Commission Decision (EU) 2020/394 of 7 October 2019 concerning the measures SA.39119 (2016/C) (ex 2015/NN) (ex 2014/CP) implemented by the Hellenic Republic in the form of interest subsidies and guarantees linked to the fires of 2007 (the present decision covers only the agricultural sector) (notified under document C(2019) 7094) (Only the Greek text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2020/394

of 7 October 2019

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), 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 invited interested parties to submit their comments, in accordance with the first subparagraph of Article 108(2) TFEU[(1)],

Whereas:

I. PROCEDURE

(1) On 22 July 2014, the Commission received a complaint regarding alleged aid granted by the Greek State to Sogia Ellas S.A. and its subsidiaries (hereby Sogia Ellas), which are active in the processing of agricultural products. The aid consisted in interest subsidies and State guarantees on existing loans that were to be renegotiated with a grace period, and on new loans.

(2) By letter dated 25 July 2014, the Commission requested information from the Greek authorities regarding the alleged aids. The Greek authorities replied by letter of 17 November 2014 providing detailed information on the legal bases of the alleged aids. The Commission sent a second letter to Greece on 11 December 2015 to which the Greek authorities replied by letter dated 11 February 2016, registered on the same date. In their reply, the Greek authorities provided additional information on the legal bases, conditions for granting the aid and the beneficiaries.

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(3) In its letter of 11 December 2015 the Commission informed the Greek authorities that the initial examination of the information they had provided showed that the alleged aids had been granted without the Commission's approval. In addition, the alleged aid was not restricted to Sogia Ellas and its subsidiaries, but on the basis of Greek legislation it could have been granted to other beneficiaries as well. For this reason, the Commission decided to open a non-notified State aid case (Case SA.39119 (2015/NN)) and to extend the scope of its investigation to include the entire agricultural sector.

(4) The Commission decision to initiate the procedure ('opening decision') was published in the *Official Journal of the European Union* on 16 September 2016[(2)]. The Commission requested the Greek authorities to provide the estimated number of beneficiaries of each scheme identified in the opening decision and the aid amounts involved. Otherwise, as stated in the opening decision, the Commission would adopt a decision on the basis of the information in its possession. The Commission invited interested parties to submit their comments on the measures concerned.

(5) No interested parties submitted comments. The Greek authorities sent their observations on the opening decision on 23 September 2016. In their reply, the Greek authorities informed the Commission that they could not provide the information requested in the Opening decision.

(6) The Commission repeated the requests to the Greek authorities to submit the missing information by letters dated 2 December 2016 and 15 January 2018. The Greek authorities submitted the requested information, respectively, by letters dated 9 March 2017 and 21 February 2018.

(7) The present decision, like the opening decision, concerns only activities linked to the production, processing and marketing of agricultural products, i.e. products listed in Annex I to the TFEU with the exception of fisheries and aquaculture products, and to forestry, as defined by Eurostat. It is therefore without prejudice to possible aids granted to other sectors of the economy in accordance with the aid schemes in question.

II. DESCRIPTION OF THE MEASURES

1. Objective

(8) The objective of the measures was to aid undertakings established and operating, irrespective of their registered seat, in the areas of Greece afflicted by the fires of 2007. According to the Greek authorities the broader aim was to restore the productive capacity, which had been gravely affected by the fires.

2. Legal Basis

(9) The legal bases for the alleged aids are found in Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) of the Minister of Economy and Finance, as amended and supplemented by Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007), Decision No 46082/B.2123/24-10-2007 (OJHR 2139/B'/2-11-2007), Decision No 6391/B.342/8-2-2008 (OJHR 242/B'/14-2-2008),

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Decision No 34227/B.1123/23-7-2008 (OJHR 1548/B'/5-8-2008), Decision No 57198/B.2406/28-12-2012 (OJHR 3462/B'/28-12-2012), as well as Article 2, paragraph 7 of Law No 3816/2010 (OJHR 6/A'/26.1.2010) and Article 21, paragraph 5 of Law No 3867/2010 (OJHR 128/A'/3.8.2010).

(10) The conditions under which the guarantee of the Greek State was granted under Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007), were established in further detail in Decision No 2/54310/0025/13.9.2007 (OJHR B' 1858/13.9.2007) of the Minister of Economy and Finance. That decision was amended by Decision No 2/86490/0025/31.12.2007 (OJHR B' 2493/31.12.2007) of the Deputy Minister of Finance, Decision No 2/57144/0025/20.8.2008 (OJHR B' 1732/28.8.2008), Decision No 2/22475/0025/25.4.2012 (OJHR B' 1346/25.4.2012) of the Minister of Finance and Decision No 2/52027/0025/30.8.2012 (OJHR B' 2404/30.8.2012) of the Deputy Minister of Finance and Decision No 2/1755/0025/20.2.2013 (OJHR B' 465/27.2.2013) of the Deputy Minister of Finance. Decision No 2/1755/0025/20.2.2013 was further amended by Decision No 2/38310/0025/14.5.2014 (OJHR B' 1262/16.05.2014) and Decision No 2/43758/0025/29/06/2015 (OJHR B' 1289/29.06.2015), which are therefore relevant for the present decision.

3. Measures

(11) On 25 August 2007 the Greek Minister of the Interior, Public Administration and Decentralization declared a state of emergency across the country by Ministerial Decision No 47870/25.8.2007 (OJHR 1706/B'/25.8.2007) due to the fires of July and August 2007, which broke out in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in the Prefecture of Achaia.

