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**Subject: State aid SA. 53520 (2019/N) - Greece - Primary Residence Protection Scheme**

Excellency,

**1. PROCEDURE**

- (1) From March until July 2019, the Greek authorities and the Commission had a number of pre-notification contacts regarding establishment of a primary residence protection scheme in Greece, to support vulnerable borrowers that encounter difficulties in repaying their loans backed by main residences.
- (2) On 1 April 2019, Greece adopted law 4605/2019 concerning public support to vulnerable borrowers that encounter difficulties repaying their loans backed by main residences ("the Law").
- (3) By letter dated 1 August 2019, Greece agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958<sup>1</sup> and to have the present decision adopted and notified in English.
- (4) On 20 August 2019, Greece notified the present primary residence protection scheme to the Commission.

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

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## 2. OBJECTIVE OF THE SCHEME

- (5) The Greek Primary Residence Protection Scheme adopted through the Law (the "Scheme") aims to support vulnerable borrowers that encounter difficulties in repaying their loans backed by main residences.
- (6) The Scheme will be administered by the State, which also includes a grant for eligible borrowers to cover part of the instalments of loans and credit facilities<sup>2</sup> which are collateralised with the main residence of the borrower (or the main residence of another owner who offers it as collateral for the borrower's loan).<sup>3</sup>
- (7) In the past years, the Greek economy has experienced a deep and prolonged recession with direct negative consequences on among others unemployment rate and available household income. According to the Greek authorities, the unemployment rate has risen from 12.7% in 2010 to a peak of 27.5% in 2013 before slightly decreasing to 19.3% in 2018. The national disposable income per capita decreased from EUR 16,400 in 2010 to EUR 13,400 in 2013 before slightly increasing to EUR 14,100 in 2018. Further, 31.8% of the population in Greece were at risk of poverty in 2018 and a significant share of both poor and non-poor households face difficulties in responding to rent payments or mortgage repayments with numbers of 48.2% and 25%, respectively. These developments also led to an increase in the NPL ratio for housing loans from 14.2% in 2010 to 44.5% in 2018.
- (8) Greece estimates that NPLs with a total gross value of up to EUR 7.9 billion as of end of 2018 are eligible under the Scheme.
- (9) Greece estimates that the total overall cost of the Scheme for the State will amount to approximately EUR 2.6 billion (1.4% of Greece's annual GDP in 2018) over a 20-year average re-payment period of the restructured loans (approx. EUR 132 million annually).
- (10) All banking institutions properly licensed in Greece, credit institutions that are under special liquidation, the 'Deposits and Loans Fund'<sup>4</sup> and specialised non-performing loan ("NPL") management companies or companies to whom credit institutions have transferred claims related to eligible loans shall participate in the Scheme (together the "Financial Institutions" or "Creditors").

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<sup>2</sup> Hereinafter, all references to 'loans' in connection with the Scheme mean loans as well as all other credit facilities collateralised with the main residence of the borrower.

<sup>3</sup> Hereinafter all references to 'borrower(s)' in connection with the Scheme, shall include borrowers as well as owners of collateralised main residences, unless specified otherwise.

<sup>4</sup> A state-owned body with the capacity, until 2013, to provide loans to civil servants.

### **3. ELIGIBILITY CRITERIA**

#### **3.1. Eligible debts (NPL Criteria)**

- (11) Debts owed to Financial Institutions, in any currency, will be eligible ("Eligible Debts") if they fulfil all the following objective criteria (the "NPL Criteria"):
- (a) prior to the submission of the application provided under the Law, such debts were secured with a mortgage or a notice of mortgage (irrespective of lien category) on a property located in Greece and used as primary residence (this is the residence declared as such in the last tax declaration/return of the borrower);
  - (b) the borrower has a right *in rem*, i.e. an exclusive or an ideal share of ownership, full or bare, or of usufruct in such primary residence;
  - (c) the value of such primary residence at the time of submission of the application provided under the Law does not exceed: (a) EUR 175,000, if the debts also include business loans; or (b) EUR 250,000 in all other cases;
  - (d) the total amount of the outstanding principal amount of debt, including any accrued interest, as well as any enforcement costs, of the debts does not exceed, at the date of submission of the application provided under the Law: (a) EUR 100,000 per Creditor, where business loans are included in the debts; or (b) EUR 130,000 per Creditor, in any other case<sup>5</sup>;
  - (e) the aforementioned debts were over 90 days past due as of 31 December 2018.
- (12) Debts benefiting from a State guarantee are not considered Eligible Debts. Additionally, debts that at the time of submission of the application in accordance with the Law, had already been settled pursuant to Articles 99 et seq. of Law 3588/2007 (Bankruptcy Code), Articles 61 to 67 of Law 4307/2014 or in accordance with Law 4469/2017, or in respect of which a request for a settlement under aforementioned provisions is pending, are not considered Eligible Debts.

