee fee and as an absolute guarantee where the guarantor is liable for the principal debt as if it were the guarantor's own debt, meaning that the creditor could ask for the repayment of principal debt from the guarantor when the principal debt has become due. The guaranteed loan was provided in order to finance the construction of a production facility in the district of Tikkala in Mikkeli ([8]).

(15) The guarantee was collateralised by way of already existing real property mortgages with a registered value of FIM 7,5 million (EUR 1 261 409) ([9]). When measure 1 was granted, approximately FIM 3 million of the real property mortgages was available as collateral. In addition, the guarantee was collateralised by business mortgages ([10]) with a registered value of FIM 25 million and FIM 30,5 million respectively on movable assets of Karjaportti.

(16) When the court-supervised restructuring proceedings commenced in December 2004, Tapiola demanded payment of the outstanding debts of Karjaportti from the City of Mikkeli under the guarantee. After having made such payments to Tapiola, the City of Mikkeli stepped in as a creditor of Karjaportti in place of Tapiola (see recital 34).

(17) Measure 2: Also in 2000, Karjaportti was assigned a plot for the construction of the Tikkala production facility by Mikkeli rural district ([11]). The size of the plot was 152 366 m^2 and the City of Mikkeli provided it without consideration to Karjaportti, that is to say, no purchase price was paid. In addition, the City of Mikkeli made a commitment to transfer the land ready for construction. To that end, the City of Mikkeli reimbursed Karjaportti the costs of levelling the land, amounting to FIM 2 000 000 (approximately EUR 336 376) ([12]).

(18) Other measures were granted to Karjaportti for the construction of the production facility in Tikkala. Finnvera granted loans and guarantees of FIM 20 000 000 (approximately EUR 3 363 759) and the Ministry of Employment and the Economy (then: Ministry of Trade and Industry) awarded direct grants amounting to FIM 15 000 000 (approximately EUR 2 552 819).

(19) Overall, the measures described in recitals 14-18 to be provided for the construction of the production facility in Tikkala had a nominal value of FIM 63 783 719 (approximately EUR 10 757 652). The gross grant equivalent of the measures granted amounted to EUR 3 617 143, according to the overview provided in the following Table:

([6]) See description of Finnvera in recital 56.
([7]) Exchange rate used EUR 1 = FIM 5,95.
([8]) The guarantee was referred to as measure 1 in the first opening decision.
([9]) The City of Mikkeli originally received a real property mortgage on the Rokkala property of Karjaportti (property 491-8-8-2) with a registered amount of FIM 7,5 million (EUR 1 261 409); in 2002, the mortgage was transferred to the production site of Tikkala (property 491-35-1-1), as the City of Mikkeli had bought the Rokkala property (see description of measure 3, recital 25).
([10]) A business mortgage is created by the issuing of a business mortgage note, registered in the business mortgage register; those notes are pledged and delivered as security to the creditor of the respective business. The registered capital of the notes, together with accrued interest at the rate set out in the notes as well as the amount expressed therein to be reserved for enforcement costs, constitutes the maximum amount that can be received by their holder. A business mortgage will cover, in principle, all business assets (such as machinery, equipment, trademark rights, raw materials, products, cash, receivables) of the debtor company, with the exception of immovable property.
([11]) Mikkeli rural district became part of the City of Mikkeli in 2001.
([12]) See section 155 of the minutes of a meeting of the City Board of Mikkeli dated 25 February 2002.

Table II

Gross grant equivalent of the measures granted in EURO

Measure	Amount	Gross grant equivalent
Guarantee City of Mikkeli	4 204 698	345 786
Assignment of land by City of Mikkeli	300 000	300 000
Levelling of the site paid by City of Mikkeli	336 376	336 376
Finnvera loan	1 681 879	82 162
Direct grants Ministry of Trade and Industry	2 552 819	2 552 819
TOTAL	**10 757 652**	**3 617 143**

(20) The gross grant equivalent of the guarantee granted by the City of Mikkeli was calculated by Finland in the following way: it compared the market rate for a comparable guarantee (1,75 %) to the guarantee premium actually charged by the City of Mikkeli (0 %). The aid element in the guarantee equals the difference between the two premiums, that is 1,75 %. If the City of Mikkeli had charged a premium at that rate, it would have collected FIM 2 406 250 FIM as premiums during the validity of the guarantee of 10 years, which discounted at a rate of 5,7 % on the date the guarantee was granted would make FIM 1 055 949 FIM (approximately EUR 345 786).

(21) The gross grant equivalent for the Finnvera loan was calculated by Finland in the following way: It compared the interest that Finnvera charged for the loan (6 months EURIBOR plus 1,75 %) with the reference rate in accordance with Commission Notice on the method for setting the reference and discount rates ([13]) that was valid at the time the loan was granted. The aid element equals the difference between the two rates for the duration of the loan (10 years). The commission that Karjaportti had to pay for the loan (0,5 %) was deducted from the result of the calculation. Discounted at a rate of 5,7 %, on the date the guarantee was granted, the aid element was EUR 82 162.

(22) The eligible investment costs were calculated on the basis of the costs relating to acquisition prices, according to the breakdown provided in the following Table:

([13]) OJ C 273, 9.9.1997, p. 3.

Table III

Breakdown of the project costs relating to acquisition prices in EURO

Land and Buildings	14 208 192
Machinery and equipment	11 155 379
Office equipment / software	572 356
TOTAL	**25 935 928**

(23) The aid element of EUR 3 617 143 corresponds to an aid intensity of 13,95 % of the total eligible costs of EUR 25 935 928.

(24) Karjaportti had applied for the measures granted by the City of Mikkeli before work on the investment project was started ([14]). The measures were taken by Finland to promote regional development. The new production site should raise the number of jobs in the region from around 400 to 550 or 600.

3.1.2. *Purchase of Land (measure 3)*

(25) On 28 February 2002, the City of Mikkeli bought six properties and one building with related leases from Karjaportti. The purchase price paid was EUR 6 646 787 ([15]). At the closing date of the purchase of the properties by the City of Mikkeli, and in case of one property, at the date when its possession was transferred to the City of Mikkeli, the properties were free of mortgages.

3.1.3. *Guarantee granted on 8 March 2004 (measure 4)*

(26) By decision of 8 March 2004, the City Council of Mikkeli granted a guarantee covering 100 % of a loan of EUR 607 054 to be granted by Tapiola. On 14 April 2004, the loan was granted at a fixed interest rate of 4 % with a duration of 10 years. The guarantee was granted without guarantee fee and as an absolute guarantee. The loan and the guarantee respectively were given to replace a loan granted by Tapiola for which the City of Mikkeli had originally granted a guarantee by a decision of 2 November 1992. The original loan amounted to FIM 7,5 million (EUR 1 261 409) and was granted at an interest rate of 4,5 % for a duration of 10 years.

([14]) According to the minutes of the City Council of Mikkeli, dated 12 June 2000, the measures were taken concerning the future construction of a new manufacturing plant.

([15]) To this price, EUR 336 376 were added for levelling costs that were reimbursed to Karjaportti by the City of Mikkeli. Accordingly, the deed for the purchase of the properties includes a purchase price of EUR 6 983 163.

(27) The guarantee was collateralised by way of the property mortgages on the production site of Tikkala that were already used as collateral for measure 1. In addition, the City of Mikkeli held a business mortgage with a value registered in the business mortgage register of FIM 25 million. Also this business mortgage was already used as collateral for measure 1.

(28) When the court-supervised restructuring proceedings commenced in December 2004, Tapiola demanded payment of the outstanding debts towards Karjaportti from the City of Mikkeli under the guarantee. After having made such payments, the City of Mikkeli stepped in as a creditor of Karjaportti in place of Tapiola (see recital 34).

3.1.4. *Guarantee granted on 10 May 2004 (measure 5)*

(29) By decision of 10 May 2004, the City Council of Mikkeli granted an absolute guarantee that covered 100 % of a EUR 1,7 million loan to be granted by Tapiola. Subsequently, on 8 June 2004, Tapiola decided to grant the 3 year investment loan amounting to EUR 1,7 million at a variable interest rate of 12 months EURIBOR plus a fixed margin of 0,3 %. The guarantee was granted without a guarantee fee and as an absolute guarantee. The guarantee was collateralised by way of the same property mortgage on the production site of Tikkala as measure 1 and measure 4 and the very same business mortgage ([16]), held by the City of Mikkeli. In addition, the City of Mikkeli received a new collateral mortgage instrument with a registered value of EUR 1 135 268 on the production site of Tikkala as a special pledge.

(30) When the court-supervised restructuring proceedings commenced in December 2004, Tapiola demanded payment of the outstanding debts towards Karjaportti from the City of Mikkeli under the guarantee. After having made such payments, the City of Mikkeli stepped in as a creditor of Karjaportti in place of Tapiola (see recital 34).

3.1.5. *Measures taken within the court supervised restructuring proceedings (measure 6)*

(31) On 17 November 2004, Karjaportti, together with the creditors Nordea Bank Finland Abp (hereinafter 'Nordea Bank'), Nordea Rahoitus Suomi Oy (hereinafter 'Nordea Financing') and OKO Osuuspankkien Keskuspankki Oyj (since 1 March 2008, this company is named Pohjola Pankki Oyj; hereinafter 'OKO/Pohjola Bank') filed for court-supervised restructuring proceedings with the District Court of Mikkeli. According to Finnish law, such restructuring proceedings may be undertaken in order to rehabilitate a distressed debtor's viable business, to ensure its continued viability and to achieve debt arrangements ([17]). The court-supervised proceedings concerning Karjaportti were commenced by decision of the District Court of Mikkeli on 1 December 2004. Legally, from the commencement, the debtor is not allowed to repay restructuring debts or provide security for such debts ([18]). Restructuring debts are all debts accrued before the commencement date.

(32) Subsequently, a restructuring programme was submitted to the District Court on 23 June 2005 and a revised restructuring programme on 30 November 2005. The duration of the restructuring programme, which was approved by the District Court on 30 January 2006, was ten years (until 1 July 2015). Between 2004 and 2008 Karjaportti has terminated 372 employment contracts and outsourced some of its activities such as acquisitions, butchery and cutting activities.

(33) Overall, approximately [30-70] (*) % of the restructuring debts subject to the court-supervised restructuring proceedings were owed to private creditors. The private creditors having the biggest shares in those debts were the above mentioned banks Nordea Bank and OKO/Pohjola Bank as well as Nordea Financing.

(34) On 16 December 2004 in relation to these court-supervised restructuring proceedings Tapiola demanded the City of Mikkeli to pay the outstanding amounts of the three loans guaranteed by the City of Mikkeli described under 3.1.1, 3.1.3 and 3.1.4. After having paid Tapiola, the City of Mikkeli became creditor of Karjaportti as regards the overall amount of the three outstanding loans, which was EUR 5 356 895. The loans were secured by the collateral described in recitals 15, 27 and 29.

(35) In addition, the City of Mikkeli entered a claim amounting to EUR 682 087 in the court-supervised restructuring proceedings, consisting of unpaid charges to the City property administration, the water management department of Mikkeli and the waste management department of Mikkeli. This claim was also secured by the collateral described in recitals15, 27 and 29.

([16]) See footnote 9.

([17]) See Restructuring of Enterprises Act 47/1993, Section 1.

([18]) See Restructuring of Enterprises Act 47/1993, Section 17.

(*) Business secret

(36) The loans and other debts (unpaid charges) towards the City of Mikkeli were considered as large secured debts ([19]) in the court-supervised restructuring proceedings. The other large secured claims were held by private parties (Nordea Bank, Nordea Financing, OKO/Pohjola Bank) as well as by Finnvera ([20]).

Table IV

Large secured debts in EUR

Creditor of secured large debts	Amount	Share in %
Nordea Bank	[…](*)	[10-40] %
Nordea Financing	[…]	[0-20] %
OKO/Pohjola Bank	[…]	[10-40] %
Finnvera	[…]	[10-40] %
City of Mikkeli – loans due to triggered guarantees	[…]	[10-40] %
City of Mikkeli – other debts (unpaid charges)	[…]	[0-20] %
TOTAL	**24 579 150**	**100 %**

(37) In relation to the loans and to other debts (unpaid charges) towards the City of Mikkeli, the following measures were foreseen in the restructuring programme:

Reduction of interest rates for the secured debts

(38) The EUR 5 356 895 loan of the City of Mikkeli was treated as "secured debt" and was divided in two parts. For both parts the interest rates were reduced according to the restructuring programme: On a portion of EUR 4,0 million, the interest rate amounted to […] EURIBOR minus […]% (however, the rate was supposed not be more than […]% or less than […]%) until 31 December 2010. After that date, an interest rate of […] EURIBOR has been charged. To the remaining portion of EUR 1 356 895 million an interest rate of […] EURIBOR has been charged ([21]). Like the loans, the unpaid charges of EUR 682 087 were treated as "secured debt" and the interest rate was reduced to a rate of […] EURIBOR ([22]).

(39) Also for the secured debts of the private creditors, an interest rate equivalent to […] EURIBOR is foreseen in the restructuring programme. For a certain amount for each creditor except […], until 31 December 2010, a reduced interest rate was foreseen, equivalent to […] EURIBOR minus […]%; minimum interest […]% and maximum interest […]%. After 31 December 2010, the interest rate for all secured debts has been […] EURIBOR.

Table V

Interest amounts for large secured debts in EUR

Creditor of secured large debts	Interest rate of […] EURIBOR minus […]% until 31 December 2010; after that date, interest rate […] EURIBOR will be charged for an amount of	Interest rate of […] EURIBOR for an amount of
Nordea Bank and Nordea Financing	[…]	[…]
OKO/Pohjola Bank	[…]	[…]
Finnvera	[…]	[…]
City of Mikkeli – loans due to triggered guarantees	[…]	[…]
City of Mikkeli – other debts (unpaid charges)		[…]

Rescheduling of debts

(40) The City of Mikkeli agreed to a deferral of payments on the debts mentioned above. According to the restructuring programme, the reimbursement of the secured debts of the City of Mikkeli is foreseen for 2015. The first instalment should have been paid on 1 July 2009, from 2010 onwards two instalments per year were foreseen, and in 2015 the remaining major part of the secured debts has to be paid, that is EUR […] for the loans due to triggered guarantees and EUR […] for other debts (unpaid charges) respectively.

(41) Also the private creditors agreed to the deferral of payments on their secured debts.

([19]) According to Section 3 point 7 of the Restructuring of Enterprises Act 47/1993, secured debts means restructuring debt where the creditor holds, as against third parties, an effective real security right to property that belongs to or is in the possession of the debtor, in so far as the value of the proceedings would have been enough to cover the amount of the creditor's claim after the deduction of liquidation costs and claims with a higher priority.

([20]) See description of Finnvera in recital 56.

([21]) The reduction of interest rates was referred to as measure 2 in the first opening decision.

([22]) The reduction of interest rates for unpaid charges was referred to as measure 4 in the first opening decision.

Table VI

Deferral of payment in EUR

Creditor of secured large debts	Debt	Instalment due on 1.7.2009 and 2.1.2010 and 1.7.2010	% of total amount of debts	Instalment due on 2.1.2011 and 1.7.2011	% of total amount of debts	Instalment due every six months starting 2.1.2012 until 2.1.2015	% of total amount of debts	Instalment due on 1.7.2015	% of total amount of debts
Nordea Bank	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Nordea Financing	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OKO/Pohjola Bank	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Finnvera	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
City of Mikkeli	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
City of Mikkeli	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total	**24 579 150**	**500 000**	2 %	**1 000 000**	4 %	**1 500 000**	6 %	**10 579 150**	43 %

Conditional debt waiver

(42) According to the restructuring programme, the reimbursement of the loans and unpaid charges to the City of Mikkeli should be accomplished by 2015, with the major part of the outstanding amount due in 2015. If in 2015 Karjaportti does not meet certain economic requirements at the end of the court-supervised restructuring proceedings (ratio between liabilities and operating margin bigger than 4), the City of Mikkeli will waive a maximum of EUR [0-3] million of the outstanding debts.

(43) Also the claims of the other creditors will be reduced at the end of the court-supervised restructuring proceedings. Nordea Bank will waive a maximum of EUR [0-3 million] and Nordea Financing will waive a maximum of EUR [0-2 million]. Finnvera's claim will be reduced by a maximum of EUR [0-2 million]. The claim of […] will not be reduced. According to the restructuring programme, the sums by which the secured debts are reduced are based on the value of the collaterals for the secured loans in two different scenarios: first scenario was that Karjaportti continues its operation; second scenario was that Karjaportti changes or terminates its operation, that is to say that the collaterals have to be realised. The two values were determined by two independent evaluations ([23]). The concrete amount by which the secured debt was reduced was then determined for each creditor separately, taking into account the ranking of the creditor and comparing the values in the two difference scenarios.

