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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State aid SA. 34405(2012/N) - Greece
JESSICA Holding Fund Greece**

Sir,

1. PROCEDURE

- (1) Following a pre-notification procedure under PN SA.34405 - 2012/PN, the Greek authorities notified the above-mentioned measure on 17 July 2012 pursuant to Article 107(3) of the Treaty on the Functioning of the European Union (TFEU).
- (2) Following a number of informal exchanges of information with the Greek authorities, the Commission requested further information by letter of 10 September 2012 to which the Greek authorities replied on the 9 October 2012. The Commission requested further clarifications on 29 October 2012 which the Greek authorities provided on 8 November 2012. Greece has agreed that the present decision is adopted in the English language.

Κύριο Δημήτρης Λ. Αβραμόπουλος
Υπουργό Εξωτερικών
Βασιλίσσης Σοφίας 5
Greece - 10671 Αθήνα

2. DESCRIPTION OF THE MEASURE

2.1. Structure and Objective

2.1.1. Facilitating sustainable urban development by provision of sub-commercial conditions via Urban Development Funds to private investors

- (3) The notified measure consists in an aid scheme making use of financial engineering instruments such as provision of equity and sub-commercial loans to private investors that carry out sustainable urban development projects. Aid is granted by means of five Urban Development Funds (UDFs) set up by National Bank of Greece, Investment Bank of Greece, EFG Eurobank Ergasias, Piraeus Bank and the consortium of the Pancretan Cooperative Bank with the TT Hellenic Postbank.
- (4) The UDFs are acting under the umbrella of the JESSICA Holding Fund Greece (JHFG). The funds' legal obligations are resulting on the one hand from the Funding Agreement between the JHFG and the Greek Authorities¹ and on the other hand from the Operational Agreements between the JHFG and the Urban Development Funds².
- (5) The notified scheme seeks to facilitate sustainable urban development in selected regions of Greece by fostering private investment in projects that contribute to sustainable urban development. This will ultimately result in greater market efficiency and social cohesion. The targeted regions of Greece by the JESSICA measure are (herein after the Greek regions): Attica, Western Greece, Ionian Islands, Western Macedonia, Epirus, East Macedonia & Thrace, North Aegean, Central Macedonia, Thessaly, Mainland Greece, Peloponnese and Crete.
- (6) The notified scheme is part of the Joint European Support for Sustainable Investment in City Areas (JESSICA) initiative, a policy initiative of the European Commission supported by the European Investment Bank (EIB) in cooperation with the Council of Europe Development Bank, designed to help Member States in using financial engineering mechanisms to support investment in sustainable urban development in the context of EU Cohesion Policy in the programming period 2007-2013.³
- (7) JESSICA has been set up as a response to perceived market failures in the urban development funding environment reflected in the lack of an integrated urban development approach, a

¹ Funding Agreement signed on 1 July 2010 between the representatives of the Hellenic Republic and the European Investment Bank.

² The Operational Agreement signed with EIB and EFG EUROBANK ERGASIAS S.A on 9 February 2012; EIB and Investment Bank of Greece signed on 9 February 2012; EIB and National Bank of Greece SA signed on 9 December 2011; EIB and Pancretan Cooperative Bank & TT Hellenic Postbank signed on 24 November 2011; EIB and PIRAEUS Banks S.A. signed on 9 February 2012.

³ Financial engineering instruments pursuant to Article 44 of Regulation (EC) No 1083/2006, hereafter referred to as the "General Regulation" (amended by Council Regulation (EC) No 284/2009 of 7 April 2009 and further amended by Council Regulation (EC) No 539/2010 of 16 June 2010), Articles 3(2)(c), 4(1), 5(1)(d) and 6(2)(a) of Regulation (EC) No 1080/2006, hereafter referred to as the "ERDF Regulation", Article 11(1) of Regulation (EC) No 1081/2006 hereafter referred to as the "ESF Regulation" and Articles 43 to 46 of Regulation (EC) No 1828/2006, hereafter referred to as the "Implementing Regulation". Throughout this decision these regulations will also be referred to as the "EU Structural Funds Regulations".

funding deficit necessitating greater leverage of scarce public resources and, overall, the need for a more commercial approach to the regeneration of urban areas.

