Commission Decision (EU) 2020/1183 of 25 February 2020 on State aid SA.34445 (2012/C) implemented by Denmark for the transfer of property-related assets from FIH to the FSC (Only the English text is authentic) (Text with EEA relevance)

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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 Member States and other interested parties to submit their comments pursuant to those provisions[(1)],

Whereas:

1. **PROCEDURE**

(1) On 30 June 2009, Denmark injected DKK 1,9 billion as Tier 1 hybrid capital into FIH Erhvervsbank A/S including its subsidiaries ('FIH') under the Danish Act on State-Funded Capital Injections[(2)].

(2) On 6 March 2012 Denmark notified a package of measures in favour of FIH. By decision of 29 June 2012 ('the Rescue and Opening Decision')[(3)] the Commission approved those measures[(4)] on a temporary basis finding them compatible with the internal market.

(3) In the same decision the Commission initiated the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') because of concerns with regard to the appropriateness of those measures, the limitation of the aid to the minimum that is necessary and the bank's own contribution, in particular in view of the potentially low remuneration of the impaired asset measures granted in favour of FIH.

(4) On 2 July 2012 FIH paid back the capital of DKK 1,9 billion it had received in 2009 under the Danish Act on State-Funded Capital Injections[(5)].

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(5) In line with the Rescue and Opening Decision Denmark submitted a restructuring plan on 4 January 2013[6], which it subsequently modified. On 24 June 2013 Denmark submitted the final update of that plan ('the restructuring plan').

(6) On 3 February 2014 Denmark submitted a term sheet setting out the terms for the restructuring of FIH, which Denmark has committed to implement (the 'commitments').

(7) The Danish authorities provided additional information during the period between 30 June 2012 and 3 February 2014.

(8) On 11 March 2014, the Commission adopted a decision[7], by which it found the measures in favour of FIH to constitute State aid which was compatible with the internal market under Article 107(3)(b) of the Treaty in light of the restructuring plan and the commitments made ('the 2014 decision').

(9) On 24 May 2014, FIH and its parent FIH Holding A/S ('FIH Holding') lodged an application to annul the 2014 decision. As a result of their action, by judgment of 15 September 2016[8], the General Court of the European Union annulled the 2014 decision. On appeal, the General Court's judgment was set aside by the judgment of the Court of Justice of 6 March 2018[9] and the case was referred back to the General Court. On 19 September 2019, the General Court of the European Union gave its judgment[10] in which it found that, when the Commission calculated the amount of capital relief resulting from the transfer of assets to the FSC, it had used an incorrect figure. Even if this incorrect figure had been previously used by FIH and the Danish financial supervisory authority, it was subsequently rectified from DKK 375 million to DKK 275 million[11]. As a result, the General Court annulled the 2014 decision. Consequently, the investigation opened with the Rescue and Opening Decision needed to be resumed to take into account the outcome of the court procedure in line with Article 266 of the Treaty, and the Commission needs to adopt a new decision closing the investigation and removing the abovementioned irregularity.

(10) As part of the resumed formal investigation, additional information was provided by the Danish authorities on 13 January 2020. In that letter, the Danish authorities also confirmed that while all commitments submitted by them on 3 February 2014 (see recital 6) had either been implemented or were no longer relevant, the Danish authorities would not reverse the implemented commitments. Based on that new submission from the Danish authorities, the Commission is able to close the formal investigation by means of this Decision.

(11) For reasons of urgency, Denmark accepts that this Decision be adopted exceptionally in the English language[12].

2. DESCRIPTION

2.1. The beneficiary

(12) FIH is a limited liability company which was, at the time of the 2014 decision, regulated by the Danish banking legislation and supervised by the Danish Financial

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Supervisory Authority ('FSA'). It was founded in 1958 and has its headquarters in Copenhagen, Denmark. It is wholly owned by FIH Holding.

(13) The FIH Group consists of FIH Holding and FIH Erhvervsbank, together with the latter's wholly-owned subsidiaries. Those subsidiaries, as of 31 December 2012, were FIH Partners A/S (covering the business segment corporate finance), FIH Kapital Bank A/S[13], FIH Realkredit A/S, which was a mortgage credit institution[14], and FIH Leasing og Finans A/S. FIH's activities consisted of three segments: banking[15], markets[16] and corporate finance[17].