3.1.6. *Purchase of shares from Karjaportti (measure 7)*

(44) On 2 September 2005 Karjaportti sold 50 % of the shares in the real estate company Kiinteistö Oy Suksimäki to a company owned by the City of Mikkeli, for a purchase price of EUR 860 000.

3.1.7. *Conversion of unpaid interest rates into loans (measure 8)*

(45) Karjaportti did not pay interest due for the secured debts of the City of Mikkeli accrued between 16 December 2004 and 19 December 2005 ([24]). Those interests amounted to EUR 281 982 and were converted into a loan for a loan period until the end of 2010 by decision of the City Council of Mikkeli dated 19 December 2005. The interest rate of the loan is EURIBOR 3 months plus 0,3 %. The repayment was supposed to start in March 2009 and consisted of four equal instalments to be paid twice a year, that is to say EUR 144 991 should be paid in 2009 and EUR 144 991 in 2010 ([25]). The repayment of the due amounts was at least partially postponed (see measure 12).

([23]) The two evaluations determined the market value of the pledged premises, based on comparable prices and rental information; they were undertaken by Kaakon Notariaatti Oy, www.kaakonnotariaatti.fi and Catella Property Oy, www.catella.fi. The studies have been ordered by Karjaportti's bankruptcy administrator.

([24]) Since then, Karjaportti has paid the due interest for the secured debts.

([25]) The conversion of unpaid interest rates was referred to as measure 3 in the first opening decision.

(46) The conversion of unpaid interest rates into loans in the year 2005 was in principle laid down in the restructuring programme. According to the programme, not only the City of Mikkeli, but all secured creditors in this context were to be treated similarly. Accordingly, on 28 December 2005, [one private creditor] converted interest rates into a loan amounting to approximately EUR 1 623 000 with a loan period until the end of 2010. The interest rate was EURIBOR 3 months plus 1,5 %. The repayment was supposed to start in 2009. On 29 December 2005, [another private creditor] converted interest rates into a loan amounting to approx. EUR 1 532 500 with a loan period until the end of 2010. The interest rate was 3 months EURIBOR plus 2 %. The repayment was supposed to start in 2009.

3.1.8. *Write-off of debts in the financial statements of 2006 (measure 9)*

(47) By a decision of 5 February 2007, the Mikkeli City Board agreed on the write-off from the 2006 accounts of a receivable from Karjaportti amounting to EUR 274 023. The writing-off of the debt in the accounts had no effect on the legal relationship between the creditor and the debtor, and consequently, the City of Mikkeli continued to pursue the collection of the debts.

3.1.9. *Write-off of debts in the financial statements of 2008 (measure 10)*

(48) The City of Mikkeli made a write-off for an uncertain receivable from Karjaportti amounting to EUR 5,7 million in its financial statements of 2008. The writing-off of the debt in the accounts had no effect on the legal relationship between the creditor and the debtor, and consequently, the City of Mikkeli continued to pursue the collection of the debts.

3.1.10. *Non-implemented guarantee that had been planned for 2009 (measure 11)*

(49) The City Council of Mikkeli decided on 8 December 2008 to provide an absolute guarantee amounting to EUR 2,75 million to cover a future loan by Tapiola to Karjaportti. The City Council entitled the City Board to decide on the detailed conditions relating to the absolute guarantee, that is to implement the guarantee. According to the notification the loan should have amounted to EUR 5 819 807 at an interest rate of 3,65 %. As remuneration for the guarantee the notified measure foresees a one time fee of 4 % and the guarantee will be granted for 10 years ([26]).

([26]) The guarantee was referred to as measure 5 in the first opening decision.

(50) The decision of the City Council of Mikkeli did not become final, as a complaint was made at the administrative court of Kuopio (Kuopion Hallinto-Oikeus). Following this complaint, the court ordered the City of Mikkeli to halt the implementation of the guarantee and to seek approval of the aid by the Commission.

(51) As the decision of the City Council of Mikkeli to provide the guarantee did not become final, Tapiola refrained from granting the loan to Karjaportti. Lastly, Finland withdrew the notification of the guarantee in March 2010, as Karjaportti withdrew its application for the guarantee and the City Board decided on 22 February 2010 not to implement the decision of the City Council.

3.1.11. *Rescheduling of debts since 2009 (measure 12)*

(52) Deferral of the repayment of secured debts: According to the restructuring programme approved by the court, Karjaportti was supposed to reimburse EUR […] in 2009 and EUR […] in 2010 of the outstanding amount of the secured debts (see Table VI). According to the notification, the reimbursement of these amounts should have been postponed, the latest until 1 July 2015.

(53) Deferral of the repayment of the loan granted in 2005 (conversion of unpaid interest rates): Karjaportti was supposed to reimburse EUR 140 991 in 2009 and the same amount in 2010 of the outstanding amount of the interests converted into a loan (see recital 40). According to the notification the reimbursement of these amounts should have been postponed to the years 2011 to 2013 ([27]).

(54) The administrative court of Kuopio (Kuopion Hallinto-Oikeus) prohibited the implementation of the City Council's decision concerning the debt rescheduling on 4 February 2009. It seems, however, that a rescheduling of debts nevertheless took place. Starting from May 2009, Karjaportti on a regular basis made proposals to the City of Mikkeli and its other creditors to postpone payments of due debts in order to safeguard the continued operation of the cooperative ([28]). These proposals were approved by the City Board of Mikkeli.

3.2. **Measures granted by Finnvera**

(55) According to the information submitted by Finland, Finnvera granted several loans and guarantees to Karjaportti in the years 2004 to 2008.

(56) Finnvera is a specialised financing company owned by Finland and it is the official Export Credit Agency of Finland. Finnvera's operations are steered by the industrial and ownership policy goals laid down by the state. These goals include: increasing the number of starting enterprises; enabling financing for changes encountered by SMEs; and promotion of enterprise growth, internationalisation and exports. In its operations, Finnvera is expected to adhere to the principle of economic self-sustainability. Finland, however, covers part of Finnvera's credit and guarantee losses; the State is directly responsible for the domestic guarantees and export credit guarantees granted by Finnvera and the State grants guarantees for Finnvera's own acquisition of funds. These state measures in relation to Finnvera do not fall within the scope of this decision; the Commission reserves the right to assess them at a later stage. Finnvera is subject to the Administrative Procedure Act 434/2003.

(57) Concerning Finnvera's corporate governance, the Supervisory Board, which supervises the company's administration by the Board of Directors and the Managing Director, represents the owner of the company, which is in Finnvera's case the State. The Supervisory Board members are selected from the parliamentary groups of political parties on the basis of their representation in the Finnish Parliament. In addition, Finnvera's Supervisory Board includes representatives of organisations in line with the company's industrial policy goals. The Board of Directors, which has 6-9 members and 2 deputy members, confirms the company's strategy, approves the financial statements and the interim report, advances the company's development and ensures that the operations are conform to law and meet the goals set by the owner. Four of the Board members and the two deputy members are elected among candidates named by various ministries. The Managing Director is responsible for the company's administration.

(58) Finnvera is exempted from paying income tax since 25 September 2007. The Commission has approved this exemption. The approval decision is based on the fact that Finnish authorities have given a commitment that Finnvera will limit its activities to the administration of state aid schemes ([29]).

3.2.1. *Guarantee granted on 17 March 2004 (measure 13)*

(59) On 17 March 2004, Finnvera granted a 100 % guarantee for a loan amounting to EUR 91 000 with a guarantee fee of 3 % per year. The loan, which had a duration of 3 years, was granted by Tapiola at a fixed interest rate of [2-5] % per year. The loan and the guarantee respectively were given to replace a loan granted by Tapiola in 1992.

([27]) These measures were referred to as measure 6 in the first opening decision.

([28]) The proposals are dated 26 May 2009, 28 September 2009, 18 November 2009, 22 January 2010, 17 February 2010, 12 April 2010, 2 June 2010, 23 August 2010, 3 November 2010, 10 February 2011 and 31 May 2011.

([29]) Commission decision N 715/06, Finland. Tax Exemption to Finnvera Oyj, OJ C 307, 18.12.2007, p. 6.

3.2.2. *Loan granted on 12 January 2006 (measure 14)*

(60) On 12 January 2006, Finnvera granted a loan amounting to EUR 180 000 at an interest rate of EURIBOR 6 months + 2 % per year. The loan relates to interest accrued during the restructuring process between 2 December 2004 and 28 February 2008, which was converted into a new credit facility. The loan was collateralised by mortgages in properties located in Tikkala, Lappeenranta and Kouvola, and shares in […]. The duration of the loan was until the end of 2010 and repayment should have started in 2009. On 23 November 2011, EUR […] of the capital was still outstanding. Private creditors […] and […] converted the interest rates at the same time into loans.

(61) On 28 December 2005, [a private creditor] converted interest rates into a loan amounting to approximately EUR 1 623 000 with a loan period until the end of 2010. The interest rate is EURIBOR 3 months plus 1,5 %. The repayment was supposed to start in 2009.

(62) On 29 December 2005, [another private creditor] converted interest rates into a loan amounting to approx. EUR 1 532 500 with a loan period until the end of 2010. The interest rate was 3 months EURIBOR plus 2 %. The repayment was supposed to start in 2009.

3.2.3. *Guarantee granted on 14 September 2006 (measure 15)*

(63) On 14 September 2006, Finnvera granted a counter-guarantee to […] amounting to EUR 300 000 with a guarantee fee of 1,65 % per year paid by Karjaportti. […] in turn granted a guarantee to Karjaportti for the same amount at an interest rate of 1,25 %. This guarantee and the counter-guarantee covered 16,7 % of EUR 1,8 million relating to a subcontracting agreement between […] and Karjaportti. The duration of Finnvera's guarantee was 8 months. The remainder of the subcontracting agreement was covered by guarantees from […] and […] (EUR 825 000 and EUR 675 000 respectively) who charged a guarantee fee of 1,75 %. Finnvera was not involved in the grant of these guarantees, that is to say they were not counter-guaranteed. Finnvera's counter-guarantee expired on 30 June 2007 without having been invoked. Accordingly, no payment obligations were incurred by Finnvera on the basis of this guarantee.

3.2.4. *Loan granted on 6 July 2007 (measure 16)*

(64) On 6 July 2007, Finnvera granted a loan amounting to EUR 250 000 at an interest rate of EURIBOR 6 months + 2,5 % per year. The loan had a duration of six months and should have been reimbursed by 15 January 2008. So far, only part of the loan was reimbursed (outstanding amount on 23 November 2011: […]).

(65) At the same time, private creditors, […] and […], granted loans amounting to EUR 800 000 and EUR 650 000 respectively, also for a duration of six months. The interest rate for those loans was 1 month EURIBOR plus 2 %. The reimbursement of their loans has also been delayed (outstanding amounts on 23 November 2011: EUR […] and EUR […]).

(66) For those two loans and the loan granted by Finnvera, Karjaportti provided the following collateral: a business mortgage with a registered value of EUR 1 850 067; shares in the company […]; and a bank account. These collaterals were divided between Finnvera, […] and […] according to their risk in relation to the loans. In fact, the three creditors had the same ranking and divided the collateral by way of a share of percentages (Finnvera: [0-30] %; [the first private creditor]: [10-50] %; [the second private creditor]: [10-50] %).

3.2.5. *Guarantee granted on 9 January 2008 (measure 17)*

(67) On 9 January 2008, Finnvera granted a counter-guarantee to […] amounting to EUR 280 000 with a guarantee fee of 2,5 % per year paid by Karjaportti. The counter-guarantee covered 80 % of a guarantee provided by […] to Karjaportti on 11 January 2008 amounting to EUR 350 000 relating to a subcontracting agreement between […] and […]. […]charged a guarantee fee of [0-3] %. Finnvera had access to a collateral in the form of a shareholding of Karjaportti in […]. According to an estimate undertaken by Finnvera, dated 8 January 2008, at the time of the grant of the counter-guarantee these shares had a security value for Finnvera of EUR […]. The counter-guarantee expired on 28 February 2011, and no payments were made under it.

4. GROUNDS FOR OPENING THE PROCEDURE

(68) As described in recitals 2, 3 and 6 the Commission decided on 8 April 2009 to open a formal investigation procedure (hereinafter 'the first opening decision'). This formal investigation procedure was extended to several additional measures on 15 December 2009 (hereinafter 'the second opening decision').

4.1. Measures granted by the City of Mikkeli

4.1.1. *Guarantee granted on 12 June 2000 (measure 1)*

(69) In its first opening decision, the Commission doubted that the measure in question would be in conformity with the private market economy investor principle. First, in accordance with Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees [30] ('the Guarantee

[30] OJ C 71, 11.3.2000, p. 14, point 4.2.

Notice 2000') that was in force at the time when the measure was granted, the measure may constitute state aid since the guarantee covered 100 % of the loan in question. This conclusion would not be changed by the Guarantee Notice 2008 currently in force ([31]). Moreover, granting the guarantee without a commission fee, that is in effect taking on a financial risk without any quid-pro-quo, cannot be described as the behaviour of a market operator.

(70) As regards compatibility, the Commission had doubts that the guarantee could qualify for an exception under Article 107(3) of the TFEU; according to a preliminary assessment the conditions of Community guidelines on State aid for rescuing and restructuring firms in difficulty ([32]) ('the R&R Guidelines 1999') seemed not to have been met.

4.1.2. *Assignment of land (measure 2)*

(71) In the second opening decision, the Commission expressed doubts that the sale was undertaken in accordance with the market economy investor principle, as the requirements of the Commission Communication on State aid elements in sales of land and buildings by public authorities ([33]) were not met. It was considered that no market price was paid, as the land was assigned to Karjaportti without consideration. In addition, Karjaportti did not have to bear the costs of levelling the site.

4.1.3. *Purchase of land (measure 3)*

(72) In the second opening decision, the Commission expressed doubts that the terms and conditions of the purchase complied with the market economy investor principle, as Finland did not provide evidence that the purchase of the properties was done under market conditions, such as an evaluation of the properties by an independent expert.

4.1.4. *Guarantee granted on 8 March 2004 (measure 4)*

(73) In the second opening decision, the Commission doubted that the measure in question would be in conformity with the private market economy investor principle. First, in accordance with the Guarantee Notice 2000 that was in force at the time of the granting, the measure may constitute state aid since the guarantee covered 100 % of the loan in question. This conclusion would not be changed by the Guarantee Notice 2008 currently in force. Moreover, granting the guarantee without a commission fee, that is in effect taking on a financial risk without any quid-pro-quo, cannot be described as the behaviour of a market operator, in particular in a situation where the company already was in difficulties.

(74) As regards the compatibility of the measure, the Commission was not provided sufficient information that would allow it to determine whether the requirements set out in the R&R Guidelines 1999 were met.

4.1.5. *Guarantee granted on 10 May 2004 (measure 5)*

(75) The Commission had similar doubts as for the guarantee granted on 8 March 2004.

4.1.6. *Agreement to the court supervised restructuring proceedings (measure 6)*

(76) In the first opening decision, the Commission doubted that the measures taken during restructuring would be in conformity with the private market economy investor principle.

(77) First, the City of Mikkeli agreed to reducing the interest rates for the secured debts with the effect that the interest rates charged were far below the reference rate for Finland at that time. Since the reference rate is considered to be the market rate for healthy companies, and since Karjaportti was in difficulties at the time, the Commission found it unlikely that a private creditor would have granted the loans at such a low interest rate.

(78) As regards the compatibility of the measures, the Commission at the time of the opening only had limited knowledge of the restructuring measures taken by Karjaportti since 2004. It was considered that the continuous restructuring had not been successful as the tax authorities filed for bankruptcy proceedings concerning Karjaportti in December 2008. Thus, the Commission had doubts that the long-term viability of the company could be achieved through the restructuring measures undertaken. As regards the other criteria for restructuring aid according to the R&R Guidelines 2004 ([34]), the Commission could not, in the absence of a notification and a restructuring plan, evaluate whether the other requirements of the R&R Guidelines 2004 were met.

4.1.7. *Purchase of shares from Karjaportti (measure 7)*

(79) In the second opening decision, the Commission doubted that the measure in question was in conformity with the private market economy investor principle, as Finland did not provide the evidence that the purchase of the shares was done under market conditions.