- (8) The essence of JESSICA is to use EU Structural Funds resources and national match-funding, when necessary by means of investments at sub-commercial terms, to grant support to Urban Development Projects (UDPs) that have a potential to contribute to sustainable urban development and have not attracted private investment due to an Internal Rate of Return (IRR) that is not sufficient for investment carried out on a purely commercial basis.
- (9) The JESSICA mechanism aims at enabling public resources to be invested in a repayable way and thus to be “recycled” and become available for further reinvestment in UDPs. JESSICA is therefore an alternative mechanism to the traditional use of EU Structural Funds as non-repayable, one-off grants, aiming at the same time to be less distortive to competition than the latter.
- (10) JESSICA was launched with a view to providing new opportunities and instruments to Member State for the ERDF programming period 2007-2013 by the following means:
 - (a) Ensuring long-term sustainability through the revolving character of the EU Structural Funds contribution to specialised funds investing in UDPs;
 - (b) Creating stronger incentives for successful implementation of UDPs by beneficiaries, by combining grants with loans and other financial instruments;
 - (c) Leveraging additional resources for UDPs with a focus on their sustainability/recyclability in the regions of the EU, and
 - (d) Contributing financial and managerial market expertise from specialists to UDPs.

2.1.2. Addressing well defined objectives of common European interest

- (11) In its notification, the Greek authorities point out that the measure addresses a well-defined objective of common European interest in accordance with the following provisions:
 - (a) Under the EU Structural Funds rules in the programming period 2007-2013⁴, managing authorities in EU Member States are allowed to use financial engineering mechanisms in order to invest part of their EU Structural Funds allocations to catalyze investment in UDPs.
 - (b) Under the Convergence objective (Article 4 of the ERDF Regulation), the ERDF focuses its assistance on supporting sustainable integrated regional and local economic development and employment, where urban areas are equally eligible for benefiting from this type of investment.
 - (c) Under the Regional Competitiveness and Employment objective (Article 5 of the ERDF Regulation), the ERDF focuses its assistance on the following three priorities:

⁴ See footnote 3.

- i. Innovation and the knowledge economy, including promoting innovation and entrepreneurship by supporting business networks and clusters in all sectors of the regional and local economy;
- ii. Environment, and in particular promoting investment for the rehabilitation of the environment, including contaminated, abandoned and other brownfield sites and land, promoting energy efficiency and renewable energy production;
- iii. Access to transport and telecommunication services of general economic interest, including the establishment of public internet access points.
- iv. Furthermore, article 8 of the ERDF Regulation focuses specifically on sustainable urban development, and states that “in the case of action involving sustainable urban development as referred to in Article 37(4)(a) of the General Regulation, the ERDF may, where appropriate, support the development of participative, integrated and sustainable strategies to tackle the high concentration of economic, environmental and social problems affecting urban areas.” This provision also states: “these strategies shall promote sustainable urban development through activities such as: strengthening economic growth, the rehabilitation of the physical environment, brownfield redevelopment, the preservation and development of natural and cultural heritage, the promotion of entrepreneurship, local employment and community development, and the provision of services to the population taking account of changing demographic structures.”

2.1.3. Providing an integrated approach by the use of Integrated Plans for Sustainable Urban Development (IPSUDs)

- (12) In order to achieve sustainable urban development, the notified measure foresees a holistic approach composed of social, economic and environmental elements that are reflected in the Funding Agreement signed with the JHFG, as well as the Operational Agreements signed with the five UDF managing institutions mentioned in recital (3). In addition, the measure will be in line with the integrated planning included in the Regional and Sectoral Operational Programme 2007-2013 for the Greek regions identified in recital (5).⁵ These documents will thus provide substantial guidance ensuring the overarching integrated approach for sustainable urban development.
- (13) In accordance with the SF Regulations, the JHFG has to operate on the basis of the mentioned above overarching planning that is complemented by specific local IPSUDs.
- (14) The Greek authorities have indicated to the Commission that in May 2010 the Ministry of Development, Competitiveness & Shipping issued a circular on the integrated plans for urban development setting out the requirements and their implementation processes including also detailed information on the procedure, actions, eligible areas, competent authorities and the general implementation of the said plans. The requirements and the implementation of the

⁵ <http://www.jessicafund.gr/index.php/jessica-in-greece/action-plan/allocation-of-resource/?lang=en>.

integrated plans for urban development shall ensure that public funds disbursed under the JESSICA measure will tackle high concentration of economic and social problems affecting urban areas.