#### **3.2. Eligible borrowers (Means Criteria)**

- (13) Eligible borrowers under the Scheme are only natural persons, with or without legal standing to be declared bankrupt under Greek law, including natural persons that offer services or products in the market (undertakings).

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<sup>5</sup> If any such debt is denominated in a currency other than Euro, for the purposes of determining the above maximum amounts of EUR 130,000 or EUR 100,000, the exchange rate of that other currency and the Euro at the time of submission of the application by the borrower shall be taken into account.

- (14) In order to be eligible in accordance with provisions of the Law, borrowers will have to fulfil a set of cumulative means-based criteria to verify their income and property owned (the "Means Criteria"):
- (a) the borrower had, during the last year for which the filing of tax returns/declarations was possible, a family income<sup>6</sup> not exceeding EUR 12,500, to be increased by EUR 8,500 if the borrower has a spouse, and by EUR 5,000 for each dependent family member of the borrower and up to three dependent family members. The maximum annual household income may therefore not exceed the amount of EUR 36,000;
  - (b) if the total amount of an borrower's Eligible Debts exceeds EUR 20,000, the total immovable property of the borrower<sup>7</sup> and any transportation means<sup>8</sup> shall have a total value not exceeding the amount of EUR 80,000;
  - (c) any bank deposits, financial products<sup>9</sup> and precious metals owned by the borrower<sup>10</sup>, have a total value not exceeding EUR 15,000;
  - (d) the borrower owes at least one Eligible Debt. A borrower that has not himself borrowed from a credit institution or the Deposits and Loans Fund, but has granted a mortgage or a notice of mortgage on his own primary residence to the benefit of another borrower, may also submit an application for the purpose of settling the debts of said other borrower under the same conditions as described in section 4 of this Decision;
  - (e) in cases where the borrower had previously submitted an application before the competent court for the settlement of his debts in accordance with the provisions of the (previous) Law 3869/2010, no court decision should have been issued:

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<sup>6</sup> The term "family income" means the total of the incomes of the Eligible Borrower/Applicant, their spouse and their dependent family members, reduced by the corresponding taxes, the special solidarity tax contribution provided under Article 43A of Law 4172/2013 (Income Tax Code) and the "free-lancers levy" provided under Article 31 of Law 3986/2011, but including any tax-exempt income and/or any independently taxable amounts.

<sup>7</sup> Including of his spouse and dependent members. The total immovable property shall exclude his primary residence.

<sup>8</sup> The term "transportation means" means those referred to in Article 31 (1) (c) (f) and (g) of Law 4172/2013 (Income Tax Code), i.e. privately-owned cars, yachts, airplanes, helicopters and sailplanes/gliders.

<sup>9</sup> The term "financial products" means money market instruments in accordance with Article 4 (17) of Law 4514/2018, securities in accordance with Article 4 (44) of Law 4514/2018 and cashable life insurance policies.

<sup>10</sup> Including of his spouse and dependent members.

- i. rejecting such application either due to fraudulent default or because of the existence of sufficient property of the borrower (Article 4 of Law 3869/2010); or
- ii. accepting the application, regardless of whether the borrower subsequently failed to adhere to the settlement plan ordered by a Court (Article 11 (2) of Law 3869/2010) or such settlement plan was terminated pursuant to the second sentence of Article 9 (3) of Law 3869/2010.

A person may nevertheless, under any of these two cases, submit an application in accordance with the Law provided that the aforementioned court decision has been repealed or refuted before the application was submitted in accordance with the Law and, in any case, before 31 December 2019.

- (15) The NPL Criteria and the Means Criteria constitute together the "Eligibility Criteria".
- (16) Borrowers fulfilling the Eligibility Criteria (the "Eligible Borrowers" or "Applicants") will benefit from the grant, provided that they follow the procedures under the Law as described in section 4.