([31]) OJ C 155, 20.6.2008, p. 10.
([32]) OJ C 288, 9.10.1999, p. 2.
([33]) OJ C 209, 10.7.1997, p. 3.
([34]) OJ C 244, 1.10.2004, p. 2; prolonged in 2009, OJ C 156, 9.7.2009, p. 3.

4.1.8. *Conversion of unpaid interest rates into loans (measure 8)*

(80) As regards the conversion of the unpaid interest rates into a loan, the City of Mikkeli agreed to charge a very low interest rate for the loan. In fact, private creditors converting their unpaid interest rates negotiated higher interest rates, which led the Commission to question whether such an approach could have been in line with the market economy investor principle.

4.1.9. *Write-off of debts in the financial statements in 2006 and 2008 (measure 9 and measure 10)*

(81) In the second opening decision, the Commission considered that if the write-off of debts in the financial statements in 2006 and 2008 also included the legal obligation ceasing to exist, the write-off would confer an advantage to Karjaportti. In the Commission's view it was questionable whether a private market investor would have acted in the same way.

4.1.10. *Non-implemented guarantee that had been planned for 2009 (measure 11)*

(82) In the first opening decision, the Commission doubted that the City of Mikkeli would act like a private market investor when granting the guarantee and considered preliminarily that the guarantee entailed state aid. As regards compatibility, the Commission had doubts whether the guarantee would comply with the R&R Guidelines 2004, as the "one time, last time principle" seemed not to have been met. In addition, the guarantee fee and the interest rate for the loan were too low in order to satisfy point 25(a) of the Guidelines and the guarantee was not in line with point 25(c) of the Guidelines, as it was not limited to six months.

4.1.11. *Rescheduling of debts since 2009 (measure 12)*

(83) In the first opening decision, the Commission doubted that the City of Mikkeli acted like a private market creditor when agreeing to the rescheduling of debts and considered preliminarily that the measure entailed state aid. As regards compatibility, the Commission had doubts whether the debt rescheduling would comply with the R&R Guidelines 2004, as the "one time, last time principle" seemed not to have been met. In addition, the debt rescheduling did not meet the requirements for rescue aid. It was not limited to six months and was hence not in line with point 25(c) of the Guidelines.

4.2. **Measures granted by Finnvera (measures 13-17)**

(84) In the second opening decision, the Commission considered that the measures were granted through state resources and were imputable to the State, as Finland owns 100 % of Finnvera. Concerning the loans, the Commission had doubts that the interest rate charged exceeded the relevant reference rates. In addition, it did not have sufficient information to assess whether the measures were granted together and at equal conditions with private investors. Concerning the guarantees, the Commission had doubts that they were granted under existing schemes, as guarantees granted to a large company in difficulty would not fall under such schemes. If the measures were granted outside an existing aid scheme, the Commission doubted that they would comply with the market economy investor principle.

5. COMMENTS FROM FINLAND

5.1. Measures granted by the City of Mikkeli

5.1.1. *Guarantee granted on 12 June 2000 (measure 1)*

(85) Finland argues that the guarantee should not be considered state aid, as Karjaportti would probably have been able to acquire such a guarantee from private capital markets. Finland refers to the fact that Tapiola granted the loan that was secured by the guarantee in question as part of a financing package of EUR 25 million for the investments in the Tikkala production site. Other parties contributed to the financing. State support for the investment consisted of the assignment of land and bearing the costs for the levelling of the site by the City of Mikkeli (see recitals 89 and 90), loans and guarantees granted by Finnvera as well as direct grants granted by the Ministry of Trade and Industry.

(86) In addition, Finland claims that the City of Mikkeli was treating all companies applying for guarantees on an equal basis.

(87) If the measure was to be considered as state aid, Finland is of the opinion that such aid would have been compatible with the internal market as it was granted in accordance with Guidelines on national regional aid ([35]) ('the RAG 1998'). Large companies were eligible for regional aid measures under Article 107(3)(a) of the TFEU if they did not exceed the amount of 24 % of the eligible net costs. These conditions were met. In particular, Finland provided a calculation according to which the gross grant equivalent would still remain under 24 % when taking into account all the state support for the investment.

5.1.2. *Assignment of land (measure 2)*

(88) Finland claims that the current book value of the plot is not a comparable indicator for the determination of the value of the plot at the time of the transfer. The City of

([35]) OJ C 74, 10.3.1998, p. 9.

Mikkeli estimates the market value of the land at the time of the assignment at EUR 300 000. According to Finland the costs of levelling the site amounted to FIM 2 million (EUR 336 376).

(89) Finland considers that the transfer of the plot of land and bearing the costs for levelling of the site has been in line with the RAG 1998 (see recital 87).

5.1.3. *Purchase of land (measure 3)*

(90) According to Finland, the purchase of the properties in the year 2002 related to the construction project of the Tikkala production facility for which Karjaportti needed funding. Finland claims that the properties were bought at a market price. The evaluation took into account that the properties were purchased in order to turn them into predominantly residential use through an alteration of plans, while part of the area was still in business use. In addition, the properties were subject to mortgages given to private creditors and alone one of the six properties had a total mortgage of approximately EUR 9,6 million, which confirms that the value of the properties was higher than the purchase price. Hence, the City of Mikkeli respected the market economy investor principle and the purchase did not include state aid.

5.1.4. *Guarantee granted on 8 March 2004 (measure 4)*

(91) Finland states that the guaranteed loan was granted to offset an old pension loan that was granted in 1992. At that time, the City of Mikkeli, together with Finnvera and […], guaranteed for the pension loan. As a counter-security, the City of Mikkeli received a mortgage with the value of FIM 7,5 million (EUR 1 261 409) on a property of Karjaportti. When issuing the guarantee on 8 March 2004, the City of Mikkeli retained this security.

(92) Finland argues that the original guarantee was granted before Finland's accession to the EU. When the City of Mikkeli granted the new guarantee on 8 March 2004, no new aid was granted, as the existing original guarantee was converted into a new guarantee while retaining sufficient counter-securities. In addition, at the same time, also other guarantors of the original pension loan of 1992 granted loans to Karjaportti.

(93) Finally, Finland disputes that Karjaportti was in difficulty within the meaning of the R&R Guidelines 1999 in spring 2004. According to Finland, the market projections were satisfactory in the first half of 2004 and Karjaportti had budgeted a profit of EUR 3 million for 2004. In addition, Karjaportti was able to get loans from private lenders at relatively low interest rates during spring and summer 2004. Finally, in December 2004, Karjaportti was considered a viable undertaking when its creditors approved the restructuring despite its prolonged financial difficulties. Otherwise, Karjaportti would have been declared bankrupt.

5.1.5. *Guarantee granted on 10 May 2004 (measure 5)*

(94) Finland considers the guarantee as a continuum of funding provided for the investment in the Tikkala production facility in the year 2000 by the City of Mikkeli. The guarantee was granted to complete the original investment plan initiated in 2000. At the time the guarantee was granted, Karjaportti was not in difficulty within the meaning of the R&R Guidelines 1999, as already brought forward for the guarantee granted in March 2004 (see recital 93).

(95) According to Finland, if the guarantee involved state aid, it was compatible as it was in line with the RAG 1998. Large companies were eligible for regional aid measures under Article 107(3)(a) of the TFEU if they did not exceed the amount of 24 % of the eligible net costs. These conditions were met, as the aid element of the guarantee was only EUR 57 835 whereas the overall investments of Karjaportti in Tikkala amounted to EUR […].

5.1.6. *Court supervised restructuring proceedings (measure 6)*

(96) Finland argues that the measures taken were all related to the commencement of the court-supervised restructuring proceeding. In accordance with the Court of Justice case-law, legislation on court-supervised recovery schemes and insolvency does not in itself justify treating that legislation as aid ([36]).

(97) Second, no new loans were granted during the proceedings, but payment of debts granted prior to the restructuring was rescheduled in conformity with the national legislation on restructuring of enterprises, treating the creditors on an equal basis. In addition to the City of Mikkeli's receivables, receivables of private players were also rearranged during the proceedings. The creditors of Karjaportti were divided into several groups. The receivables of each group of creditors were subject to mutually equal and similar terms. Finland points out that this is in particular true as regards the secured debts of the City of Mikkeli. Hence, it seems that the City of Mikkeli has acted like a private market economy investor when agreeing to the court-supervised restructuring proceedings.

([36]) See Case C 480/98 Kingdom of Spain v Commission [2000] ECR I-08717, paragraph 18.

(98) In addition, Finland points out that the City of Mikkeli had deemed it more profitable to reschedule the debts than to allow Karjaportti to go bankrupt and to close down permanently, which is also showed in a liquidation balance sheet attached to the restructuring programme.

(99) As regards the compatibility of the measures under the R&R Guidelines 1999, Finland argues that a company subject to restructuring proceedings should generally be deemed as firm in difficulty within the meaning of the Guidelines. It then repeats that the restructuring proceeding did not involve state aid and that the City of Mikkeli did not carry out support measures during the restructuring proceedings.

(100) Then Finland brings forward arguments relating to each of the measures granted: As regards the triggering of City of Mikkeli's guarantee for the loan granted in 2000, Finland argues that Mikkeli did not grant any new loans to Karjaportti, but simply stepped in as a creditor on the demand of Tapiola at the beginning of the court-supervised restructuring proceedings, which was an ordinary measure under such restructuring proceedings. As regards the terms and conditions of the repayment of the loan, Finland points out that they had been specified in the restructuring programme and were equal for all creditors within the same group of creditors.

(101) As regards the unpaid charges, Finland clarifies that the receivables are owed to the City property administration, the water management department and the waste management department of the City. The receivables consist of unpaid charges that had arisen prior to the commencement of the court-supervised restructuring proceeding. No guarantee was granted for those outstanding amounts by the City of Mikkeli, as they were receivables due to the City. Hence, when the court-supervised restructuring proceedings started, they were entered into the restructuring programme as one sum.

5.1.7. *Purchase of shares from Karjaportti (measure 7)*

(102) Finland claims that the shares of the real estate company Kiinteistö Oy Suksimäki were purchased at a market price from Karjaportti. Finland submitted an independent valuer's statement according to which the value of the shares amounted to approximately EUR 1 million based on the prevailing rent level. This value was adjusted as regards the actual prevailing rent level and the shares were accordingly bought at a price of EUR 860 000. Hence, the property transaction did not include any aid element.

5.1.8. *Conversion of unpaid interest rates into loans (measure 8)*

(103) Concerning the conversion of the unpaid interest into a loan, Finland firstly argues that the non-payment of interest rates is a typical measure to court-supervised restructuring proceedings. The conversion of such unpaid interest into loans, which will be better ranked than other loans, is foreseen by Finnish legislation. In addition, Finland considers that the conversion of the unpaid interest into a loan was taken in accordance with the private market investor principle, as private creditors converted unpaid interest receivables into loans together with the City of Mikkeli.

5.1.9. *Write-off of debts in the financial statements of 2006 and 2008 (measure 9 and measure 10)*

(104) Finland confirms that recording the debts as a loss is simply a bookkeeping operation on the creditor's part, done in accordance with the principle of prudence and the respective provisions in the Accounting Act 1336/1997. Finland argues that the debt write-off does not affect the legal relationship between the creditor and the debtor, i.e. the debts were not waived. The City of Mikkeli has confirmed that it has not waived the debts recorded as losses and that it continues to pursue collection. The debt is part of the secured debt under the court-supervised restructuring proceedings.

5.1.10. *Non-implemented guarantee that had been planned for 2009 (measure 11)*

(105) Before the notification of the guarantee was withdrawn in March 2010, Finland argued that the guarantee was compatible according to the R&R Guidelines 2004. In light of the withdrawal of the notification, Finland's arguments are not presented in more detail.

5.1.11. *Rescheduling of debts since 2009 (measure 12)*

(106) Finland argues that rescheduling of debts is a measure inherent to court-supervised restructuring proceedings and does not involve state aid. According to Finland, the creditors of Karjaportti had a mutual understanding that the rescheduling of debts was a reasonable alternative in order to safeguard their receivables. It informs the Commission that the notified rescheduling was never implemented, as the administrative court of Kuopio (Kuopion Hallinto-Oikeus) halted the implementation of the debt rescheduling. Finland explains that Karjaportti's debts were nevertheless rescheduled, following several proposals by Karjaportti in the period 2009–2011, which were accepted by the City of Mikkeli. Finland claims that this subsequent rescheduling was in line with the market economy investor principle, as the City of Mikkeli and all other creditors implemented the rescheduling at equal terms.

5.2. **Measures granted by Finnvera**

5.2.1. *Guarantee granted on 17 March 2004 (measure 13)*

(107) Finland considers that the guarantee was granted in line with the Guarantee Notice 2000. In any event, the guarantee did not involve state aid. First, Finnvera's risk was not increased, as the guarantee replaced a guarantee that Finnvera granted earlier (in 1992) for a pension loan. This loan was replaced by a new pension loan in 2004, for which Finnvera granted the guarantee in question. In addition, two private creditors granted credit facilities to Karjaportti at the same time in order to allow for funding the postponement of the 2004 payments. Furthermore, the guarantee was subject to a high fee and the aid element of the guarantee was below the de-minimis threshold. Finally, the forecasts for Karjaportti were good at the time the guarantee was granted.

5.2.2. *Loan granted on 12 January 2006 (measure 14)*

(108) Finland considers that the loan granted in 2006 did not involve state aid as Finnvera acted like a private market creditor when converting the unpaid interest into a new loan in line with the restructuring programme. In addition, private creditors converted their unpaid interest into new loans shortly before Finnvera did so and at similar conditions.

5.2.3. *Guarantee granted on 14 September 2006 (measure 15)*

(109) Finland considers that the guarantee was granted in line with the Guarantee Notice 2000. In any event, the guarantee does not involve state aid as it only covers 16,7 % of EUR 1,8 million and private creditors were covering the remainder of this amount by way of guarantees.

5.2.4. *Loan granted on 6 July 2007 (measure 16)*

(110) Finland considers that the loan granted in 2007 did not involve state aid as Finnvera acted together with two private creditors who granted new loans at the same time and at similar conditions. In addition, the loan was collateralised by way of valuable mortgages and business mortgages.

5.2.5. *Guarantee granted on 9 January 2008 (measure 17)*

(111) Finland considers that the counter-guarantee was granted in accordance with the Guarantee Notice 2000. In any event, it does not involve state aid as the other party involved was a private lender and the guarantee fee imposed by Finnvera was considerably higher than the guarantee fee imposed by the private lender.

6. **COMMENTS FROM INTERESTED PARTIES**

(112) The interested party only commented on measures 1, 2, 3, 5, 7, 9 and 10.

6.1.1. *Guarantee granted on 12 June 2000 (measure 1)*

(113) The interested party states that the guarantee was granted in order to secure a loan of FIM 25 million for the investment in a new production site.

6.1.2. *Assignment of land (measure 2)*

(114) The interested party claims that a plot of land was allocated to Karjaportti and the City of Mikkeli undertook to provide municipal engineering and other requisite technical work, with costs totalling FIM 2,5 million. Karjaportti paid FIM 1,2 million for the plot. In the books of Karjaportti, the plot is valued EUR 403 000 and the interested party wonders whether the allocation of the land could have been state aid.

6.1.3. *Purchase of land (measure 3)*

(115) The interested party alleges that the City of Mikkeli bought six abandoned factory buildings in Mikkeli and paid a total of EUR 6,7 million for them. An investor acting in accordance with the market economy investor principle would not have bought properties of a company in deep financial troubles at such a price.

6.1.4. *Guarantee granted on 10 May 2004 (measure 5)*

(116) The interested party alleges that Karjaportti was in grave difficulties at the time the guarantee was granted. The company had substantial debts already towards the City of Mikkeli and the group companies owned by the City of Mikkeli.

6.1.5. *Purchase of shares from Karjaportti (measure 7)*

(117) The interested party alleges that the price paid for the shares in the real estate company was above the book value of the shares.

6.1.6. *Write-off of debts in the financial statements of 2006 and 2008 (measure 9 and measure 10)*

(118) The interested party submitted a copy of minutes of the meeting of the Mikkeli City Board dated 5 February 2007, in which the debt-write off in the financial statements of 2006 was decided. In addition, the interested party points out that it was at least unusual that the City of Mikkeli wrote off millions of euros of Karjaportti's debts in its 2008 financial statements, and questions in particular why the City of Mikkeli was at the same time prepared to grant further guarantees to Karjaportti.

7. **ASSESSMENT**

(119) Article 107(1) of the TFEU lays down that 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 and affects trade between Member States is incompatible with the internal market.