- (15) The Greek authorities, taking account of Article 8 of the ERDF Regulation, as well as Section 2.1 of the Community Strategic Guidelines on Cohesion 2007-2013⁶, informed the Commission that in the context of the notified measure local IPSUDs, which correspond to urban planning measures under applicable Greek urban development laws, shall furthermore have to meet the following main requirements:
- (a) Any IPSUD must be officially proposed and certified by the relevant local authority or public sector agency on the basis of existing legislation on land use planning;
 - (b) IPSUDs must indicate a geographical area of intervention precisely defined;
 - (c) IPSUDs have to be based on a clear strategy, justifying the need for public intervention;
 - (d) IPSUDs shall contain the elements of a land-use plan, i.e. sufficient physical definition of any public works to be undertaken, specification of standard land-use parameters, the minimum level of public services required and the associated infrastructure endowment have to be established;
 - (e) Integration into a wider area must be insured for any IPSUD;
 - (f) IPSUDs must ensure compliance with environmental requirements under EU law;
 - (g) A study of the needs and a socio-economic appraisal has to be carried out for each IPSUD;
 - (h) In each IPSUD, a governance scheme and a financial plan shall be taken account of, according to the requirements set under the existing urban planning framework.
- (16) The Greek authorities confirmed that the integrated planning documents mentioned above shall be in line with the criteria set out in the Community Strategic Guidelines on Cohesion 2007-2013.

2.1.4. Alternative approach to address the objective

- (17) The Greek authorities have emphasized that up to now, urban regeneration approaches were largely based on the development of public infrastructure through grants (e.g creation of green areas, rehabilitation of public spaces, social welfare services etc.) without considering the potential of combining the above with interventions that have a repayable character. The JESSICA measure in Greece will allow improving the level of services provided to its citizens and increase the overall impact on the society. The Greek authorities also acknowledge that grants, as non-repayable instruments, would have a greater tendency to distort competition.

⁶ Council Decision of 6 October 2006 on Community strategic guidelines on cohesion (2006/702/EC), OJ L 291 of 21.10.2006.

- (18) Therefore, the implementation of the JESSICA measure in Greece will allow to complement and integrate the existing urban regeneration architecture through the following means:
- (a) The JESSICA measure in Greece establishes geographically dedicated investment funds, whose activity is based on the recyclability of funding. Recyclability of resources is a key element that determines the added value of JESSICA, since it allows the regional authorities to establish a continuous funding mechanism for cities;
 - (b) The interventions carried out through the JESSICA measure are based on synergetic effect, in the sense that project financing is appraised on the basis of an integrated development plan;
 - (c) The measure leverages private capital, thereby giving the opportunity to cities to increase the overall impact of investment on the society, taking also into consideration the scarce resources of the public sector.

2.1.5. Efficiency objective: Addressing Market failure(s)

- (19) The Greek authorities have emphasised that addressing the above mentioned urban development needs requires substantial capital investments. However, according to Greek authorities, these investments although efficient from a wider economic perspective, would not be delivered by the market. The Greek authorities indicated that market failures affect the availability of market financing for urban regeneration projects. Consequently, public support is required to correct them and necessary to attract investment to urban development projects covered by this scheme.
- (20) Moreover, the Greek authorities provided information stating that the market failures, affecting UDPs supported by the JHFG's investment strategy fall into the following categories: information asymmetries combined with risk aversion; transaction costs increasing single projects' costs; and externalities that are not included in the market price. The market failures have been identified both on the demand and supply side.
- (21) At the same time, the Greek authorities confirmed that the existence of market failure would be established for each UDP pursuant to the appraisal carried out by the UDF of UDPs as also described in recital (178)-(179).

2.1.5.1. Demand side market failures: nature of projects

- (22) Uncertainty regarding demand for development in degraded areas is linked both to urban regeneration projects inherent characteristics in general, as well as market failures that are specific for UDPs carried out in Greece. In this regard, the Greek authorities have emphasised that information failures caused by the economic environment uncertainties and high transaction costs tend to further exacerbate risk aversion increasing the reluctance of investors to provide financing for urban regeneration projects. They have provided information on these points, relevant for the Greek economy, as indicated in the following sections of the decision.

(a) Urban regeneration projects inherent characteristics

- (23) Firstly, the Greek authorities have emphasised that, in general, regeneration projects carried out in degraded areas are characterised by high risks linked to the characteristics of their localisation i.e. declining areas of derelict urban environment, urban poverty pockets of high unemployment, low income and social exclusion, where up-front investments are already significant, while revenues projections remain uncertain because of presumed low demand.
- (24) Furthermore, risk aversion is exacerbated by preparatory costs arising between the first investment and first returns. Appraisal of urban regeneration has inherent risks linked to planning, development costs, possible contamination, project duration, yield and rent, finance and volatility. As a result, investors make conservative projections of the value of new developments affecting the level of return for equity investors. In cases where project sites are contaminated due to prior development, upfront preparatory costs and lengthy pre-construction and construction periods, lead to abnormal time lags before value can be realised for investors. Particular forms of urban regeneration, such as in brownfield areas, increase the need for preparatory costs since initial investments will need to be directed towards cleaning and decontamination of soil, water and air, which cost money and time, and usually involve high environmental liability risks, especially where development is undertaken on what was contaminated land.
- (25) Therefore the above characteristics often make urban regeneration projects commercially unattractive, as private investors perceive the costs of the project as greater than its commercial value.
- (26) In addition, in the case of property development investments, which include public goods (e.g. public spaces, residential parking etc.), investors may be reluctant to invest, failing to appropriate all benefits arising from the investment or, as a consequence, failing to capture the need to integrate these for the overall successfulness of the project.
- (27) In light of the above general characteristics of urban regeneration projects, the Greek authorities have further drawn attention to the following market failures pertinent for urban development projects in Greece.