(12) The Greek authorities submitted that the extent and magnitude of the destruction caused by the fires in those areas were huge and resulted in the loss of human lives and animal populations, and the devastation of the countryside, both forest and farmland, and infrastructure, with extremely serious effects on the local economy. The scale of the phenomenon was such as to be classified by the Greek authorities as a disaster within the meaning of Article 107(2)(b) TFEU, as shown in the relevant graphs of the Commission, to which the Greek authorities referred in their communication with that Institution[(3)].

(13) In order to address that situation, the Greek Minister of Economy and Finance adopted Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007)[(4)], which was successively amended and supplemented. That Decision was entitled 'Loans for working capital and other credit facilities to businesses and professionals which were affected by the fires of year 2007 in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in [the Prefecture of] Achaia'.

(14) The Decision established two State aid schemes[(5)], as follows:

(a) a scheme providing for the arrangement of debts accrued until 25 August 2007, overdue or not[(6)] (referred to for the purposes of this Decision as 'scheme A'), which consisted of the capitalisation of debts that were subsequently

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turned into new loans and which involved granting of a 'grace period', interest subsidies and State guarantees;

(b) a scheme covering new loans for working capital, to be granted after 25 August 2007, for which interest subsidies and State guarantees could be granted[7] (referred to for the purposes of this Decision as 'scheme B').

(15) In particular, Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007) stated the following:

The arrangement of debt and the granting of working capital to businesses and professions which are located and operate in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea, and in the Aigialeia district of the Prefecture of Achaia which were affected by the fires in 2007.

A. Arrangement of debt

All debts, due and not due, up to 25 August 2007 of businesses and professionals affected by fires during the year 2007 shall be capitalised and turned into a new loan with a grace period of 28 months. The first instalment is payable on 31 December 2009. The rest of the loan shall be paid off in equal six-monthly instalments (amortisation of principal and interest). The entire duration of the loan arrangement shall be 10 years, including the grace period. The interest payable on the loan in the grace period shall be subsidised at 100 % by the account set up pursuant to Law 128/1975 and for the rest of the loan period at 50 %.

The interest rate of a debt arrangement shall be the rate of the last issue of twelve-month Greek Treasury bonds before the start of the interest period, increased by 70 % of the full contribution pursuant to Law 128/1975. The subsidy rate shall be rounded up/down to the nearest quarter of a point.

For the principal and interest on the above-mentioned loans, the guarantee of the Greek Government shall be provided in accordance with Law 2322/1995, as in force.

B. Granting of loans for working capital for businesses and professionals

Working capital may be granted by the credit institutions in accordance with the corresponding provisions governing needs and working capital of Act No 1955/*2.7.1991 of the Governor of the Bank of Greece, as in force. These loans will be subsidised by the account set up pursuant to Law 128/1975 as follows:*

a. for loans of up to EUR *5 000 , 100 % interest subsidy.*

b. for loans of up to EUR *20 000 , 80 % interest subsidy.*

c. for loans of up to EUR *60 000 , 50 % interest subsidy.*

d. for loans of up to EUR *90 000 , 30 % interest subsidy.*

The amount of the interest subsidy will be the same for the entire loan amount.

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These loans will be granted up to a maximum amount of 35 % of the company's turnover for the year 2006 and will be for a duration of 60 months.

The interest rate for the above-mentioned loans shall be the rate of the last issue of twelve-month Greek Treasury bonds before the start of the interest period, increased by 70 % of the full contribution pursuant to Law 128/1975. The subsidy rate shall be rounded up/down to the nearest quarter of a point.

It should be noted that the turnover of businesses which made no sales in the previous year 2006 or which started operations from 1 January 2007 to 31 August 2007 will be determined by the purchases made during the first six months of operations in 2007 multiplied by two (2) and the amount will be established after taking into account a gross profit ratio of 45 %.

For the principal and interest on the above-mentioned loans, the guarantee of the Greek Government shall be provided in accordance with Law 2322/1995, as in force.

(16) Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007) amended the title and the body of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007). The new title read 'Loans for working capital and other credit facilities to businesses and professionals in the Prefectures of Messinia, Ilia, Arcadia, Laconia, Euboea and the Aigialeia district in [the Prefecture of] Achaia'. In other words, the phrase: *'which were affected by the fires of year 200 7 '*, which referred to the beneficiaries of the aid schemes and thereby apparently restricted the scope of the aid schemes to beneficiaries actually affected by the fires, was deleted from the title of the legal basis.

(17) Moreover, Decision No 38600/B.1750/5-9-2007 (OJHR 1780/B'/5-9-2007) added a sentence, highlighted in the following extract, to the first sentence of Chapter A of Decision No 36579/B.1666/27-8-2007 (OJHR 1740/B'/30-8-2007):

A. Arrangement of debt

All debts, due and not due, up to 25 August 2007 of businesses and professionals **in the aforementioned prefectures, which prefectures were***affected by fires during the year 2007, shall be capitalised and turned into a new loan with a grace period of 28 months. The first instalment is payable on 31 December 2009.* [emphasis added]

(18) Those two amendments combined led to the requirement that the damage sustained by the beneficiaries should have been caused by the fires of 2007 not applying to the beneficiaries anymore, but simply to the Prefectures in which these were established and operating, irrespective of their registered seat. That conclusion is reinforced by the reply of the Greek authorities to a question asked by the Commission in its letter of 11 December 2015, namely whether the compensation to the beneficiaries was provided for damage suffered by them as a direct consequence of the fires. In their reply of 11 February 2016, the Greek authorities insisted on the universal and unprecedented nature of the fires that resulted in damage to undertakings simply because they had production activities in the affected areas.