(120) The conditions laid down in Article 107(1) TFEU are cumulative and thus for a measure to be qualified as state aid all the conditions must be fulfilled simultaneously.

(121) Whereas Article 107(1) of the TFEU provides for the general prohibition of state aid within the Union, Articles 107(2) and 107(3) of the TFEU provide for exemptions to the general rule that such aid is incompatible with the internal market as stated in Article 107(1) of the TFEU.

(122) In the following sections, the Commission assesses the existence of state aid separately for each of the measures described. If a measure entails state aid, the Commission goes on to assess the compatibility of the aid measure. The Commission distinguishes between measures withdrawn, measures that were granted by the City of Mikkeli and measures that were granted by Finnvera. As a preliminary point, it is assessed at what point in time Karjaportti could be considered a company in difficulty.

7.1. **Company in difficulty**

(123) For both, the existence of state aid and the compatibility of the measures in question it is relevant whether the beneficiary was in difficulty at the time when the measures were granted. The question whether Karjaportti can be considered a company in difficulty has to be assessed under the R&R Guidelines 1999 until 9 October 2004, the date of expiry of the R&R Guidelines 1999 ([37]). As from 10 October 2004, the R&R Guidelines 2004 are applicable ([38]).

(124) According to the R&R Guidelines 1999, a company can be considered as being in difficulty when it meets the so called hard criteria laid down in Point 5 of those Guidelines, that is when it lost more than half of its registered capital or could be subject to collective insolvency proceedings under national law. If the hard criteria are not met, a company can still show the "usual signs of a firm being in difficulty" according to point 6 of the R&R Guidelines 1999, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value (so-called soft criteria). The R&R Guidelines 2004 include similar hard and soft criteria in Points 10 and 11.

(125) Against this background, the Commission notes that in the year 2000, Karjaportti has not lost capital nor has it shown the "usual signs" of a firm being in difficulty in the year 2000. In fact it seems that Karjaportti was a healthy company which recorded a high turnover, a positive operating result, stable share capital and reserves at relatively high levels for the period between 2000 and 2002 (see also Table I).

(126) The situation looked gloomier in the following years. Turnover was decreasing and losses had significantly increased from 2003 to 2004. Debt was mounting and already at the beginning of 2004, the beneficiary started rescheduling of debts and had to ask the creditors for deferral of due payments ([39]). It also seems that Karjaportti had some excess capacities. In addition, it has to be taken into account that already in 2004, Karjaportti's losses were not covered by the contingency fund anymore (see Table I).

(127) According to Karjaportti's financial statements, the share capital of Karjaportti almost disappeared in 2004, as it dramatically fell to less than a tenth of its value compared to the year 2003. Since then the company recorded negative equity that tended to increase over the last years. With the exception of the year 2006, Karjaportti has since 2003 been loss making. The profit made in 2006 cannot be perceived as a sign of recovery of the company as it did not stem from the core activity of the company. Karjaportti's operational profit remained negative, similarly to the preceding and the following years. The profit in 2006 was not sufficient to offset the amount of deficit accumulated over past accounting periods nor to compensate for the negative equity. Overall the financial situation of Karjaportti remained considerably unfavourable. In 2008, Karjaportti was twice put into bankruptcy proceedings by the tax authorities.

([37]) See Point 79 of the R&R Guidelines 1999: "Subject to the provisions set out below, these Guidelines shall enter into force on the date of their publication in the *Official Journal of the European Communities*. They shall remain in force, unless otherwise stipulated in any new decision, for five years." The R&R Guidelines 1999 were published on 9 October 1999.

([38]) See Point 102 of the R&R Guidelines 2004.

([39]) According to minutes of a City Council meeting from 8 March 2004, Karjaportti had started restructuring its debts earlier that year and asked the City of Mikkeli to agree on a deferral of the instalments due in 2004 to the year 2005 for the loan granted in 2000, guaranteed by the City of Mikkeli (which was accepted by the City Council).

(128) In light of the facts presented in recitals 125-127, it can be concluded that Karjaportti qualifies as a firm in difficulty under Point 5 of the R&R Guidelines 1999 and under Point 11 of the R&R Guidelines 2004 respectively since the beginning of 2004. In 2008, when Karjaportti was subject to bankruptcy proceedings, it also qualified as a firm in difficulty under Point 10(c) of the R&R Guidelines 2004.

7.2. **Measures withdrawn**

7.2.1. *Non-implemented guarantee that had been planned for 2009 (measure 11)*

(129) In accordance with Article 8 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty ([40]) ('the Procedural Regulation'), a Member State can withdraw the notification after the opening of the formal investigation procedure in due time before the Commission has taken a decision on the aid character of the notified measure. In such case, the Commission will decide to close that procedure on the ground that it is without object.

(130) As the decision of the City Council of Mikkeli to provide a guarantee to Karjaportti did not become final and the City Board decided in February 2010 not to implement the guarantee, Finland withdrew the notification of the guarantee in March 2010. Thus, as regards the guarantee, the investigation became without object.

7.3. **Measures granted by the City of Mikkeli**

7.3.1. *Guarantee granted on 12 June 2000 (measure 1) and assignment of land (measure 2)*

Existence of state aid

(131) Guarantee (measure 1): As described in recitals (14)-(16), the City of Mikkeli gave the guarantee in June 2000 and made payments under the guarantee in December 2004. After the City of Mikkeli had become creditor of Karjaportti, the conditions for the loan were changed within the court-supervised restructuring proceedings (for details see recitals 34-39).

(132) Accordingly, several steps have to be distinguished. Whereas the aid is granted at the moment when a state guarantee is given, any payments by the state according to the terms of the guarantee are not to be considered as granting of state aid ([41]). On the other hand, the change of the conditions of the loan after the state guarantor has become creditor could entail state aid. In the following, it is examined whether the guarantee given in June 2000 constitutes state aid. The question whether the changes in the conditions of the loan could entail state aid is assessed as part of measure 6 (see recitals 188-195).

(133) The guarantee was given by the City of Mikkeli and accordingly consists of state resources and is imputable to the state.

(134) To involve state aid, within the meaning of Article 107(1) of the TFEU, a measure must confer an advantage that an undertaking would not have obtained under normal market conditions. In order to carry out that assessment, the Commission will rely on the Guarantee Notice 2000. At the time when the measure was granted, the Guarantee Notice 2000 was in force. However, as the case-law of the Court clearly indicates, "the question whether aid is State aid within the meaning of the Treaty must be determined on the basis of objective elements, which must be appraised on the date on which the Commission takes its decision" ([42]). Accordingly, for the assessment in hand, the Commission will rely on the Guarantee Notice 2008.

(135) According to point 3.2 of the Guarantee Notice 2008, the existence of state aid within an individual state guarantee can be ruled out if four cumulative requirements are fulfilled: "(a) The borrower is not in financial difficulty […], (b) The extent of the guarantee can be properly measured when it is granted, […] (c) The guarantee does not cover more than 80 % of the outstanding loan or other financial obligation […], (d) A market-oriented price is paid for the guarantee […]."

(136) In the case at hand, the borrower has not been in financial difficulties at the time of granting (see recitals 123–128). However, the guarantee under assessment covers 100 % of the loan.

(137) In addition, the guarantee was granted without any guarantee fee, even though the granting authority itself considered that a great risk was entailed ([43]). Whereas Finland argues that Karjaportti could have obtained a similar guarantee on the market, the Commission is of the opinion that a guarantee premium of zero cannot be considered as close to the market premium applicable at the time of granting. The guarantee covered 100 % of the loan in question, that is to say that the granting authority bore the risk of default of the beneficiary alone and the guarantee was granted as an absolute guarantee, i.e. the

([40]) OJ L 83, 27.3.1999, p. 1.
([41]) Point 2.1 of the Guarantee Notice 2008.
([42]) See Joined Cases C-341/06 P and C-342/06 P Chronopost SA and La Poste v Union française de l'express (UFEX) and Others [2008] ECR I-04777, paragraph 95.
([43]) According to the Minutes of the City Council of Mikkeli of 12 June 2000, "… it must be observed that the risk to the City is great during the first years …".

guarantor was liable for the principal debt as if it were the guarantor's own and the creditor could ask for the repayment of principal debt from the guarantor when the principal debt had become due.

(138) Accordingly, in the case at hand, contrary to the view of Finland, the Commission is of the opinion that the measure cannot be considered free of aid.

(139) Finland's argument that the measure was granted together with other parties can be rejected, as according to the information provided by Finland the other parties taking part in the investment were also state owned. Accordingly, it is considered that the measure confers an advantage to Karjaportti.

(140) To be considered state aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods. The measure under assessment was granted to Karjaportti, one specific company. Therefore, the Commission considers that the measure taken constitutes a selective advantage to the beneficiary.

(141) Finally, the Commission has to consider whether the measure taken by the City of Mikkeli in favour of Karjaportti is likely to distort competition and affect trade between Member States, by providing this company with an advantage over (potential) competitors not receiving public support. There is trade in meat products between Member States, the area in which the beneficiary operates. According to Finland, Karjaportti exports its products mainly to Russia, but also to Member States. Therefore, the Commission considers that the measure taken is likely to distort competition and affect trade between Member States.

(142) On the basis of the foregoing, the Commission concludes that the measure constitutes state aid.

(143) Assignment of land (measure 2): Finland does not deny that the measure could constitute state aid. The beneficiary was clearly granted an advantage, as it did not have to pay anything for the assignment of the land. In addition, the City of Mikkeli reimbursed the beneficiary the costs for the levelling of the site. Accordingly, the Commission considers that the measure confers an advantage to Karjaportti that it would not have received on the market.

(144) In addition, the measure meets all other requirements for the existence of state aid. As described in detail in recitals 133, 140 and 141, also the assignment of land consists of state resources and is imputable to the state, is selective, and it distorts competition and affects trade among the Member States.

(145) On the basis of the foregoing, the Commission concludes that the measure constitutes state aid.

Compatibility

(146) Finland argues that the guarantee, together with the assignment of land for building the production site in Tikkala, is compatible as regional aid. At the time when measures 1 and 2 were granted, that is in the year 2000, the RAG 1998 were in force ([44]). The measures under consideration were not granted under a scheme, but as an individual ad hoc payment. As they were granted in a sector to which the RAG 1998 are applicable, the measures fall in principle within the scope of the RAG 1998. At the time of granting, the beneficiary was not in difficulty, as described in recitals 123–128 above, and it was located in Itä-Suomen, a region eligible for regional aid under Article 107(3)(a) of the TFEU. Therefore, the Commission has assessed the project under the RAG 1998. This assessment has led to the following observations:

(147) According to Section 2 of the RAG 1998, regional aid can only be compatible if there is a balance between its distortive effect and its advantage as regards the development of a less favoured region. In this context, the Commission notes that the investment project in question was supposed to have positive impact on the regional development. It contributed to the further development of the economic activity and to the creation of new and indirect jobs. In fact, as described in recital 24, the new production site should raise the number of jobs in the region from 400 to 550-600.

(148) Section 4 of the RAG 1998 lays down the conditions for granting compatible regional aid.

(149) First, according to Point 4.1 of the RAG 1998, the object of regional aid is to secure either productive investment (initial investment) or job creation linked to investment. Initial investment means according to Point 4.4 of the RAG 1998 an investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment, or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment. The measures under consideration were used to build a new production site, which is an initial investment within the meaning of point 4.4 of the RAG 1998.

([44]) See Section 6 of the RAG 1998.

(150) Secondly, the aid intensity must be below the regional aid ceiling of 24 % ([45]). In order to calculate the aid intensity, the value of the investment and the aid element involved in the measures considered have to be determined.

(a) Concerning the investment's value, according to Point 4.5 of the RAG 1998, the eligible costs in this context may include costs for land, building plants and machinery. In the event of a purchase, only the costs of buying these assets should be taken into account. In fact, Finland calculated the eligible costs according to these provisions, resulting in an amount of EUR 25 935 928 (see recital 22 and Table III).

(b) Concerning the aid element involved, Finland provided a calculation, the credibility of which has been cross-checked by the Commission. For measure 1, the guarantee granted by the City of Mikkeli, the Guarantee Notice 2000 can be used to quantify the aid element. Three methods are foreseen to quantify the aid element, out of which one is to calculate it "by any other objectively justifiable and generally accepted method" (Section 3.2 of the Guarantee Notice 2000). Finland has compared the market rate for a comparable guarantee to the guarantee premium actually charged by the City of Mikkeli, which seems in fact to be an objectively justifiable and generally accepted method. For measure 2, the aid element consists of the value of the land plus the costs for levelling the site, which is also acceptable. As regards the funding from Finnvera and the Ministry of Trade and Industry, which is not subject to this Decision, if the funding were to be considered to involve state aid, the aid element would also have to be taken into account. Finland provided a calculation for the aid element involved in the Finnvera loan, which is considered credible. For the direct grants of the Ministry of Trade and Industry, the whole amount was taken into account. Overall, taking into account the aid element involved in the measures granted by the City of Mikkeli, Finnvera and the Ministry of Trade and Industry, the aid element (calculated as gross grant equivalent), is EUR 3 617 143 (see Table II).

(151) The aid element of EUR 3 617 143 corresponds to an aid intensity of 13,95 % of the total eligible costs of EUR 25 935 928 The aid intensity is hence below the threshold of 24 %.

(152) Third, according to Point 4.10 of the RAG 1998, aid for initial investment must be conditional on maintaining the investment in question for a minimum period of five years. Finland confirmed that the investment in question was to be maintained for a minimum period of five years.

(153) Fourth, according to Point 4.2 of the RAG 1998, the beneficiary's contribution to the investment's financing must be at least 25 %. Finland confirmed that this was the case.

(154) Fifth, the Commission notes that, in line with Point 4.2 of the RAG 1998, the aid application has been submitted before work on the project was started and that the rules on cumulation of aid are respected, as foreseen in Point 4.18 of the RAG 1998, and that the regional aid ceiling was not exceeded.

(155) On the basis of the foregoing arguments, the Commission concludes that measures 1 and 2 met the conditions of the RAG 1998 and are therefore compatible.

7.3.2. *Purchase of land (measure 3)*

(156) In principle, the market economy investor principle is also applicable to the purchase of land or other assets by a State. Such purchase could include state aid if it cannot be considered a normal commercial transaction. Even if a public authority purchases goods and services at a market price, state aid may nevertheless still be present if it turns out that the State did not have an actual need for the land or assets in question ([46]).

(157) Accordingly, the Commission has to assess whether the purchase of land can be considered a normal commercial transaction. To this end, it has to be considered whether the price paid by the City of Mikkeli reflected the value of the properties and the building bought.

(158) According to the interested party, a private market investor would not have been willing to pay EUR 6,7 million for the factory buildings which the City of Mikkeli bought at this price.

(159) Finland, on the other hand, provided the Commission with an indication of the value of the properties. According to Finland, private bank […] held a mortgage amounting to EUR 7,5 million on one of the properties sold at the time of the purchase ([47]).

([45]) Commission Decision in case N238/1999, letter to Finland dated 13 December 1999 concerning the regional aid map 2000-2006,

([46]) See Case T-14/96 Bretagne Angleterre Irlande (BAI) v Commission [1999] ECR II-139 paragraph 71; Joined Cases T-116/01 and T-118/01, P & O European Ferries (Vizcaya), SA and Diputación Foral de Vizcaya v. Commission [2003] ECR II-02957, paragraphs 114 et seq.

([47]) See recital (25); when the possession on the property was transferred to the City of Mikkeli, it was free of mortgages.

(160) Finland informed the Commission that no evaluation of the land exists. The Commission considers that the value of the mortgage held by a private bank might give an indication of the value of the property. Indeed, before accepting collaterals, a bank will value the property in question so that if the debtor is not able to pay back its debt, the bank may be satisfied by realising the mortgage.

(161) For the properties in question, the City of Mikkeli paid a purchase price of EUR 6 646 787, which is below the registered amount of the mortgage held by a private party on one of the properties prior to closing the sale procedure. In addition to this property, five other properties and a building were sold to the City of Mikkeli. In addition, the Commission notes that the City of Mikkeli bought the properties with a view to converting the land into residential area by implementing changes to local plans; the properties were located near city centre and in an attractive residential area.

(162) On the basis of the foregoing, the doubts raised by the Commission in the opening decision concerning the price paid for the properties and the buildings are dispelled. It is considered that the City of Mikkeli bought the properties and the building at a price that reflected their value and that the market investor test is met. The Commission therefore concludes that the measure does not involve state aid.