(b) Imperfect and asymmetric information

- (28) Imperfect information arises when it is difficult or expensive to gain detailed information either because markets are weak or because information is expensive (or in some cases impossible) to collect.
- (29) Information is not only imperfect but can also be asymmetric, where market counter-parties possess different levels and depth of information about local markets in general and specific developments in particular. Information asymmetries reflect the high and uncertain risks attributed to urban regeneration by developers and investors. This increases risk aversion among investors and results in overly conservative projections of the value of new developments, which often means that investors perceive development to be economically unviable. Uncertainty and perceptions of high investment risk from both developer and funder perspectives, are either priced into projects or already lead to a decision not to invest/develop. Thus, the market often perceives high and unacceptable market risks, especially until

completion and the confirmation of first results, and does not take the projects forward, even though this would be efficient from a wider economic perspective.

- (30) In fact, recent research has shown that perceptions of investment performance in urban regeneration areas may be too negative⁷. For example, systematic under-pricing of regeneration markets has often been caused by a lack of information and in fact investment property in regeneration areas can out-perform national and local benchmarks (IPD, 2009).
- (31) Information failures as a rule lead to high transaction and agency costs where it is time-consuming and expensive to gain full and robust information about the specific site and urban project as a whole. Potential investors face more difficulties in gathering reliable information on the business prospects of an urban regeneration project. This is in particular the case for highly risky projects. Furthermore, small deals are less attractive to investment funds due to relatively high costs for investment appraisal and other transaction costs.
- (32) It is emphasised by the Greek authorities that in particular in Greece investors have difficulties in accessing and obtaining efficient market information in order to adequately assess investments' future cash flow and potential risks. Financial information regarding property development (data regarding prices, vacancy rates, publication of firms' accounts, etc.), as well as regulatory information (relative to the institutional framework, governmental processes, public agencies, public procurement contracts, policy implementation, etc.), is inaccurate or even unavailable, which in turn exacerbates information failures.
- (33) As a matter of illustrating the above the Greek authorities draw attention to the fact that relatively few international investors express a positive view regarding the Greek capital that has traditionally been the focal point of all commercial and investment activity in Greece:

According to the PricewaterhouseCoopers survey "Emerging Trends in Property development Europe 2011", *"although Athens was ranked 20th out of 27 cities in 2010, 2011 figures report strong concerns and uncertainty about the fragility of the Greek economy and as a result local respondents fear that matters could take a significant turn for the worse, thus ranking Athens, Greece focal point of economic activity, in the 26th position with respect to property performance and city investment opportunities. Those worries proved well-founded. Local respondents are universally gloomy, almost all suggesting that 2011 will be worse than 2010"*.

- (34) The limited investment interest and activity in the property development market is also reflected in construction activity indicators. In fact, according to the 'Greek Foundation for Economic and Industrial Research, The Greek Economy 2/11, Quarterly Bulletin', No 64, July 2011 *"the decrease that is registered for Q1 of 2011 in the overall production in construction index is estimated at -16.6%, in comparison to -23.3% for the respective period of 2010. However, the index is at historically low levels of at least six years (57 units). The adverse situation in which the sector has come into the last couple of years is distinctively mirrored in*

⁷ Colantonio, A. and Dixon, T. (2010) Urban Regeneration and Social Sustainability: Best Practice from European Cities, Wiley – Blackwell.

*the index of construction works production that continues to fall by 27.3% in comparison to 2010*⁸.