(14) As of 31 December 2012, FIH Holding was owned by the Danish Labour Market Supplementary Pension Fund which held 48,8 % of the shares of FIH Holding, by PF I A/S[18] which held 48,8 % of the shares, and by the Executive Board and executive employees who held 2,3 % of the shares, with FIH Holding itself holding 0,1 % of the shares.

(15) At the end of 2011, the FIH Group had a balance sheet of DKK 84,16 billion (EUR 11,28 billion) and its total capital ratio[19] was 17,8 % which increased to 21,2 % by 31 December 2012. On 31 December 2012 FIH had a balance sheet of DKK 60,76 billion (EUR 8,1 billion)[20] and risk weighted assets of DKK 29,84 billion (EUR 3,98 billion).

(16) FIH was a focused niche bank specialising in medium-term financing as well as risk management advisory and corporate finance services for Danish enterprises with a balance sheet exceeding DKK 10 million (EUR 1,34 million). Originally FIH's banking activities covered three segments: Property Finance, Acquisition Finance and Corporate Banking.

(17) FIH constituted Denmark's sixth-largest bank by working capital[21] at the time of the Rescue and Opening Decision, servicing more than 2 000 banking customers at group level. The market share of FIH in bank and mortgage lending at that time was estimated at 1,7 %. It had a market share in SME/corporate lending of 2,5 %. In June 2012 FIH had a market share of 2,1 % of the total market for lending to corporates (both banks and mortgage banks).

(18) The FIH Group had performed weakly in the years preceding the adoption of the 2014 decision. On 25 June 2009, it applied to the Danish Recapitalisation Scheme[22] and on 30 June 2009 it received a State-funded Tier 1 hybrid capital injection of DKK 1,9 billion in the form of a loan note. The coupon of that note amounted to 11,46 % per annum. Over the entire year 2009 the FIH Group reported a pre-tax loss of DKK 148 million (EUR 19,9 million).

(19) Although the FIH Group had a pre-tax profit of DKK 316 million (EUR 42,5 million) in 2010, that profit was mainly driven by non-recurring positive market value adjustments, including unrealised gains on an indirect holding. In 2011 the FIH Group reported a pre-tax loss of DKK 1,27 billion (EUR 170 million) due to impairment charges on loans and negative market value adjustments. On 31 December 2012 it had a pre-tax loss of DKK 47 million (EUR 6,4 million). For the end of 2013 a pre-tax profit

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of DKK 95 million (EUR 12,8 million) has been budgeted. In 2013 the third quarter net profit for continuing operations before taxation was DKK 23,2 million (EUR 3,09 million). For total operations after taxation FIH recorded a loss of DKK 20,1 million (EUR 2,71 million) in 2012.

(20) In 2009 and in 2010 Moody's downgraded FIH's rating from A2 to Baa3. In 2010 the owners of FIH (the Icelandic Financial Supervisory Authority and the Central Bank of Iceland)[23] agreed to sell their shares in FIH to the current owners. That new ownership was expected to bring about significant improvement to the credit rating of FIH, as the prior ownership by Kaupthing Bank hf had been one of the main concerns for Moody's regarding FIH. However, mainly due to circumstances specific to FIH such as the refinancing of government-guaranteed bond issues, credit quality and exposure to the property sector, in 2011 Moody's downgraded FIH further to B1 with negative outlook.

(21) The rating downgrade in 2011 was in line with the market prices at that time for FIH bonds that did not benefit from a government guarantee: FIH's 2-4 year debt was priced at spreads of 600-700 basis points over the equivalent maturity EURIBOR-linked swap.

2.2. **The events triggering the aid measures**

(22) In 2011 and 2012 FIH anticipated difficulties with regard to debt that would mature in 2012 and 2013. The resulting funding challenge was mainly caused by a decline in FIH's credit rating and changed capital market conditions[24]. In July 2009 FIH had already obtained liquidity assistance in the form of a government guarantee totalling DKK 50 billion (EUR 6,31 billion), which it had wholly utilised. It had also obtained a Tier 1 hybrid capital injection of DKK 1,9 billion (EUR 255 million) from the State under the Danish Guarantee Scheme. As of 31 December 2011 FIH held government-guaranteed bonds amounting to DKK 41,7 billion (EUR 5,56 billion), which constituted 49,94 % of the balance sheet of the bank.