7.3.3. *Guarantee granted on 8 March 2004 (measure 4) and guarantee granted on 10 May 2004 (measure 5)*

(163) As for the guarantee granted in June 2000, several steps have to be distinguished (granting of the guarantee; payment under the guarantee; change of conditions in the loan; compare recital 132). Accordingly, in the following, it is examined whether the guarantees given in March 2004 and in May 2004 constitute state aid. The question whether the changes in the conditions of the loan could entail state aid is assessed as part of measure 6 (see recitalsto 188-195).

Existence of state aid

(164) Measure 4: Contrary to Finland's arguments, presented under recital (92), the Commission considers that converting existing liabilities in a new guarantee can constitute state aid. In this context, a distinction has to be made between existing aid and new aid. The definition of existing aid entails individual aid measures that had been put into effect prior to the entry into force of the Treaty (Article 1(b) of the Procedural Regulation). New aid, on the contrary, is "all aid […] which is not existing aid, including alterations to existing aid" (Article 1(c) of the Procedural Regulation). According to Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 ([48]), an alteration is "any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market".

(165) In fact, the City of Mikkeli granted a new guarantee on 8 March 2004 that was securing a new loan granted by Tapiola on 14 April 2004. The new guarantee cannot be seen as a continuation of the old guarantee as it was granted for a new loan with new conditions. The fact that this loan replaced a loan granted in 1992 by Tapiola that had already been guaranteed by the City of Mikkeli does not alter the view of the Commission. Whereas it is true that the new loan amounted to the outstanding capital of the old loan, and the interest rate was more favourable for Karjaportti (4,5 % p.a. for the old loan; 4 % p.a. for the new loan), there was a change in the duration of the loan (the old loan should have been repaid ten years after granting, that is to say in November 2002; the new loan allowed repayment until 2014). Overall, the amount of the new loan (capital plus interest for the years 2004 to 2014) is higher than the amount of the old loan. Accordingly, by granting the new guarantee, the risk of the City of Mikkeli and hence the amount of the measure increased compared to the old guarantee. Granting the new guarantee has to be seen as an alteration of the old guarantee that allows classifying the new guarantee as new aid. Accordingly, Finland's argument that the old guarantee was granted before Finland's accession and can thus be considered as existing aid and that the new guarantee cannot be considered as involving granting new aid can be dismissed.

(166) The question whether the guarantee conferred an advantage to the beneficiary can be assessed on the basis of the Guarantee Notice 2008. At the time when the measure was granted, the Guarantee Notice 2000 was in force. However, as explained in recital (134), the Commission will rely on the Guarantee Notice 2008 when assessing the measure. According to point 3.2 of the Guarantee Notice 2008, the existence of state aid within an individual state guarantee can be ruled out if four cumulative requirements are fulfilled (see recital 135). The guarantee under assessment covers 100 % of the loan. This suffices to say that the existence of state aid cannot be ruled out on the basis of point 3.2 of the Guarantee Notice 2008. In addition, and contrary to Finland's arguments, the Commission considers that Karjaportti was in difficulty, within the meaning of the R&R Guidelines 1999, already in March 2004 (see recitals123-128), which is another reason that the guarantee cannot fall under point 3.2. of the Guarantee Notice 2008.

([48]) OJ L 140, 30.4.2004, p. 1.

(167) In addition, the guarantee was granted without any guarantee fee, even though the company was facing difficulty and the risk for the City of Mikkeli could be considered as considerable. The guarantee covered 100 % of the loan in question, i.e. that the granting authority bore the risk of default of the beneficiary alone and the guarantee was granted as an absolute guarantee, that is to say the guarantor is liable for the principal debt as if it were the guarantor's own and the creditor can ask for the repayment of principal debt from the guarantor when the principal debt has become due.

(168) In addition, Finland believes that the measure is in line with the market economy investor principle, in particular as private parties were involved. This argument can be rejected. According to the information submitted by Finland, firstly, the private parties did not grant guarantees but loans to the beneficiary. Second, the loans by the private parties were not granted at the same time as the guaranteed pension loans. Third, the interest rate asked for by at least one of the private parties for a loan was already higher than the interest rate for the pension loan. More importantly, private parties only agreed on short term loans, with a duration of several months, whereas the guarantee granted by the City of Mikkeli covered a loan with a duration of ten years.

(169) In view of the foregoing, it is considered that the measure confers an advantage to Karjaportti. In addition, measure 4 meets all other requirements for the existence of state aid. As described in detail in recitals 133, 140 and 141, also this guarantee consists of state resources and is imputable to the state, is selective and distorts competition and affects trade among the Member States.

(170) Measure 5: Finland's argument that the measure was granted to continue the investment started in 2000 can be rejected, as the guarantee was clearly a new measure.

(171) According to point 3.2 of the Guarantee Notice 2008, the existence of state aid within an individual state guarantee can be ruled out if four cumulative requirements are fulfilled (see recital 135). Like measure 4, the guarantee under assessment covers 100 % of the loan and Karjaportti was already in difficulty within the meaning of the R&R Guidelines 1999 in May 2004 (see recitals 123-128). Accordingly, the guarantee cannot fall under point 3.2 of the Guarantee Notice 2008.

(172) In addition, and similar to measure 4, the guarantee was granted without any guarantee fee, even though the company was facing difficulty and the risk for the City of Mikkeli could be considered as considerable. The guarantee covered 100 % of the loan in question and was granted as an absolute guarantee. Accordingly, in the case at hand, contrary to the view of Finland, the Commission is of the opinion that the measure confers an advantage to Karjaportti.

(173) In addition, measure 5 meets all other requirements for the existence of state aid. As described in detail in recitals 133, 140 and 141 also this guarantee consists of state resources and is imputable to the state, is selective and distorts competition and affects trade among the Member States.

(174) On the basis of the foregoing, the Commission concludes that measure 4 and measure 5 constitute state aid.

Compatibility

(175) Finland did not bring forward any arguments as regards the compatibility of measure 4. For measure 5, Finland invoked Article 107(3)(a) of the TFEU and the RAG 1998 (see recital 95). The RAG 1998 can however not serve as compatibility basis, as, Karjaportti was in difficulty at the time of granting of the two guarantees (see recitals 123-128). According to the RAG 1998, aid to companies in difficulty has to be assessed under the Rescue and Restructuring Guidelines ([49]). Therefore, the Commission first assesses whether measures 4 and 5 are compatible as rescue and restructuring aid according to the R&R Guidelines. At the time of granting, the R&R Guidelines 1999 were applicable ([50]).

(176) According to the R&R Guidelines 1999, a rescue aid has to meet certain requirements, which are not all fulfilled by the measure under consideration.

(a) First, whereas the measures consist of liquidity support in the form of a guarantee (point 23(a) of the R&R Guidelines 1999), the loans covered by the respective guarantees were not granted at an interest rate at least comparable to those observed for loans to healthy firms (reference rate for Finland in March 2004: 4,43 % plus 100 basis points; reference rate for Finland in May 2004: 4,43 % plus 100 basis points).

(b) Second, the guarantees were not linked to a loan that was to be reimbursed over a period of not more than twelve months after disbursement of the last instalment to the firm (point 23(b) of the R&R Guidelines 1999).

([49]) See Point 4.4, fn. 10 and fn. 21 of the RAG 1998.
([50]) According to Section 6 of the R&R Guidelines 1999, they applied until 9 October 2004; see fn. 37 above.

(c) Third, Finland did not provide any information that the aid was warranted on the grounds of serious social difficulties and had no unduly adverse spillover effects on other Member States (point 23(c) of the R&R Guidelines 1999).

(d) Fourth, the guarantees were neither reimbursed within 6 months nor had a restructuring plan within the meaning of the R&R Guidelines 1999 been set up (point 23(d) of the R&R Guidelines 1999).

(e) Lastly, there are no indications that the guarantees were restricted to the amount needed to keep the firm in business for the period during which the aid was authorised (point 23(e) of the R&R Guidelines 1999).

(177) Measure 4 and 5 do not meet all the requirements for restructuring aid set out in the R&R Guidelines 1999 either.

(a) First, the measures were not conditional on the implementation of a restructuring plan (point 31 of the R&R Guidelines 1999). It is noted that no restructuring plan within the meaning of point 32 et seq. of the R&R Guidelines 1999 has been set up.

(b) Second, aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources (point 40 of the R&R Guidelines 1999) and for the measures under consideration, there is no indication of an own contribution of the beneficiary.

(c) Third, in order to avoid undue distortions of competition, compensatory measures must be taken (point 37 of the R&R Guidelines 1999). Such measures have not been provided for.

(178) Accordingly, the Commission considers that the measures were not granted in accordance with the R&R Guidelines 1999.

(179) Further, it has to be considered whether measure 4 and 5 could be compatible on the basis of any other of the exemptions laid down in Article 107(2) and (3) of the TFEU.

(180) The exemptions in Article 107(2) of the TFEU do not apply in the present case because the measures in question do not have a social character, have not been awarded to individual consumers, are not designed to make good damage caused by natural disasters or exceptional occurrences and have not been awarded to the economy of certain areas of the Federal Republic of Germany affected by the division of that country.

(181) Further exemptions are laid out in Article 107(3) of the TFEU.

(182) Article 107(3)(a) of the TFEU states that “aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment” may be declared compatible with the internal market. Karjaportti, at the time of granting, was located in such an area.

(183) At the time when measures 4 and measures 5 were granted, the compatibility of state aid to assisted areas was regulated by the RAG 1998. Under those Guidelines, companies in difficulties are not eligible for regional aid. Accordingly, in view of the foregoing, the Commission concludes that the aid is not eligible for the derogation provided for in Article 107(3)(a) of the TFEU.

(184) Article 107(3)(b) of the TFEU states that "aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State" may be declared compatible with the internal market. The Commission notes that the aid in question is not designed to promote the execution of an important project of common European interest nor has the Commission found any evidence that it is designed to remedy a serious disturbance in the Finnish economy. In view of the foregoing, the Commission concludes that the aid does not qualify for the derogation enshrined in Article 107(3)(b) of the TFEU.

(185) Article 107(3)(d) of the TFEU states that aid to promote culture and heritage conservation may be declared compatible with the TFEU where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest. This Article obviously does not apply to the current case.

(186) Article 107(3)(c) of the TFEU provides for the authorisation of state 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. The Commission has developed several guidelines and communications that explain how it will apply the derogation contained in this Article. However, the Commission considers that because of the nature and characteristics of the aid, it is self-evident that the exceptions under these guidelines and communications are not applicable to the present case.

(187) On the basis of the foregoing arguments, the Commission considers that measures 4 and 5 involve state aid that is not compatible with the internal market.

7.3.4. *Court-supervised restructuring proceedings (measure 6)*

(188) Finland's main argument, as described in recitals 96-98, is that the City of Mikkeli was not more generous than other creditors of the company, but that the City of Mikkeli acted together with private creditors of the beneficiary and at the same conditions. Accordingly, it acted like a private market economy investor when agreeing to the restructuring programme.

(189) The first question to be verified in this context is if the market economy operator test applies to situations where one or several public entities, the behaviour of which is imputable to the State, carry out multiple measures in respect of one undertaking. The General Court has addressed this question in BP Chemicals v Commission ([51]). According to the Court, the mere fact that a public undertaking has already made capital injections into a subsidiary which are classed as 'aid' does not automatically mean that a further capital injection cannot be classed as an investment which satisfies the private market economy investor test. The Commission has, however, to determine whether multiple measures in respect of one undertaking can be reasonably severed and can be seen as independent measures. In this context, according to the Court, the chronology of the measures in question, their purpose, and the subsidiary's situation at the time when each decision to make an injection was made have to be considered ([52]).

(190) In the case at hand, the Commission has to determine whether the guarantees granted in March and May 2004 (measure 4 and measure 5) can be severed from the court-supervised restructuring proceedings (measure 6). Whereas it is true that all three measures have been decided within one year, the Commission observes that they intervened in a different context. In the meantime, a court-supervised restructuring proceeding had been initiated, in which all creditors of the company participated. The purpose of measure 6 therefore was no longer to enable the company to return to viability without insolvency by obtaining fresh money from private banks. Rather, the City of Mikkeli, as all other creditors, aimed, in their role as creditors, to maximize the recovery of their outstanding claims under the constraints of the national bankruptcy law. Therefore, the Commission considers that measure 6 can be severed from measures 4 and 5.

(191) .As described in recital 31, Karjaportti, together with its private creditors, filed for court-supervised restructuring proceedings with the District Court of Mikkeli according to the Restructuring of Enterprises Act 47/1993. A restructuring programme was submitted to the Court, including details of the measures currently under assessment. The Court, after having checked the details, approved the restructuring programme. The Commission notes that Karjaportti has been subject to court-supervised restructuring proceedings under Finnish law. In fact, the purpose of such a court-supervised restructuring proceeding is to rehabilitate a distressed debtor's viable business, to ensure its continued viability and to achieve debt arrangements. Therefore, the Commission considers that the measures taken by the City of Mikkeli during the court-supervised restructuring proceeding can be assessed according to the market economy investor principle.

(192) According to the Magefesa case law ([53]), if the state is more generous than other creditors of the company, measures under a court-supervised restructuring procedure can constitute state aid. Accordingly, the Commission verifies whether indeed the private and the public creditors were equally treated in the restructuring proceedings

(193) First, it is noted that overall, the […] of restructuring debts (approximately [30-70] %) is owed to private creditors. The main private creditors are Nordea Bank, Pohjola Bank and Nordea Financing. Second, it has to be considered that the creditors of Karjaportti were divided into different groups, according to their ranking. Together with the private creditors Nordea Bank, OKO/Pohjola Bank and Nordea Financing as well as the state owned specialised financing company Finnvera, the City of Mikkeli belonged to the group of creditors of large secured debts. As can be seen in Table IV, within these large secured debts, the City of Mikkeli has a share of [10-40]%, whereas the private creditors together have a share of [30-70] %. Finnvera has a share of [10-40] %.

(194) In the following, each of the measures taken by the City of Mikkeli is assessed in more detail:

(195) Reduction of interest rates for secured debts: As can be seen in Table V, the interest rates for the loans and other debts (unpaid charges) which were considered "large secured debts" were the same for private and public creditors, with the exception of […]. This creditor received an interest rate of […] EURIBOR for all outstanding amounts from the commencement of the restructuring proceedings, whereas the other creditors received for a part of the outstanding amounts only […] EURIBOR minus […]% until 2010.

([51]) Case T-95/11 BP Chemicals v Commission [1998] ECR II-3235.
([52]) Case T-95/11 BP Chemicals v Commission [1998] ECR II-3235, paragraphs 171 and 172.
([53]) See Case C 480/98 Kingdom of Spain v Commission [2000] ECR I-08717, paragraph 19.

This difference was due to the fact that […] had the highest ranking as regards the collaterals provided by Karjaportti as security. It is considered that […] higher ranking justifies the difference in the interest rates applied.

(196) Rescheduling of loans: The claims of the City of Mikkeli were deferred to the same extent as the claims of other secured debtors. As can be seen in Table VI, Karjaportti has to pay instalments to all secured creditors from July 2009 on until 2015, when the biggest part of instalments becomes due (43 % of the capital of each of the secured debts). The instalments to be paid to each creditor all have the same proportion in relation to the overall amount of the claim of the respective creditor (2 % of the outstanding amount for the first three instalments; 4 % for the next two instalments; 6 % for the remaining instalment). The last instalment amounts to 43 % of the capital for each of the secured creditors. Accordingly, the City of Mikkeli has not been treated less favourable than the private creditors in a similar situation.

(197) Conditional debt waiver: According to the restructuring programme, as described in recitals 42 and 43, the amounts to be waived at the end of the court-supervised restructuring proceedings, if certain economic requirements are not met, are based on a comparison between the value of the collateral if Karjaportti continues its operations, and the value of the collateral in case of its realisation, determined for each of the respective creditors, taking into account their respective rankings. The value of the collateral in the two scenarios was determined by two independent valuators at the time when the restructuring programme was set up, based on comparable prices and rental information. Against this background, […] does not have to waive debts at the end of the court-supervised restructuring proceedings, as it is the highest ranking creditor. The amounts for the other creditors were also determined according to the said methodology, resulting in the amounts presented in recital 43. The methodology used in determining the respective amounts can be considered credible, in particular as it relates the respective ranking to the value of the respective collateral in the two scenarios. In practice, the calculation was based on independent expert evaluations, and the same principles were used to all creditors when determining the amounts by which the restructuring debts can be at maximum reduced at the end of the court-supervised restructuring proceedings. In light of this, it can be considered that all creditors were treated on an equal basis.