#### **4. RESTRUCTURING TERMS AND PAYMENT OF THE GRANT BY THE STATE BODY**

##### **4.1. Loan restructuring**

- (17) Pursuant to Article 75 of the Law, an Applicant that has been considered to fulfil the Eligibility Criteria and has reached an agreement with the Creditors shall pay an amount (the "Restructured Amount") equal to either:
  - (a) 120% of the market value of his primary residence; or
  - (b) the total amount of the Eligible Debts, in case the latter is lower than the amount determined under (a) above.

Under the Law, the market value of the primary residence is the market value entered in the books of the credit institution on 31 December of the last year prior to the submission of the application.<sup>11</sup>

- (18) The Restructured Amount shall be paid in monthly equal instalments, bearing interest at a rate equal to the three-month Euribor plus 2%. The total amount of the restructured loans shall be re-paid over a time period of twenty-five years which period cannot exceed in any case the Applicant's age of eighty, unless a third person (being a person acceptable to the Creditors) guarantees repayment to the Creditors.

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<sup>11</sup> According to Article 70 of the Law, the Applicant may prove that the commercial value of his principle residence is different than the one entered in the books of the Creditors, and so the amount referred to in Article 75 (1) shall be determined by the proven commercial value.

- (19) If more than one Creditor has settled, then the monthly instalment resulting from the above calculation in general shall be divided between the Creditors in settlement. This shall happen in accordance with their participation percentage in the auction proceeds, which would have resulted, if the principal residence had been auctioned, in accordance with the relevant detailed provisions of the Law.

#### **4.2. Application and payment of the grant by the State Body**

- (20) The period for submission of applications is limited to six months, starting 1 July 2019. Application within this period shall be a condition for participation in the Scheme.
- (21) The applications will be filed through a digital platform (hereinafter the “Platform”) specifically set up and administered by the State for the purpose of the electronic submission and handling of the applications. The Platform will be developed by the General Secretariat of Information Systems of the Ministry of Finance in cooperation with the Special Secretariat for the Management of Private Debt.
- (22) Once an Eligible Borrower’s application is definitively submitted, the Platform shall communicate the application and its accompanying documents to the Creditors whose claims are to be settled. Upon such communication, the Creditors are also notified that the primary residence of the Applicant is temporarily protected against any enforcement measures by any of the Applicant’s creditors (public and/or private).
- (23) The Financial Institutions are granted access to the full content of the Eligible Borrower’s application. Within one month from the communication of the application to the Creditors, any Creditor may submit a proposal to settle his claims against the Eligible Borrower in accordance with the provisions set out in Article 75 of the Law or to reject the Applicant’s request. The Creditor’s proposal shall make reference inter alia to: (a) the total amount of the Applicant’s debt, (b) the amount of debt to be restructured, (c) the interest rate, (d) an indication of the monthly instalments and (e) the percentage and the amount of the State’s contribution to the monthly instalments.
- (24) Within one month from the expiry of the Creditors’ submission deadline, the Applicant shall declare which of the submitted Creditors’ proposals he accepts or rejects. If such deadline expires with no action, the Applicant shall be deemed to have rejected the proposal(s) submitted by the Creditor(s). In case of acceptance of the Creditors’ proposal(s), a relevant settlement agreement is considered to have been concluded between the Applicant and the Creditor(s).
- (25) Upon conclusion of the consensual settlement agreement (or issue of a relevant court ruling in case of judicial settlement), the Applicant’s entitlement to a State contribution, as well as the exact amount thereof, shall be examined by the State through the Platform.