(23) With those State-guaranteed bonds maturing in 2012 and 2013, FIH was about to face a funding problem. The FSA estimated, in the second half of 2011, that there was a relatively high risk that FIH would be unable to comply with liquidity requirements in the following 12-18 months as a result of its expected inability to obtain funding from the open markets.

(24) In order to address those emerging liquidity problems FIH was to carry out a substantial reduction of its balance sheet.

2.3. **The aid measures**

(25) To solve the liquidity problems that FIH was then expected to face, in July 2012 Denmark proposed a complex impaired asset measure to transfer problematic property finance assets of FIH to a new subsidiary of FIH Holding ('Newco'). At the same time, Denmark committed to provide funding and recapitalisation to Newco whenever needed.

(26) The 'measures'[25] consisted of two phases of a share purchase agreement[26] and several side agreements under which assets of the FIH Group amounting to approximately DKK 17,1 billion (EUR 2,3 billion or 28 % of total assets of FIH at the time of the transfer) were transferred to Newco. Newco[27] was then purchased by the Danish Financial Stability Company ('FSC')[28], after which it would be wound-up in an orderly manner under the approved Danish winding-up scheme[29], in accordance with the scheme's principles[30]. The winding-up process was expected to last until 31 December 2016 but it could take until 31 December 2019 to complete. The FSC was able to finance almost the entire capital amount of DKK 2 billion for the purchase of Newco through an early redemption of the DKK 1,9 billion Tier 1 hybrid capital loan note which had been granted to FIH[31] by the State in 2009. The FSA approved the repayment by FIH of the State capital injection on 2 July 2012, based on a solvency and liquidity analysis that included the asset transfer measure[32].

(27) In phase 1 there was a demerger of the assets and liabilities of FIH Erhvervsbank and FIH Kapital Bank A/S into Newco, the new subsidiary owned by FIH Holding. The assets transferred to Newco were real estate loans and securities amounting to DKK 15,2 billion (EUR 2,1 billion) and derivatives of DKK 1,6 billion (EUR 215 million). The initial liabilities of Newco consisted of two loans (Loan One and Loan Two) with a remaining equity part of DKK 2 billion.

(28) Loan One was a loss-absorbing loan from FIH to Newco of DKK 1,65 billion (EUR 221 million). That loan would only be repaid by Newco to FIH if the winding-up process of the assets transferred to Newco generated proceeds in excess of the FSC's purchase price of DKK 2 billion (EUR 268 million). As for remuneration for Loan One, Newco was to pay the five-year Danish Government Bond rate plus 1,15 %[33].

(29) Loan Two was a loan from FIH Erhvervsbank to Newco of approximately DKK 13,45 billion (EUR 1,8 billion). As remuneration for Loan Two, Newco was to pay FIH the DKK CIBOR three-month rate plus 1,12 %. The maturity of Loan Two matched the maturity of loans which had previously been issued by FIH under the State guarantee. Loan Two and those matching loans thus fully matured in mid-2013 and it was contractually agreed that, as Newco repaid loans to FIH, FIH would repay outstanding loans that were guaranteed by the government. As the notional amount of Loan Two has been repaid by Newco to FIH, the FSC has provided funding to Newco in the amounts that were necessary to refinance Newco's assets.

(30) In phase 2, which was executed immediately after the completion of phase 1, the FSC bought all the shares in Newco from FIH Holding. The price initially paid[34] by the FSC to FIH Holding for Newco was the equity capital (net worth) as of 1 January 2012, which amounted to DKK 2 billion.

(31) FIH Holding could then use the cash proceeds as immediate liquidity to pay back some of the government-guaranteed debt. At the same time, the asset transfer led to a replacement of real estate loans by loans to a government-sponsored entity, thus reducing FIH's risk weighted assets by about DKK 10 billion[35].