(198) Overall, the Commission considers that the City of Mikkeli was not treated less favourably than the private creditors during the court-supervised restructuring proceedings. Where differences to the other creditors occur, they were justified by the different quality of collaterals the respective creditors held. Therefore, in light of the above, it has to be concluded that the beneficiary did not gain an advantage within the meaning of Article 107(1) of the TFEU from the court-supervised restructuring proceedings. The doubts that the Commission raised in the opening decision are dispelled and the measures described in recitals 31-43 do not constitute state aid.

7.3.5. *Purchase of shares (measure 7)*

(199) First, the Commission notes that the purchase of shares was not part of the court-supervised restructuring proceedings.

(200) Finland claims that the City of Mikkeli acted in line with the market economy investor principle when purchasing the shares. First, following the logic of the BP Chemicals case (see recitals 189-191), it has to be determined whether the market economy investor principle can be applied to measure 7, as the City of Mikkeli had already granted aid measures to Karjaportti in the past. In this context, the Commission notes that measures 4 and 5 were taken before the beginning of the court-supervised restructuring proceedings, whereas the purchase of shares only took place afterwards. In addition, whereas the purpose of measures 4 and 5 was to allow the beneficiary to continue to have access to liquidity, after the beginning of the court-supervised restructuring proceedings it was clear that those needs would be addressed within such proceedings. Therefore, it is considered that measure 7 can be severed from measures 4 and 5 and that the market economy investor principle is in principle applicable to measure 7.

(201) As described at recital 156, the market economy investor principle is applicable to the purchase of land or other assets by a state. Finland provided a valuation of the value of the shares, undertaken by […] ([54]), a real estate management agency based in Helsinki. The valuation, dated 29 March 2005, valued the shares in the real estate company between EUR 1 million and EUR 1,1 million. The valuation was based on the value of the property owned by the company. Two methods were applied to determine the value: the capital value at market rent (after housing statistics compiled by Statistics Finland) and the resale value (after asking prices).

(202) At the time the shares were sold, the property was rented out below the market rent level. According to the valuation, the market rent level could be reached in two years, with the maximum yearly rent increase. Accordingly, the value of the property was adjusted at the time of the purchase and in the end, the City of Mikkeli bought the shares at a price of EUR 860 000.

([54]) See […].

(203) The valuation was undertaken by an independent expert. The methodology used, as described above, was to first check the capital value at market rent, then the resale value. Both values were based on market data and the two values were used to determine the value of the shares, which was also adjusted to the rent level prevailing at the time of the purchase. This methodology is considered as plausible. The Commission concludes that the shares in Kiinteistö Oy Suksimäki were bought at a market price and that the measure did not confer an advantage to Karjaportti.

(204) On the basis of the foregoing, the doubts raised by the Commission in the opening decision have been dispelled and it is concluded that the measure does not include state aid.

7.3.6. *Conversion of unpaid interest rates into loans (measure 8)*

Existence of state aid

(205) Finland argues that the conversion of unpaid interest rates into loans is a typical measure to court-supervised restructuring proceedings. It is true that such a measure can be seen as inherent to court-supervised restructuring proceedings. In the case at hand, the conversion of unpaid interest rates into loans in the year 2005 was in principle already laid down in the restructuring programme for all creditors of large secured debts ([two private creditors] and Finnvera). In light of this, the Commission does not consider the fact that unpaid interest rates were converted into a loan as such as state aid. It has, however, to be verified whether the interest rate that the City of Mikkeli charged from Karjaportti involved an advantage to the latter.

(206) In this context, Finland considers that the City of Mikkeli acted in accordance with the private market investor principle, as private creditors converted unpaid interest rates into loans together with the City of Mikkeli. First of all, by the same token as for the court-supervised restructuring proceedings, it is considered that in principle the private market investor principle can be applied to measure 8, as this measure is severable from measures 4 and 5 (see recitals 189-191). Applying the private market investor principle to the case at hand, the Commission notes the following: Whereas it is true that not only the City of Mikkeli, but also [the private creditors] were subject to the conversion, the interest margin charged for the loans was not the same. In fact, [one private creditor] asked for EURIBOR 3 months plus 1,5 % and [the other private creditor] for EURIBOR 3 months plus 2 %, whereas the City of Mikkeli only asked for EURIBOR 3 months plus 0,3 %. Hence, the interest rate which the City of Mikkeli agreed to charge for the loan is 1,2 % below the interest that [one private creditor] charged and 1,7 % below the interest that [another private creditor] charged. Therefore, the argument that the City of Mikkeli acted on equal terms with private creditors can be rejected. In light of the difference in interest rates it can also be excluded that the City of Mikkeli charged a market fee for the loan. Therefore, the loan into which the unpaid interest rates were converted by the City of Mikkeli provides an advantage to Karjaportti.

(207) In addition, measure 8 meets all other requirements for the existence of state aid. As described in detail in recitals 133, 140 and 141 the loan consists of state resources and is imputable to the state, is selective and distorts competition and affects trade among the Member States.

(208) On the basis of the foregoing, the Commission concludes that measure 8 constitutes state aid.

Compatibility

(209) Finland did not bring forward any arguments as regards the compatibility of measure 8. As Karjaportti was in difficulty at the time of the conversion of the unpaid interest rates (see recitals 123-129), the Commission first assesses whether measure 8 is compatible as rescue and restructuring aid according to the R&R Guidelines. At the time of granting, the R&R Guidelines 2004 were applicable ([55]).

(210) According to the R&R Guidelines 2004, a rescue aid has to meet certain requirements, which are not all fulfilled by the measure in question.

(a) First, whereas the measure consists of liquidity support in the form a loan (point 25(a) of the R&R Guidelines 2004), the interest rate charged is not at least comparable to those observed for loans to healthy firms (reference rate for Finland in December 2005: 4,08 % plus 100 basis points; the interest rate charged for the loan was EURIBOR 3 months + 0,3 %, which amounted on 19 December 2005 to 2,486 % plus 30 basis points).

(b) Second, Finland did not undertake to communicate a restructuring plan within six months of the authorisation of the aid and the duration of the measure was not limited to six months (point 25(a) and (c) of the R&R Guidelines 2004).

(c) Third, the one time, last time principle (point 25(e) of the R&R Guidelines 2004) is not met, as the company has received incompatible and illegal state aid at times when it was in difficulty before.

([55]) See Point 102 of the R&R Guidelines 2004.

(211) The measure does not meet all the requirements for restructuring aid set out in the R&R Guidelines 2004 either.

(a) First, the measure is not conditional on the implementation of a restructuring plan (point 34 of the R&R Guidelines 2004). Whereas it is true that a restructuring programme for Karjaportti was set up during the court-supervised restructuring proceedings, it does not comply with the requirements of point 35 of the R&R Guidelines 2004 (duration of 10 years, no sensitivity analysis, no return to long term viability within a reasonable time frame).

(b) Second, aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources (point 43 of the R&R Guidelines 2004) and for the measures under consideration, there is no indication of an own contribution of the beneficiary.

(c) Third, the measure does not meet the one time, last time principle, as the company had received incompatible and illegal state aid at times when it was in difficulty before.

(212) Accordingly, the Commission considers that the measure was not granted in accordance with the R&R Guidelines 2004.

(213) Further, it has to be considered whether measure 8 could be compatible on the basis of any other of the exemptions laid down in Article 107(2) and (3) of the TFEU. For the same reasons as set out above for measure 4 and measures 5 (see recitals 179-186), the Commission considers that none of the exemptions is met. Therefore, the Commission concludes that measure 8 involves state aid that is not compatible with the internal market.

7.3.7. *Write-off of debts in the financial statements in 2006 and in 2008 (measure 9 and measure 10)*

(214) First, it has to be verified whether these debt write-offs could confer an advantage to Karjaportti. This would be the case if the City of Mikkeli abandoned to pursue the collection of the debts, that is if it waived the debts in question.

(215) As described at recital 105, Finland confirmed that the write-off of debts was only an accounting measure that does not affect the legal relationship between the creditor and the debtor, that is to say that the debts were not waived. According to the documents submitted by Finland, the City of Mikkeli is still pursuing collection of the debts.

(216) According to the principle of prudence under the good accounting practice and in accordance with Accounting Act 1336/1997, the value of receivables entered in the balance sheet may not exceed their probable value. Accordingly, receivables that probably cannot be collected are recorded in the profit and loss statement as an expense.

(217) On the basis of the foregoing, the Commission considers that the debt write-off was only done in the financial accounts of the City of Mikkeli in line with accounting standards and the respective claims are still pursued within the court-supervised restructuring proceedings.

(218) The doubts raised by the Commission in the opening decision have been dispelled and it can be concluded that the measures did not provide an advantage to Karjaportti. Therefore, measure 9 and 10 do not involve state aid.

7.3.8. *Rescheduling of debts since 2009 (measure 12)*

Existence of state aid

(219) Finland's argument that the measure is inherent to court-supervised restructuring proceedings and does not involve state aid can be rejected. First, the rescheduling of debts in 2009 was not foreseen in the initial restructuring programme and second, the fact that such a restructuring would be undertaken in line with the national legislation is not sufficient to exclude state aid ([56]).

(220) In principle, also measures mitigating the charges which are normally included in the budget of an undertaking, can be considered as state aid. Concerning rescheduling of debts, the Commission is assessing such behaviour with the private creditor test ([57]). There, the state is rather viewed as a public creditor which, like a private creditor, seeks to recover sums due to it and which, to that end, concludes agreements with the debtor, under which the accumulated debts are to be rescheduled or paid by instalments in order to facilitate their repayment ([58]). There is favourable treatment in the meaning of Article 107(1) of the TFEU if the amount owed can be paid back to the public creditor at more favourable terms than would be permitted by a private creditor. The Commission takes note of the argument of Finland that the rescheduling was never implemented as the administrative court of Kuopio (Kuopion Hallinto-Oikeus) prohibited its implementation. However, as Finland states, the repayment schedule of the debt has

([56]) See Case T-152/99 Hamsa v Commission [2002] ECR II-3049, paragraph 158.
([57]) See Case T-36/99 Lenzing AG v Commission [2004] ECR II-3597, paragraph 152.
([58]) See Case C-342/96 Spain v Commission [1999] ECR I-2459, paragraph 46.

nonetheless been extended, resulting in a deferral of due payments. In this context, the Commission notes that the actually implemented rescheduling differs from the notified rescheduling as regards the amounts and the timeframe. The amount actually rescheduled by the City of Mikkeli is lower than the originally notified amount and the rescheduling was only granted for shorter periods than originally notified. In light of this, it is considered that the notified measure has been implemented with modifications. Irrespective of these modifications, the Commission notes that no private creditor would ever have accepted a debt rescheduling in whatever form for reasons set out in this recital.

(221) A private creditor will normally enforce its claims if it has previously entered into agreements on the rescheduling of debts which have not been honoured by the debtor ([59]). The City of Mikkeli, on the contrary, agreed to a subsequent debt rescheduling after Karjaportti had failed to respect the conditions of the debt rescheduling agreed to during the court-supervised restructuring proceedings. In addition, there are no particular reasons for non-enforcement, such as higher securities provided to the City of Mikkeli. Lastly, as regards the prospects of future profitability and viability of the company, the Commission considers that the financial situation of the company was such that it did not give cause to believe that investments would reach an acceptable level of profitability within a reasonable period. At the time of granting, Karjaportti was in bankruptcy proceedings and in addition, since 2004, the company had been in court-supervised restructuring proceedings. In light of this, the Commission notes that a hypothetical private creditor, in the same situation as the City of Mikkeli, would not have accepted continued rescheduling of the debts.

(222) In this context, Finland states that the City of Mikkeli has acted on equal terms with the other creditors of Karjaportti.

(223) In fact, concerning the notified debt rescheduling, the agreement of the private creditors was, according to Finland, conditional on the agreement by the City of Mikkeli. Second, it seems that the intended debt rescheduling did not foresee the same conditions for all of the secured creditors. Whereas the City of Mikkeli would have deferred the payment of the outstanding debts to 2011, the private creditors would still have received an instalment in 2009. In the light of this, the argument brought forward by Finland can be rejected.

(224) On the basis of the foregoing, the Commission concludes that the measure does not meet the private creditor test and that it provides an advantage to Karjaportti.

([59]) See Case T-36/99 Lenzing AG v Commission [2004] ECR II-3597, paragraph 140 et seq.

(225) As regards the other requirements for the existence of state aid within the meaning of Article 107(1) of the TFEU, the Commission notes that the rescheduling was agreed to by the City of Mikkeli and accordingly consists of state resources and is imputable to the state. In addition, the measure can be considered selective. Finally, it distorts competition and affects trade among the Member States, as described in more detail in recitals 133, 140 and 141.

(226) On the basis of the foregoing, the Commission concludes that the measure constitutes state aid.

Compatibility

(227) Finland's main argument was that this measure did not involve state aid; it had, however, also notified measure 12 as rescue aid (see recital 1). In fact, when the City of Mikkeli agreed to the debt rescheduling, Karjaportti was in difficulty within the meaning of point 10(c) of the R&R Guidelines 2004 (see recitals 123-129). Accordingly, the compatibility of the measure in question has to be considered on the basis of the R&R Guidelines 2004.

(228) According to the R&R Guidelines 2004, a rescue aid has to meet certain requirements, which are not all fulfilled by the measure in question.

(a) First, the measure does not consist of liquidity support in the form of loan guarantees or loans (point 25 (a) of the R&R Guidelines 2004, but of deferral of payments.

(b) Second, Finland did not undertake to communicate a restructuring plan within six months of the authorisation of the aid and the duration of the measure was not limited to six months (point 25(a) and (c) of the R&R Guidelines 2004).

(c) Third, the one time, last time principle (point 25(e) of the R&R Guidelines 2004) is not met, as the company has received incompatible and illegal state aid at times when it was in difficulty before.

(229) The measure does not meet all the requirements for restructuring aid set out in the R&R Guidelines 2004 either.

(a) First, the measure is not conditional on the implementation of a restructuring plan (point 34 of the R&R Guidelines 2004). It is noted that no restructuring plan within the meaning of point 35 of the R&R Guidelines 2004 was set up.

(b) Second, aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources (point 43 of the R&R Guidelines 2004) and for the measures under consideration, there is no indication of an own contribution of the beneficiary.

(c) Third, in order to avoid undue distortions of competition, compensatory measures must be taken (point 38 of the R&R Guidelines 2004). Such measures were not provided for.

(d) Fourth, the measure does not meet the one time, last time principle, as the company had received incompatible and illegal state aid at times when it was in difficulty before.

(230) Accordingly, the Commission considers that the measure was not granted in accordance with the R&R Guidelines 2004.

(231) Further, it has to be considered whether measure 12 could be compatible on the basis of any other of the exemptions laid down in Article 107(2) and (3) of the TFEU.

(232) The exemptions in Article 107(2) of the TFEU do not apply in the present case because this measure does not have a social character, has not been awarded to individual consumers, is not designed to make good damage caused by natural disasters or exceptional occurrences and has not been awarded to the economy of certain areas of the Federal Republic of Germany affected by the division of that country.

(233) Further exemptions are set out in Article 107(3) of the TFEU.

(234) Article 107(3)(a) of the TFEU states that "aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment" may be declared compatible with the internal market. Karjaportti, at the time of granting, was located in such an area.

(235) Compatibility of State aid to assisted areas is regulated by the RAG 1998. Under those Guidelines, companies in difficulties are not eligible for regional aid. Accordingly, the Commission concludes that the aid is not eligible for the derogation provided for in Article 107(3)(a) of the TFEU.

(236) Article 107(3)(b) of the TFEU states that "aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State" may be declared compatible with the internal market. The Commission notes that the aid in question is not designed to promote the execution of an important project of common European interest nor has the Commission found any evidence that it is designed to remedy a serious disturbance in the Finnish economy. In view of the foregoing considerations, the Commission concludes that the aid does not qualify for the derogation enshrined in Article 107(3)(b) of the TFEU.

(237) Article 107(3)(d) of the TFEU states that aid to promote culture and heritage conservation may be declared compatible with the TFEU where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest. This Article obviously does not apply to the current case.

(238) Article 107(3)(c) of the TFEU provides for the authorisation of state 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. The Commission has developed several guidelines and communications that explain how it will apply the derogation contained in this Article. However, the Commission considers that because of the nature and characteristics of the aid, it is self-evident that the exceptions under these guidelines and communications are not applicable to the present case.