- (26) An Applicant whose application was rejected due to non-compliance with the Eligibility Criteria or who has not reached a settlement agreement with the Creditor(s) through the Platform for any reason whatsoever may request from a court to order settlement of the debts and grant protection of his primary residence within six months from the conclusion of the process for the consensual settlement of his debts. The application is directed against the Creditors with which the Applicant did not reach an agreement. The competent court shall determine the hearing of the application by absolute priority within six months of the date on which it was lodged. The court's decision shall be adopted within three months of the hearing.
- (27) The State shall contribute to the monthly instalments for the repayment of the Restructured Amount provided that:
- (a) the Applicant fulfils the Eligibility Criteria set out in the Law;
  - (b) a settlement (whether by way of agreement or by way of a court ruling) of all Eligible Debts has been achieved;
  - (c) the relevant settlement is in accordance with Article 75 of the Law; and
  - (d) that the *de minimis*<sup>12</sup> rules are adhered to (to the extent applicable).
- (28) The State's contribution shall be a percentage of each monthly instalment provided in the settlement plan for each Eligible Debt. Such percentage varies and shall be specified on the basis of the Applicant's yearly income and family status (i.e. taking into account whether the Applicant has a spouse and/or dependent family members), and shall neither exceed the threshold of 50% nor shall be lower than 30% of the agreed instalment for all Eligible Debts, excluding business loans. In relation to Eligible Debts that are business loans the State's contribution shall not exceed the threshold of 30% nor shall be lower than 20% (without prejudice to the requirements described in recital (29)) of the monthly instalment provided in the settlement plan for such business loan. Joint Ministerial Decision No. 39100/2019 determines the exact percentage of the State's contribution to which an Applicant/Eligible Borrower is entitled to, depending on his status<sup>13</sup>.
- (29) With respect to business loans, the total amount of State contribution will be capped and will not in any case exceed the ceiling of EUR 200,000, which is set as the threshold in the De Minimis Regulation. The foregoing ceiling will be reduced – on a case by case basis – by an amount equal to the aggregate of the *de minimis* aid measures received by the Applicant during the previous two fiscal years and the current fiscal year so as to ensure that each undertaking benefitting from the Scheme does not receive aid in excess of the *de minimis*

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<sup>12</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid ("De Minimis Regulation").

<sup>13</sup> Upon yearly re-examination of the Applicant's income, the exact amount of the State's contribution may be re-adjusted within the limits prescribed in Joint Ministerial Decision No. 39100/2019.

ceiling.<sup>14</sup> In case for any Applicant the *de minimis* ceiling has been reached by the time of the application said Applicant will not be considered as Eligible Borrower for the purpose of receiving a State contribution. The maximum amount of the *de minimis* aid an Applicant is entitled to receive will be notified both to the Applicant and the Creditors through the Platform.

- (30) The State's contribution shall cease in case it is found that the Applicant does not fulfil the conditions for its granting or in case it is subsequently found that the Applicant has made false representation in relation to the fulfilment of the Eligibility Criteria<sup>15</sup>. Furthermore, the State's contribution is discontinued in case the Applicant fails to pay the part of the monthly instalments that is payable by him so that the overall delayed amount corresponds to three monthly instalments. To this end, the Creditors are obliged to notify the Platform on a monthly basis on the borrower's payments. In case of delayed payments by the Applicant, the State is entitled to recover from the Applicant any amounts of State contribution paid by the State. By way of exception, in case a Creditor has failed to notify the State of the Applicant's non-payment and the settlement plan has been terminated due to the Applicant's non-payment, any amounts of State contribution paid following the date when a Creditor should have notified the State, shall be recovered by that Creditor.
- (31) In the case that an Eligible Borrower fails to comply with their payment obligations under the consensual or judicial arrangement as per Article 80 of the Law, then:
- (a) the Eligible Borrower will be obliged to return any amounts of State contribution already paid out by the State (Article 77(7) of the Law);
  - (b) the total amount due shall revert to the original amount, minus any amounts already paid by the Eligible Borrower; and

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<sup>14</sup> The Joint Ministerial Decision No. 39100/2019 (concerning the determination of the State contribution) is to be amended in order to encompass arrangements necessary for the measure to fulfill the requirements of Commission Regulation (EU) 1407/2013 with respect to beneficiaries that perform an economic activity and are business loan borrowers (currently not included). Similarly, with respect to business loans held by individuals considered as undertakings active in the primary sectors of production of agricultural products, fishery and aquaculture, the Joint Ministerial Decision No. 39100/2019 (as this will be amended) shall clearly provide that the respective ceilings introduced by Commission Regulation (EU) No 1408/2013 and Commission Regulation (EU) No 717/2014 shall not be exceeded.