(239) On the basis of the foregoing arguments, the Commission considers that measure 12 involves state aid that is not compatible with the internal market.

7.4. **Measures granted by Finnvera**

(240) As a preliminary remark, the Commission recalls that Finland has, in the context of state aid decision N 715/2006, given a commitment that the activities of Finnvera will be limited to administering state aid schemes. On this basis, the Commission has decided on 25 September 2007 (the date of the Commission decision) that the exemption from income tax for Finnvera does not constitute state aid. Measures 13 to 17 have been granted before the Commission decision in case N 715/2006. Measure 18 has been granted after the adoption of the Commission decision in case N 715/2006. The Commission therefore has to take into account the commitment given by the Finnish authorities in this case in its assessment of measure 18.

7.4.1. *Guarantee granted on 17 March 2004 (measure 13)*

Existence of state aid

(241) In order to be considered state aid in the sense of Article 107(1) of the TFEU, a measure must be granted directly or indirectly from state resources and it must be imputable to the State. Finland has not disputed that measures taken by Finnvera consist of state resources and are imputable to the State. According to case law, resources of an undertaking are to be considered state resources if the State is capable, by exercising its dominant influence over such undertakings, to direct the use of their resources ([60]). Measures granted by a special financing institution, which can be considered a public sector body according to its statute, are generally imputable to the State ([61]). The Court has further explained the notion of imputability in Stardust Marine ([62]). It provided the following indicators for establishing imputability: integration of the public undertaking into the structures of the public administration; the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators; the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law); the intensity of the supervision exercised by the public authorities over the management of the undertaking. In this context, the Commission notes that Finnvera's actions are subject to administrative law, indicating that it is closely linked to the administration. Finnvera is a 100 % state owned special financing company, which enjoys a State guarantee and is mainly providing state aid and financing which is not readily available on the market, such as export credits. Therefore, although its activities may overlap on the margins with commercial banks, it does not exercise its activities in normal conditions of competition with private operators. It is incorporated under ordinary company law; at the same time, the State exercises strong supervision: the State appoints the Supervisory Board members from the parliamentary groups of political parties on the basis of their representation in the Finnish Parliament. Most of the Managing Board members have to be chosen among candidates elected by several Ministries. (see recitals 56-57). In light of this, the Commission considers that measures taken by Finnvera consist of state resources and are imputable to Finland.

(242) Concerning the question whether measure 13 provides an advantage to the beneficiary, contrary to Finland's view, the measure was not granted together with private creditors at the same conditions. Whereas it is true that […] and […] both granted loans to Karjaportti in 2004, the Commission has no indication that those banks also granted guarantees. In addition, the loans granted by the two private creditors were only granted in summer 2004, that is to say a couple of months after Finnvera had granted measure 13, and it can hence not be considered that Finnvera acted "together" with them. Finland's argument that the guarantee was granted in accordance with the Guarantee Notice 2000, can also be rejected. First, as explained above, the Commission relies on the Guarantee Notice 2008 when assessing the measure (see recital 134). According to point 3.2 of the Guarantee Notice 2008, the existence of state aid within an individual state guarantee can be ruled out if the borrower is not in financial difficulty. As the Commission considers that Karjaportti was already in difficulty, within the meaning of the R&R Guidelines 1999, in March 2004 (see recitals 123-128), the application of the Guarantee Notice can be excluded. Finland also brings forward that the guarantee was subject to a high fee. In light of Karjaportti's financial difficulties at the time of granting of the guarantee, it is, however considered that the guarantee fee charged by Finnvera is not a market fee. In fact, the beneficiary had total financing costs of [5-8]% for the loan together with the guarantee, whereas the Reference Rate applicable at that time was 4.43 %, to which at least 400 basis points would have to be added, considering the beneficiary's financial difficulties. In view of the foregoing, it is considered that the measure confers an advantage to Karjaportti.

(243) Furthermore, to be considered state aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods. Measure 13 was granted to Karjaportti, one specific company. Therefore, the Commission considers that it constitutes a selective advantage to the beneficiary.

(244) In addition, the Commission has to consider whether measure 13 is likely to distort competition and affect trade between the Member States. In this context, Finland argues that the aid element of the guarantee was below the de minimis threshold. When measure 13 was granted, 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 aid ([63]) ('the de minimis Regulation 2001') was applicable ([64]). One of the requirements for applying the de minimis Regulation 2001 is that the total de minimis aid granted to an enterprise must not exceed EUR 100 000 over any period of three years. The guarantee under assessment only amounted to EUR 91 000, that is to say it would even respect the ceiling of EUR 100 000 if the whole amount had to be taken into account as aid element. It has, however, to be determined whether measure 13 has to be assessed together with measure 4, a guarantee which the City of Mikkeli granted in March 2004, only 9 days prior to measure 13, the guarantee granted by Finnvera. Whereas the two guarantees were

([60]) Case C-482/99 French Republic/Commission (Stardust Marine) [2002] ECR I-4397.

([61]) Case T-358/94 Air France vs. Commission [1996] ECR II-2109, paragraphs 55-61.

([62]) Case C-482/99 French Republic/Commission (Stardust Marine) [2002] ECR I-4397, paragraph 50-59.

([63]) OJ L 10, 13.1.2001, p. 30.

([64]) See Article 5(2) of Commission Regulation (EC) No 1998/2006, OJ L 379, 28.12.2006, p. 5.

granted by two different entities and covered two separate loans with a different duration, these two loans replaced one single loan granted by Tapiola in 1992. It can hence be considered that measure 4 and measure 13 were granted for the same purpose, which was to allow converting the Tapiola loan granted in 1992 into new loans. In light of this close link between the two measures, the Commission considers that measure 4 and measure 13 have to be seen as one measure for the purpose of applying the ceiling of EUR 100 000 ceiling of the de minimis Regulation 2001. Taken together, the aid element involved in those two measures exceeds EUR 100 000. The Commission therefore concludes that measure 13 does not fall under the de minimis Regulation 2001.

(245) Finally, Finland argues that measure 13 is the continuation of already existing liabilities and that hence Finnvera's exposure is not increased. Finland presented a similar argument in relation to measure 4. By the same token as for measure 4, the Commission does not consider measure 13 as mere continuation of a previously granted measure (see recitals 164-165).

(246) On the basis of the foregoing, the Commission concludes that measure 13 constitutes state aid.

Compatibility

(247) Finland did not bring forward any arguments as regards the compatibility of measure 13. As Karjaportti was in difficulty when Finnvera granted the guarantee (see recitals 123-128), the Commission first assesses whether it is compatible as rescue and restructuring aid according to the R&R Guidelines. At the time of time of granting, the R&R Guidelines 1999 were applicable ([65]).

(248) According to the R&R Guidelines 1999, a rescue aid has to meet certain requirements, which are not all fulfilled by the measure in question.

(a) First, the guarantee was not linked to a loan that was to be reimbursed over a period of not more than twelve months after disbursement of the last instalment to the firm (point 23(b) of the R&R Guidelines 1999).

(b) Second, Finland did not provide any information that the aid was warranted on the grounds of serious social difficulties and had no unduly adverse spillover effects on other Member States (point 23(c) of the R&R Guidelines 1999).

(c) Third, the guarantee was neither reimbursed within 6 months nor had a restructuring plan within the meaning of the R&R Guidelines 1999 been set up (point 23(d) of the R&R Guidelines 1999).

(d) Lastly, there are no indications that the guarantee was restricted to the amount needed to keep the firm in business for the period during which the aid was authorised (point 23(e) of the R&R Guidelines 1999).

(249) For the same reasons as set out above for measure 4 and measure 5 (see recitals 177–178), the Commission considers measure 13 does not meet all the requirements for restructuring aid set out in the R&R Guidelines 1999 either. Accordingly, the Commission considers that the measure was not granted in accordance with the R&R Guidelines 1999.

(250) Further, it has to be considered whether measure 13 could be compatible on the basis of any other of the exemptions laid down in Article 107(2) and (3) of the TFEU. For the same reasons as set out above for measure 4 and measure 5 (see recitals 179–186), the Commission considers that none of the exemptions is met. Therefore, the Commission concludes that measure 13 involves state aid that is not compatible with the internal market.

7.4.2. *Loan granted on 12 January 2006 (measure 14)*

(251) Finland argues that the measure was foreseen in the restructuring programme for the court-supervised restructuring proceedings and that Finnvera took the measure together with private creditors.

(252) It is true that the measure was already foreseen in the restructuring programme for both private and public creditors of Karjaportti. According to the documents submitted by Finland, the conversion of interest actually took place in the end of 2005 and the beginning of 2006. Also private creditors converted their interest rates into loans.

(253) First, following the logic of the BP Chemicals case (see recitals 189-191), it has to be determined whether the market economy investor principle can be applied to measure 14. In this context, the Commission notes that measures 4, 5 and 13 were taken before the beginning of the court-supervised restructuring proceedings, whereas measure 14 was taken in the course of such proceedings. For the reasons set out above in recitals 189–191, the Commission considers that measure 14 can be severed from measures 4, 5, and 13. In addition, measure 14 was even foreseen in the restructuring programme itself, which had the purpose of bringing the company back on track.

([65]) According to Section 6 of the R&R Guidelines 1999, they applied until 9 October 2004; see fn. 37 above.

(254) Second, as regards the application of the market economy investor principle to the measure at hand, the Commission considers that the loans granted by the private creditors […] and by […] are comparable to the loan granted by Finnvera. As secured creditors in the court supervised restructuring proceedings the companies are all in a similar situation. Given that these loans were granted at similar conditions to the loan granted by Finnvera (same loan period, comparable reimbursement period) and that the interest rate that Finnvera asked was even more favourable for Finnvera (EURIBOR 6 months + 2 % was 4,643 % on 1 January 2006) than the interest rate the private creditors received (on 1 January 2006, EURIBOR 3 months + 1,5 % was 3,988 %; EURIBOR 3 months + 2 % was 4,488 %), the Commission concludes that the measure did not confer an advantage to Karjaportti.

(255) On the basis of the foregoing, it is concluded that the measure does not include state aid.

7.4.3. *Counter-guarantee granted on 14 September 2006 (measure 15)*

(256) First, the Commission considers that the beneficiary of the measure is Karjaportti, although the counter-guarantee was granted to […]. The low fee charged by […] from Karjaportti indicates that […] only granted the guarantee in the light of the guarantee granted by Finnvera. Indeed, in fact, Karjaportti and not […] pays the guarantee premium for the counter-guarantee to Finnvera.

(257) In any event, Finland considers that Finnvera acted on the same terms as private creditors […] and […] did. It is true that […] and […] were in a similar situation as Finnvera. All three companies are secured creditors in the court-supervised restructuring proceedings. They all have granted loans and guarantees to Karjaportti before ([…]).

(258) By the same token as for measure 14, following the logic of the BP Chemicals case (see recitals 189–191) it is considered that the market economy investor principle can be applied to measure 15, as this measure is severable from measures 4, 5 and 13 (see recital 253).

(259) Concerning the measure in question, overall the guaranteed loan amounted to EUR 1,8 million. Finnvera counter-guaranteed […] for only 16,7 % of this sum (EUR 300 000). The remainder of the loan was covered by guarantees from […] and […] (EUR 825 000 and EUR 675 000 respectively), which were not counter-guaranteed by Finnvera. From the perspective of the beneficiary Karjaportti, the overall costs for the counter-guaranteed guarantee were higher than for the guarantees granted by […] and […]. Whereas the latter two charged a guarantee fee of 1,75 % from Karjaportti, the total financing costs for the counter-guarantee for Karjaportti were 2,9 % (1,65 % for the […] guarantee plus 1,25 % for the counter-guarantee). It follows that the measure taken by Finnvera did not confer an advantage to Karjaportti.

(260) On the basis of the foregoing, it is concluded that the measure does not include state aid.

7.4.4. *Loan granted on 6 July 2007 (measure 16)*

(261) As described at recital 110, Finland argues that the loan did not involve state aid as it was part of a larger funding measure in which also private creditors took part.

(262) By the same token as for measure 14, following the logic of the BP Chemicals case (see recitals 189–191) it is considered that the market economy investor principle can be applied to measure 16 (see recital 253).

(263) As outlined in recital 254, the Commission considers that […] and […] are in a comparable situation to Finnvera. Concerning the specific measure under consideration, it is true that Finnvera granted the loan at the same time at similar conditions as […] and […]. The duration of the loans was for all creditors six months; for all loans, payment was delayed in the same proportion (outstanding amount for all creditors is approximately […]% of the original amount). All three loans were secured with the same collateral, as described in recital 66, and the collateral is divided among the creditors according to the risk of the respective creditor in relation to the loan it granted. Concerning the interest rate, it seems that the interest rate that Finnvera asked was even more favourable for Finnvera (EURIBOR 6 months + 2,5 % was 6,847 % on 6 July 2007) than the interest rate the private creditors received (on 9 July 2007, EURIBOR 1 month + 2 % was 6,105 %). Accordingly, the loan can be considered to be in line with the market economy investor principle and not to entail state aid.

(264) On the basis of the foregoing, it is concluded that the measure does not include state aid.

7.4.5. *Guarantee granted on 9 January 2008 (measure 17)*

Existence of state aid

(265) First, it has to be determined which entity benefits from the measure in question, […] or Karjaportti Finnvera granted the counter-guarantee to […], the main bank of Karjaportti. […] granted in turn a guarantee to Karjaportti. […] charged a very low fee from Karjaportti for this guarantee, which indicates, that […] only granted the guarantee to Karjaportti as it was covered by the counter-guarantee of Finnvera. The Commission also notes that not […], but Karjaportti pays the guarantee premium for the counter-guarantee to Finnvera. In light of this, the Commission considers that the beneficiary of the measure is Karjaportti.

(266) Secondly, it has to be assessed whether the measure gives an advantage to Karjaportti. In this context, Finland claims that the counter-guarantee does not involve state aid, as another private party was involved in the arrangement. This argument can be rejected, as Finnvera granted a counter-guarantee for the guarantee of the private party involved, meaning that Finnvera and the private party were not at all in a similar situation.

(267) In light of this, the Commission assesses the measure on the basis of the Guarantee Notice 2008. Whereas it is true that Finnvera's counter-guarantee does not cover more than 80 % of […] guarantee, the beneficiary, Karjaportti, was in difficulty at the time of granting, as described in more detail in recitals 123–128. Accordingly, the existence of state aid cannot be ruled out on the basis of point 3.2 of the Guarantee Notice 2008.

(268) Even if a guarantee does not fulfil all the requirements of point 3.2 of the Guarantee Notice 2008, the fee paid for a guarantee can still justify the conclusion that the guarantee does not entail state aid. In any event, in the case at hand, contrary to the view of Finland, the Commission is of the opinion that the measure cannot be considered aid free. The guarantee was granted at a low guarantee fee, even though the company was facing difficulties (see recitals 123–128) and the risk for Finnvera could be considered as considerable. Accordingly, it is considered that the measure confers an advantage to Karjaportti. The Commission observes in this context also that Finnvera, according to the commitment given by the Finnish authorities in the context of case N 715/2006, was not allowed to grant market-based financing.

(269) In addition, the measure meets all other requirements for the existence of state aid. As described in recital 241, measures granted by Finnvera consist of state resources and are imputable to the state. Measure 17 is also selective, as the only company benefitting from it is Karjaportti. Lastly, it distorts competition and affects trade among the Member States..

(270) On the basis of the foregoing, the Commission concludes that the measure constitutes state aid.

Compatibility

(271) Finland did not argue that measure 17 was compatible with the internal market. In fact, when Finnvera granted the measure, Karjaportti was in difficulty within the meaning of the R&R Guidelines 2004 (see recitals 123-128). Accordingly, the measure could only be compatible as rescue and restructuring aid according to the R&R Guidelines 2004.

(272) According to the R&R Guidelines 2004, a rescue aid has to meet certain requirements, which are not all fulfilled by the measure under consideration.

(a) First, the guarantee did not come to an end within a period of not more than six months after the disbursement of the first instalment (point 25(a) of the R&R Guidelines 2004).

(b) Second, Finland did not communicate within six months after the first implementation of the measure a restructuring plan or liquidation plan or proof that the guarantee had been terminated (point 25(c) of the R&R Guidelines 2004).

(c) Third, the one time, last time principle (point 25(e) of the R&R Guidelines 2004) is not met, as the company had received incompatible and illegal state aid at times when it was in difficulty before.

(273) The measure does not meet all the requirements for restructuring aid set out in the R&R Guidelines 2004 either.

(a) First, the measure is not conditional on the implementation of a restructuring plan (point 34 of the R&R Guidelines 2004). It is noted that no restructuring plan within the meaning of point 35 of the R&R Guidelines was set up.

(b) Second, aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources (point 43 of the R&R Guidelines 2004) and for the measures under consideration, there is no indication of an own contribution of the beneficiary.

(c) Third, in order to avoid undue distortions of competition, compensatory measures must be taken (point 38 of the R&R Guidelines 2004). Such measures were not provided for.

(d) Fourth, the measure does not meet the one time, last time principle, as the company had received incompatible and illegal state aid at times when it was in difficulty before.

(274) Accordingly, the Commission considers that the measure was not granted in accordance with the R&R Guidelines 2004.

(275) Further, it has to be considered whether measure 17 could be compatible on the basis of any other of the exemptions laid down in Article 107(2) and (3) of the TFEU. For the same reasons as set out above for measure 4 and measures 5 (see recitals 179–186), the Commission considers that none of the exemptions is met. Therefore, the Commission concludes that measure 17 involves state aid that is not compatible with the internal market.

8. **RECOVERY**

(276) According to the TFEU and the Court of Justice's established case-law, the Commission is competent to decide that the state concerned must abolish or alter aid ([66]) when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a state to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([67]). In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([68]).

(277) Following that case-law, Article 14 of the Procedural Regulation laid down that "where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary."

(278) Thus, six measures at hand are to be considered as illegal and incompatible aid:

— Guarantee granted on 8 March 2004 by the City of Mikkeli (measure 4);

— Guarantee granted on 10 May 2004 by the City of Mikkeli (measure 5);

— Conversion of unpaid interest rates into loans (measure 8);

— Rescheduling of debt since 2009 (measure 12);

— Guarantee granted on 17 March 2004 by Finnvera (measure 13);

— Guarantee granted on 9 January 2008 by Finnvera (measure 17).

(279) They must therefore be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Recovery shall hence take place from the time when the advantage occurred to the beneficiary, that is to say when the aid was put at the disposal of the beneficiary and shall bear recovery interest until effective recovery.

8.1. **Recovery of the aid measures granted in the form of guarantees**

(280) The incompatible aid element of two guarantees granted by the City of Mikkeli in 2004 (measure 4 and measure 5) and of the guarantees granted by Finnvera in the years 2005 (measure 13) and 2008 (measure 17) shall be determined based on the following principles.

(281) In principle, a state guarantee could be aid up to the total amount of the underlying loan, if the beneficiary is not capable of accessing financial markets on its own powers ([69]). In the case at hand, Finland has, however, demonstrated that Karjaportti was still able to access financial markets at the time of granting the guarantees in 2004, by providing information on loans granted by private lenders to the beneficiary (see recital 93). There are little indications on whether Karjaportti had still access to the markets in 2008, when measure 17 was granted. In this context, the Commission notes that the counter-guarantee granted by Finnvera only covered 80 % of the guarantee provided by a private creditor, which means that for 20 % the private creditor still carried the risk. In light of this, it can be considered that the company was still capable of assessing financial markets without the guarantee of 2008.

(282) However, given Karjaportti's financial difficulties at the time of the granting of the measures, commercial banks would have charged a correspondingly higher interest rate than the one achieved with the state guarantees, because the latter are an additional security for the banks. Thus, the Commission considers that Karjaportti benefitted from lower interest rates, which it received thanks to the guarantees.

(283) According to Point 4.2 of the Guarantee Notice 2008, in the absence of a comparable market guarantee premium, the total financing costs of the guaranteed loan (interest rate plus guarantee premium) should be compared to the interest rate on the market for a similar loan without a state guarantee. In many cases, such a market interest rate is not available. Therefore, the Commission has developed in its Communication on the revision of the

([66]) See Case C-70/72 Commission v Germany [1973] ECR 00813, paragraph 13.

([67]) See Joined Cases C-278/92, C-279/92 and C-280/92 Spain v Commission [1994] ECR I-4103, paragraph 75.

([68]) See Case C-75/97 Belgium v Commission [1999] ECR I-030671 paragraphs 64-65.

([69]) Point 2.2 and Point 4.1.(a) of the Guarantee Notice 2008

method for setting the reference and discount rates ([70]) ('the Reference Rate Communication 2008') a financial methodology which, for the reasons set out in point 4.2 of the Guarantee Notice 2008, can be used as proxy for the market interest rate.

(284) In the case at hand, there is no indication of what Karjaportti would have paid for a comparable non-guaranteed loan. Furthermore, the granting of the three guarantees predates the economic and financial crisis. In addition, the Commission is of the view that due to the time elapsed since the granting of the measures, the calculation of a "real" market rate for a Finnish meat producer would be a difficult exercise. Therefore, the Commission will use the relevant reference rate as proxy for the market rate.

8.1.1. *Guarantee granted on 8 March 2004 (measure 4)*

(285) As regards measure 4, the securisation of Karjaportti's loans could be considered as normal for the purpose of the Reference Rate Communication 2008. Karjaportti provided a property mortgage and a business mortgage for measure 4. The registered values of these two instruments are quite high (see recital 27). It has, however, to be taken into account that the very same collateral was already used to collateralise other claims of the City of Mikkeli (such as measure 1), so that not the full amount would be available for the measure at stake. Also, it has to be considered that the actual value of the property mortgage as well as of the business mortgage depends on the value of the encumbered goods and the City of Mikkeli's ranking.

(286) In this context, it is noted that Finland could not provide an evaluation of the value of the collaterals at the time of granting the guarantee. It provided, however, two independent valuations of the collateral in general, used for drawing up the restructuring programme, dated 15 February 2005 (see recital 43), which is quite close to the date of granting the guarantee. In this context, it is mentioned that in light of the rank of the City of Mikkeli the property mortgage might suffice to cover its claims if the property is kept in use; if Karjaportti has to be liquidated, the value of the property might be too low to cover any of the City of Mikkeli's claims. The business mortgage might cover only part of the City of Mikkeli's claims. In light of this, it seems plausible to consider the collateral provided as normal quality collateral.

(287) Therefore, the interest rate Karjaportti should have paid for a loan under market conditions, without a guarantee, is the reference interest rate of 4,43 % plus a risk premium of 650 basis points, which reflects the risk premium applicable to a firm in difficulty providing normal collateral. The aid amount should therefore be calculated as the difference between this theoretical market rate and the interest rate at which the guaranteed loan was actually provided (4 %), after the deduction of the price actually paid for the guarantee, that is to say 0 basis points. The difference between these rates shall be calculated for the period the rate actually provided was applied.

(288) The aid shall bear recovery interests calculated from the moment the difference between the theoretical interests and the interest rate at which the guaranteed loan was actually provided would have been due until effective recovery.

8.1.2. *Guarantee granted on 10 May 2004 (measure 5)*

(289) As regards measure 5, the securisation could be considered as normal for the purpose of the Reference Rate Communication 2008. Karjaportti provided the same collateral as for measure 4, that is to say a property mortgage on the production site of Tikkala and a business mortgage. In addition, a "special pledge" on the production site of Tikkala was granted, with a registered value of EUR 1 135 268 (see recital 29). To all these collaterals the same reasoning applies as provided above for measure 4, and it seems plausible to consider the collateral provided as normal collateral.

(290) The interest rate Karjaportti should have paid for a loan under market conditions, without the guarantee, is again the reference interest rate of 4,43 % plus a risk premium of 650 basis points. The aid amount should therefore be calculated as the difference between this theoretical market rate and the interest rate at which the guaranteed loan was actually provided (12 months EURIBOR + 0,3 %), after the deduction of the price actually paid for the guarantee, i.e. 0 basis points. The difference between these rates shall be calculated for the period the rate actually provided was applied.

(291) The aid shall bear recovery interests calculated from the moment the difference between the theoretical interests and the interest rate at which the guaranteed loan was actually provided would have been due until effective recovery.

8.1.3. *Guarantee granted on 17 March 2004 (measure 13)*

(292) The Commission is not aware of details of the securisation of measure 13, and it can thus only provide the method how the recovery has to be effected. In a first step, if measure 13 was indeed collateralised, the value of such collateral according to the Reference Rate Communication has to be determined.

([70]) OJ C 14, 19.1.2008, p. 6.

(293) The interest rate that Karjaportti should have paid for a loan under market conditions, without the guarantee, is again the reference interest rate of 4,43 % plus a risk premium reflecting the value of the securisation. The aid element should be calculated as the difference between this theoretical market rate and the interest rate at which the guaranteed loan was actually provided ([2-5] %), after the deduction of the price actually paid for the guarantee, which was 3 %. The difference between these rates shall be calculated for the period the rate actually provided was applied.

(294) The aid shall bear recovery interests calculated from the moment the difference between the theoretical interests and the interest rate at which the guaranteed loan was actually provided would have been due until effective recovery.

8.1.4. *Guarantee granted on 9 January 2008 (measure 17)*

(295) As regards measure 17, the securisation could be considered as normal for the purpose of the Reference Rate Communication 2008. Karjaportti provided collateral in the form of a shareholding in a company, which Finnvera estimated to have a security value of EUR […], as described in more detail in recital (67). The interest rate Karjaportti should have paid for a loan under market conditions, without the guarantee, is again the reference interest rate of 5,19 % plus a risk premium of 650 basis points. The aid amount should therefore be calculated as the difference between this theoretical market rate and the interest rate at which the guaranteed loan was actually provided ([0-3] % plus the interest rate for outstanding amounts under the subcontracting agreement) after the deduction of the price actually paid for the guarantee, that is to say 250 basis points. The difference between these rates shall be calculated for the period the rate actually provided was applied.

(296) The aid shall bear recovery interests calculated from the moment the difference between the theoretical interests and the interest rate at which the guaranteed loan was actually provided would have been due until effective recovery.

8.2. **Recovery of the aid granted in the form of the conversion of unpaid interests into loans (Measure 8)**

(297) The incompatible aid element in measure 8, a loan granted by the City of Mikkeli, has to be determined. As described in recitals 45-46, the City of Mikkeli granted the loan at lower interest rates than the private creditors of Karjaportti. In principle, for a loan, the aid element is calculated as the difference between the interest rate at which the loan was actually provided and the market rate. In the case at hand, private creditors granted loans together with the City of Mikkeli. The interest rates the private creditors charged can be seen as indication for a market rate.

(298) The aid amount should therefore be calculated as the difference between the average interest rate charged for the loans granted by the private creditors (EURIBOR 3 months + 2 % and EURIBOR 3 months + 1,5 %) and the interest rate at which the loan was actually provided (EURIBOR 3 months + 0,3 %).

(299) The difference between these rates shall be calculated for the period the rate actually provided was applied.

(300) The aid shall bear recovery interests calculated from the moment the difference between the theoretical interests and the interest rate at which the loan was actually provided would have been due until effective recovery.

8.3. **Recovery of the aid granted in the form of a rescheduling of debts since 2009 (Measure 12)**

(301) The incompatible aid element in measure 12, the rescheduling of debts by the City of Mikkeli since 2009, has to be established. As described in recitals 219-226, the notified debt rescheduling has been implemented with modifications. As the Commission is not aware of the details of the actually implemented rescheduling, it can only provide the method how the recovery has to be effected.

(302) The aid was put at the disposal of the company from the moment Osuuskunta Karjaportti deviated from the payment schedule as agreed to during the court-supervised restructuring proceedings in 2006. The Commission considers that at the time of granting the aid, Karjaportti was no longer capable of accessing financial markets. Therefore, the aid equals the amount of rescheduled debt. The amounts to be recovered therefore equate to the amount of rescheduled debts towards the City of Mikkeli. Payments already made may however be deducted from the amounts to be recovered.

(303) The aid shall bear interests from the date the aid was put at the disposal of the company until effective recovery.

9. **CONCLUSION**

(304) The Commission notes that the formal investigation as regards the guarantee of EUR 2,75 million notified but subsequently withdrawn by Finland became without object pursuant to Article 8 of the Procedural Regulation.

(305) Concerning the guarantee granted in the year 2000 and the assignment of the land in the same year by the City of Mikkeli, the Commission considers those measures to be state aid that is compatible as investment aid under the RAG 1998.

(306) The purchase of land undertaken in 2002 by the City of Mikkeli is considered not to entail aid as it was done under market conditions.

(307) The guarantees granted by the City of Mikkeli in March 2004 and May 2004 can be considered as state aid, taking into account that Karjaportti was a company in difficulty within the meaning of the R&R Guidelines 1999 at the time of granting. These measures are not compatible with the internal market, as none of the provisions of Article 107(2) and (3) of the TFEU are met.

(308) The measures taken within the court-supervised restructuring proceedings by the City of Mikkeli were granted together with comparable private creditors and under similar conditions. Accordingly, the Commission concludes that the market economy investor principle was met and that the measures do not entail state aid.

(309) The purchase of shares by the City of Mikkeli and the write-off of debts in the financial statements in 2007 and 2008 can be both considered as aid free.

(310) The conversion of unpaid interest rates into a loan by the City of Mikkeli in December 2005 can be considered as state aid, taking into account that Karjaportti was a company in difficulty within the meaning of the R&R Guidelines 2004 at the time of granting. These measures are not compatible with the internal market, as none of the provisions of Article 107(2) and (3) of the TFEU are met.

(311) As regards the rescheduling of debts agreed to by the City of Mikkeli in 2009, it is noted that it was a subsequent rescheduling of debts. In the light of this, the Commission considers that a private creditor would not have agreed to such a debt rescheduling and that the measure constitutes state aid. As Karjaportti was in difficulty within the meaning of the R&R Guidelines 2004 at the time of granting, the measure could only have been compatible under those Guidelines. As not all requirements are fulfilled, it is concluded that the measure constitutes incompatible state aid.

(312) The guarantee granted by Finnvera on 17 March 2004 also entails state aid, which is not compatible under the R&R Guidelines 1999. The loan granted by Finnvera on 12 January 2006 does not constitute state aid, as it was granted together with comparable private creditors and at similar conditions. The same is true for the guarantee granted by Finnvera in September 2006 and the loan granted in July 2007.

(313) Finally, the guarantee granted on 9 January 2008 by Finnvera can be considered as state aid, taking into account that Karjaportti was in difficulties within the meaning of the R&R Guidelines 2004 at the time of granting. The measure is not compatible with the internal Market, as none of the provisions of Article 107(2) and (3) of the TFEU is met.

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union in respect of the guarantee of EUR 2,75 million (measure 11), notified but subsequently withdrawn by Finland, is terminated.

Article 2

The measures which Finland has implemented for Osuuskunta Karjaportti, consisting of:

— purchase of land in 2002 (measure 3),

— the measures taken within the court-supervised restructuring proceedings (measure 6),

— the purchase of shares from Osuuskunta Karjaportti (measure 7),

— the write-off of debts in the financial statements of 2006 and 2008 (measure 9 and measure 10),

— the Finnvera loan granted in June 2006 (measure 14),

— the Finnvera counter-guarantee granted in September 2006 (measure 15) and

— the Finnvera loan granted in July 2007 (measure 16)

do not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

The state aid measures which Finland has implemented for Osuuskunta Karjaportti, consisting of:

— a guarantee granted in June 2000 (measure 1) and

— the assignment of land in the same year (measure 2)

are compatible with the internal market within the meaning of Article 107(3)(a) of the Treaty on the Functioning of the European Union.

Article 4

The state aid measures which Finland has implemented for Osuuskunta Karjaportti, consisting of:

— Guarantee granted on 8 March 2004 by the City of Mikkeli (measure 4);

— Guarantee granted on 10 May 2004 by the city of Mikkeli (measure 5);

— Conversion of unpaid interest rates into loans (measure 8);

— Guarantee granted by Finnvera on 17 March 2004 (measure 13);

— Guarantee granted on 9 January 2008 by Finnvera (measure 17);

— Rescheduling of debt since 2009 (measure 12).

were unlawfully put into effect by Finland in breach of Article 108(3) of the Treaty on the Functioning of the European Union and are incompatible with the internal market.

Article 5

1. Finland shall recover the aid referred to in Article 4 from the beneficiary.

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

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

4. Finland shall cancel all outstanding payments of the aid referred to in Article 4 with effect from the date of notification of this decision.

Article 6

1. Recovery of the aid referred to in Article 4 shall be immediate and effective.

2. Finland shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 7

1. Within two months following notification of this Decision, Finland shall submit the following information to the Commission:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

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

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Finland shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 4 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 8

This Decision is addressed to the Republic of Finland.

Done at Brussels, 12 June 2012.

For the Commission

Joaquín ALMUNIA

Vice-President