<sup>15</sup> If it is proven that the Eligible Borrower made false or inaccurate statements in their application, with the result that their eligibility is affected, the judicial or extrajudicial arrangement is considered to be automatically void. Further, the Eligible Borrower shall forfeit all rights under the rescheduling agreement and shall pay the Creditors the difference between what would have been due as per the original loan agreement and the reduced amount paid so far, and the affected Creditors shall have the right to impose enforcement measures. The relevant debt is subject to an interest rate of 5 %. Should the Eligible Borrower fail to comply within 30 days of receipt of a notice inviting him to do so, foreclosure proceedings may be initiated immediately (Article 72(12) of the Law).



- (c) the Creditors shall be entitled to proceed with enforcement measures including against the Eligible Borrower's primary residence, which shall no longer benefit from the protection of the Law.

## 5. POSITION OF GREECE

- (32) Greece submits in its notification that the grant available under the Scheme does not constitute State aid within the meaning of Article 107(1) TFEU to the Eligible Borrowers, which have received a loan. This includes both individuals not performing an economic activity and those that are performing such an economic activity and are therefore considered undertakings.
- (33) With respect to individual borrowers not performing an economic activity, Greece argues that only natural persons who have loans secured by their protected main residence are eligible to receive the State grant. Therefore, they cannot be regarded as undertakings within the meaning of Article 107(1) TFEU.
- (34) With respect to business loans of individuals performing an economic activity, Greece submits that the amount of the subsidy is restricted to EUR 200,000, thus the State support would qualify as *de minimis* aid under the De Minimis Regulation. The Greek authorities will ensure the compliance of the Scheme insofar individuals performing an economic activity are concerned with the requirements of the De Minimis Regulation. In particular, they will establish a monitoring mechanism to ensure that each undertaking benefitting from the Scheme does not receive aid in excess of the respective *de minimis* ceiling and that the provisions on cumulation are complied with.<sup>16</sup>
- (35) With respect to Financial Institutions, Greece takes into consideration the position adopted by the Commission on indirect aid to financial institutions in a similar scheme implemented by another Member State<sup>17</sup>. Therefore, Greece does not contest the potential existence of indirect State aid to the Financial Institutions participating in the Scheme as a result of the financial support provided to Eligible Borrowers.
- (36) Greece submits that they consider any potential indirect State aid to Financial Institutions to be compatible under Article 107(2)(a) TFEU for individual borrowers not performing an economic activity and under Article 107(3)(c) TFEU for undertakings.

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<sup>16</sup> As described in footnote 14, this holds *mutatis mutandis* for *de minimis* aid in the primary sectors of production of agricultural products as well as fishery and aquaculture.

<sup>17</sup> See Commission decision in case SA.49554 (2018/N) – Cyprus – Cypriot scheme for non-performing loans collateralized with primary residences (Estia). OJ C 14, 11.01.2019, p.3.

- (37) Further, Greece notes that any indirect aid provided to Financial Institutions under the Scheme does not fall within the scope of Directive 2014/59/EU on bank recovery and resolution<sup>18</sup>.

## 6. ASSESSMENT

### 6.1. Existence of aid

- (38) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (39) The Scheme has been drawn up and adopted by the Greek government. The grant under the Scheme is to be disbursed by a public organisation to the Financial Institutions which thereby will receive partial reimbursement of Eligible Borrowers' loans (interest and outstanding amount). Therefore, the notified aid Scheme is created by the State and funded from the budget of Greece. It follows that the measure is imputable to the State and that State resources are involved.
- (40) In the case of the Scheme, there are two possible groups of beneficiaries, namely the Eligible Borrowers, and the Financial Institutions, which underwrote and/or are holding the loans on their balance sheet.

#### 6.1.1. Eligible Borrowers

- (41) The Scheme covers generally natural persons residing in the property underlying the mortgage contract, who cannot be regarded as undertakings within the meaning of Article 107(1) TFEU and, thus, assistance to them falls outside the scope of State aid rules.
- (42) As noted in recital (13), the Scheme also covers natural persons which offer goods and services on the market and can therefore be considered to be undertakings within the meaning of Article 107(1) TFEU. The Commission notes that the maximum State grant (over three years) on the scheme will not exceed EUR 200,000 and therefore will be within *de minimis* ceiling. Moreover, Greece will ensure that all requirements of the De Minimis Regulation, including cumulation, are complied with.<sup>19</sup> Therefore, as regards natural persons constituting undertakings, the Commission observes that the

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<sup>18</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD"), OJ L 173 of 12.06.2014, p. 190. Greece also refers to the inapplicability of Regulation 806/2014/EU on a Single Resolution Mechanism and a Single Resolution Fund ("SRMR"), whose provisions regarding State aid correspond to the greatest extent possible to the relevant provisions of the BRRD. Therefore, Greece submits that references to the BRRD should also be understood as references to the SRMR.

<sup>19</sup> See recital (34) of this Decision and footnote 14.

conditions of the De Minimis Regulation are met and, as a result, the measure at stake is deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.

- (43) The Commission therefore concludes that the grants provided under the Scheme to the benefit of individual mortgage borrowers do not meet all the criteria laid down in Article 107(1) TFEU, and the measure is not subject to the notification requirement under Article 108(2) TFEU.

#### 6.1.2. *Financial Institutions*

- (44) The Scheme provides for the grant to be channelled to the Eligible Borrowers via Financial Institutions, which are considered undertakings and thus fall within the scope of State aid rules.
- (45) In assessing the economic effect of the Scheme on the Financial Institutions, the Commission observes that:
- (a) If the loans do not turn performing as a result of the Scheme, the situation for the Financial Institutions would not change as compared to the current situation; the institutions would have recourse to the loans' collateral up to their outstanding nominal amount, including through the foreclosure process.
  - (b) If the loans turn performing as a result of the Scheme, the Financial Institutions will be able to restart collecting cash-flows, as long as the borrowers do not re-default, up to the loans' restructured nominal amount. This amount may be lower than the outstanding nominal amount, if the latter is higher than the 120% of collateral's market value, i.e. if the loan's equity is negative.
- (46) The Scheme would then have two opposite effects on the Financial Institutions:
- (a) On the one hand, the State subsidy will help the defaulted borrower to restart paying the restructured loans to the Financial Institutions. This entails a positive economic effect for the Financial Institutions as long as the loans' restructured nominal amount is higher than the potential proceeds from the banks' recourse to the loans' collateral, including through the foreclosure process, under the current loans' terms.
  - (b) On the other hand, the Financial Institutions may give up the potential repayment of more than the restructured amount of the mortgage achieved through other means as long as the restructured nominal amount is lower than the outstanding nominal amount.
- (47) To the extent that the Scheme is effective in improving the perspectives of the Financial Institutions to turn the NPLs into performing loans, it is a reasonable assumption that the positive effect (of recovering a value higher than the proceeds from the recourse to the loans' collateral and up to the restructured nominal amount) would tend to prevail over the negative effect (of giving up a

potential upside above the restructured nominal amount and up to the outstanding nominal amount).

- (48) In conclusion, it cannot be excluded that the Financial Institutions indirectly benefit from the Scheme and its embedded subsidies.
- (49) The advantage is selective because it is only available to Financial Institutions, as opposed to other businesses that supply goods and services, and amongst these, it is only open to those which hold loans that are secured against the borrower's main residence.
- (50) As the Scheme gives an economic advantage to the Financial Institutions who are competing on the banking market, the Commission notes that the Scheme potentially distorts competition.
- (51) Regarding trade between Member States, the Commission notes that intra-Union trade should be considered affected once a national measure reinforces the position of an undertaking as regards its competitors. It is not necessary that the beneficiary undertaking takes part itself in intra-Union trade. The circumstance that an economic sector, such as that of financial services, has been the object of a significant process of liberalisation at the level of the Union, which has accentuated competition, gives rise by its nature to a real or potential effect of aid, such as the Scheme, on trade between Member States.
- (52) Therefore, as the measure is imputable to the State, involves State resources, provides a selective advantage to certain beneficiaries engaged in an economic activity, affects trade between member States and distorts or threatens to distort competition in the internal market, the Commission concludes that the Scheme constitutes State aid within the meaning of Article 107(1) TFEU.

## **6.2. Scope and criteria for assessing the compatibility**

### *6.2.1. Legal basis for the compatibility assessment*

- (53) It is necessary to examine the Scheme's compatibility with respect to the indirect aid to the Financial Institutions in the light of Article 107 TFEU.
- (54) With respect to the different groups of Eligible Borrowers, the compatibility of the indirect aid to the Financial Institutions will be assessed under two distinct legal bases. More specifically, with regard to natural persons (not constituting undertakings) as final beneficiaries, Article 107(2)(a) TFEU constitutes the compatibility basis. However, with regard to natural persons constituting undertakings within the meaning of Article 107(1) TFEU as final beneficiaries, Article 107(3)(c) TFEU serves as the applicable compatibility basis. For the avoidance of doubt, the indirect aid to the Financial Institutions will not be assessed under Article 107(3)(b) TFEU, which is the legal basis under which the Commission has been consistently assessing any restructuring or liquidation aid to financial institutions since the beginning of the financial crisis. Therefore, the

Crisis Communications<sup>20</sup> detailing the compatibility assessment under Article 107(3)(b) TFEU are not applicable.

6.2.2. *Compatibility of the indirect aid to the banks flowing from the support to natural persons: assessment under Article 107(2)(a) TFEU*

- (55) With respect to the indirect aid to Financial Institutions flowing from the support to natural persons (not constituting undertakings), it can benefit from the exception on aid having a social character as laid down on Article 107(2)(a) TFEU.
- (56) Article 107(2)(a) TFEU provides that *"aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned"* shall be compatible with the internal market.
- (57) The proposed Scheme primarily intends to safeguard the main residence of borrowers from the risk of repossession. As described in recital (7), Greece has suffered from an economic crisis in recent years; therefore, the unemployment rate has increased and as of 2018 remains at 19.3% while at the same time disposable income has decreased between 2010 and 2018 with a yearly rate of 1.8%. As a result, the amount of defaults on the repayment of loans has dramatically increased (the NPL ratio for housing loans as of end of 2018 equals 44.5%) and the threat of repossession has emerged for a significant part of the population. The significant shares of approximately one half of poor households and a quarter of non-poor households that face difficulties in responding to rent payments or mortgage repayments further illustrate this challenge. To the extent that the Scheme aims at securing that households are protected from the risk of foreclosure, it reflects both short-term and long-term social concerns.

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<sup>20</sup> Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("*2008 Banking Communication*"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("*Recapitalisation Communication*"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2010 Prolongation Communication*"), OJ C 329, 7.12.2010, p. 7; Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("*2011 Prolongation Communication*"), OJ C 356, 6.12.2011, p. 7 and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("*2013 Banking Communication*") OJ C 216, 30.07.2013, p.1.

- (58) The Commission, therefore, accepts that the Scheme is predominantly of a social nature. For instance, the Eligibility Criteria take into account the income and wealth of the borrower's household.
- (59) The Commission also concludes that the Scheme fulfils the condition under Article 107(2)(a) TFEU that the aid must be “*granted without discrimination related to the origin of the products concerned*” since all mortgage lenders established in Greece are part of the Scheme.
- (60) In the light of all the foregoing, the Commission concludes that the indirect aid to the financial intermediaries channelling the support to individual borrowers is deemed to be compatible pursuant to Article 107(2)(a) TFEU.

*6.2.3. Compatibility of the indirect aid to the banks flowing from the support to undertakings: assessment under Article 107(3)(c) TFEU*

- (61) Article 107(3)(c) TFEU provides that “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*” may be considered compatible with the internal market.
- (62) The Commission assesses the measure directly under Article 107(3)(c) TFEU following the common assessment principles relevant to this particular case. In particular, it has to analyse whether the measure contributes to a well-defined objective of common interest, whether it is appropriate with respect to the aim it desires to achieve, whether the measure is necessary and whether it is proportionate.
- (63) With regard to the objective of common interest, the Scheme aims at avoiding the foreclosure of small entrepreneurs from the house in which they live. Without it, the activation of foreclosure proceedings would likely involve serious hardships, as these entrepreneurs would be evicted from their homes. Thus, the aid pursues an objective of common interest which consists in addressing the social hardships particular to the vulnerabilities faced by small entrepreneurs.
- (64) With regard to the appropriateness of the Scheme, the measure is suitably designed to achieve the objective of common interest, since the State will pay part of the monthly instalment due by the entrepreneurs to the Financial Institution, such that the institution does not proceed with foreclosure and seize up the residence of the entrepreneurs. Hence, the Scheme seems well-targeted and appropriate for the intended objective. The Scheme is designed in such a way as to alleviate the current risks of foreclosure faced by small entrepreneurs. The Commission notes in this respect that the Eligibility Criteria take into account the income and wealth of the borrower's household.

- (65) With regard to the necessity of the Scheme, its criteria are designed so as to target vulnerable natural persons offering products or services in the market (and are therefore considered undertakings) only and, thus, it avoids targeting the entire stock of existing NPLs held by Greek Financial Institutions. In addition, the Scheme is limited to payments of part of the monthly instalment; the Financial Institutions will continue to bear the credit risk vis-à-vis such loans, for the amount of the loan still outstanding post-restructuring. This means that the risk of default is not eliminated by the Scheme.
- (66) With regard to the proportionality of the Scheme, the measure seems to be limited to what is necessary to achieve the objective pursued. The aid cannot generate unnecessary advantages to the Financial Institutions and hence cannot generate undue distortion of competition. Greece has estimated a budget for the grant available under the Scheme of ca. EUR 132 million per year over an expected average re-payment period for the restructured loans of 20 years. The Eligible Loans would amount to a total of up to EUR 7.9 billion, i.e. 10.2% of the Greek banks' total NPLs, or 2.7% of total assets as of end of 2018. The amount of NPLs eventually subject to the subsidy can be reduced by the borrowers' participation rate and the application of the Eligibility Criteria.
- (67) In view of the above, with respect to undertakings, the indirect aid to the Financial Institutions through the *de minimis* aid to the undertakings is compatible under Article 107(3)(c) TFEU.

## **7. ASSESSMENT OF THE EXISTENCE OF INTRINSICALLY LINKED PROVISION OF UNION LAW**

- (68) It has been established that the Scheme provides indirectly aid to the Financial Institutions. To the extent that some Financial Institutions, notably the banks, fall under the scope of Directive 2014/59/EU<sup>21</sup>, as defined in Article 1, it needs to be assessed whether such aid qualifies as "extraordinary public financial support", as defined pursuant to Article 2(28).
- (69) This is necessary because the Commission cannot approve aid as compatible with the internal market if it breaches another intrinsically linked provision of Union law.
- (70) Article 2(28) of the Directive defines extraordinary public financial support as: *"State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) or of a group of which such an institution or entity forms part."*

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<sup>21</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 173 of 12.06.2014, p. 190.

- (71) That definition does not encompass any type of aid, but only aid whose objective is “*to preserve or restore the viability, liquidity or solvency*” of a bank. The Scheme’s objective is two-fold depending on whether the direct beneficiary constitutes an undertaking or not. In the first case, the aid objectively pursues the social goal of Article 107(2)(a) TFEU. In the second case, the aid objectively pursues the goal of addressing the social hardships particular to the vulnerabilities faced by small entrepreneurs under Article 107(3)(c) TFEU. Nevertheless, in both cases, the predominantly social objective indicates that the Scheme’s objective is not to preserve or restore the viability, liquidity or solvency of a bank. The Financial Institutions benefit only indirectly through the aid to the two categories of Eligible Borrowers. This is corroborated by the fact that the aid does not qualify as one of the types of aid contemplated by the Crisis Communications, as indicated in recital (54).
- (72) Furthermore, it is expected that the size of the support to each Financial Institution would anyway not be sufficiently large to have a material effect on the viability, liquidity or solvency of the bank. As discussed in recital (66), the total budget and overall scope of the Scheme are small compared to the stock of NPLs and to the size of the banks active in Greece. In addition, compared to the potential maximum benefit implied by the total budget, the actual benefit can be reduced by certain factors. This includes the number of applicants as resulting from the eligibility filters and the take-up, the actual ability of the Scheme in turning the NPLs into performing loans, as well as the re-default rates.
- (73) In conclusion, the Scheme’s objective is not to preserve or restore the viability, liquidity or solvency of a bank and it is also unlikely that it would result in any material effect on any of the financial institutions’ viability, liquidity or solvency.
- (74) Therefore, the criteria for the aid to be considered as “extraordinary public financial support” are not fulfilled and the Scheme does not fall under the scope of Directive 2014/59/EU.
- (75) This assessment is without prejudice to the prerogative of the Commission to initiate infringement procedures against a Member State for breach of Union law, including breach of the provisions of Directive 2014/59/EU.



## 8. DECISION

The Commission has accordingly decided not to raise objections to the aid to Financial Institutions on the grounds that it is compatible with the internal market pursuant to Article 107(2)(a) and 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Member of the Commission