(c) Externalities

- (35) The Greek authorities have emphasised that private markets may fail to capture collective benefits of urban regeneration projects, such as environmental and health benefits and improved neighbourhoods. In projects within the urban development and infrastructure category such as reconversions of industrial and degraded areas, the benefits of improvements to the physical environment or contamination removal, whilst generating wider societal benefits, do not always create the same benefits for developers.
- (36) In fact, in many of the regions targeted by the measure, intense industrial and manufacturing activity has led to increased levels of pollution, with a severe impact on the residents' quality of life. In the polluted areas a divergence between private and social costs and benefits is present, since negative externalities add to the social cost of any project undertaken in the area. Despite generating wider benefits, the undertakings have no incentive to reduce their level of pollution or to take individual measures to protect environment and correct respective negative externalities.
- (37) Consequently, without public support, energy efficiency interventions which lead to significant environmental long-term benefits for the society are not considered “profitable” enough to compensate for investment.

2.1.5.2. Supply side market failures: provision of long term development finance

- (38) In addition to the identified above demand side market failures affecting UDPs, there is, according to the Greek authorities, a market failure in the provision of long-term development finance. Long-term investors, including financial investors, such as pension funds and insurance companies, are particularly risk averse and in general not interested in lending to risky projects. Furthermore, commercial banks face capital and liquidity constraints and obtaining bank loans with the long maturities required by urban development projects has become even more difficult.
- (39) The Greek authorities point out that the recession of the Greek economy, combined with the drastic fiscal austerity, has made access to finance even more difficult. The banking sector in Greece has a limited ability to support growth with credit as a result of the Greek banks' inability to access international capital markets since the end of 2009. It has been emphasised in the notification that this could further lead to a negative spiral affecting business expectations regarding the future of the economy, thus restraining economic activity.
- (40) Furthermore, the Greek authorities have indicated that Greece is struggling to meet all targets set in its Stability and Growth Programme for 2011-2014. Economic policies affecting issues such as taxation and market regulation are regularly revised in order to meet fiscal targets. As a

⁸ Greek Foundation for Economic and Industrial Research, The Greek Economy 2/11, Quarterly Bulletin, No 64, July 2011.

result, consumers and investors have limited information about the reforms' progress and how on-going institutional changes could affect investment decisions.

- (41) Consequently, the current economic situation further restricts availability of funding for urban regeneration projects. In this regard the Greek authorities emphasise that the credit crunch may jeopardize the renovation and rehabilitation of the urban environment. The market is stagnant as economic actors investing in these projects are not only risk averse but also experience growing difficulties in accessing funding at fair conditions.

2.1.6. Equity objective: Addressing socio-economic problems in deprived urban areas

- (42) In addition to addressing the above economic inefficiencies in the form of market failures, investments into UDPs may, as pointed out by the Greek authorities, seek to compensate for economic or social problems that characterise deprived urban areas, which mutually affect investment viability notably in most of the Greek regions qualifying as assisted areas in the sense of the regional aid guidelines.
- (43) The Greek authorities pointed out that the JESSICA initiative launched by the EU Commission and the EIB responds to the request by several Member States and the European Parliament to give special attention to the need for renewal and/or regeneration of certain urban areas in order to improve convergence across EU regions. Economic and social cohesion is a Community objective, pursuant to Articles 4, 14 and 174 TFEU. Strengthening economic and social cohesion implies, in particular, the reduction of disparities between levels of development of different areas.
- (44) The Greek authorities recognise the importance of Social Cohesion which is set forth as one of the top 5 thematic priorities, and represents Development Axis 3 "Social Cohesion and Employment" included in the National Strategic Reference Period, which serves horizontally all the territorial and thematic priorities set by the National Reform Programme⁹ and was combined with commercial objectives, especially in the context of undertaking actions to strengthen business and entrepreneurship in the regions reflected in the regional operational programmes.
- (45) The Greek authorities have indicated that, in Greece, the JESSICA initiative will further support these actions aiming at the reduction of social and/or regional disparities in the urban areas through focusing on the:
- (a) improvement of social integration;
 - (b) improvement of mobility;
 - (c) improvement in energy management and energy efficiency;
 - (d) increase of the use of renewable energy;

⁹ The Hellenic NRP 2005-2008 covers the initial years of implementation of the 2007-2013 programming period of the EU Structural Funds and the NSRF. A significant number of policies, development means and interventions that have been included in the NRP are served by the CSF 2000 - 2006, and a significant part of them will be co-financed by the NSRF 2007-2013.

- (e) re-use of industrial and degraded areas;
 - (f) development of high-technology clusters and added value infrastructure;
 - (g) improvement of urban waste management;
 - (h) provision of premises, installations and equipment for productive activities.
- (46) According to the information transmitted by the Greek authorities, urban centres in Greece are characterised by a range of dynamic factors and problems that hinge on their development¹⁰. Among the principal characteristics of the urban centres of the country one can mention¹¹:
- (a) major demographic diversity;
 - (b) two metropolitan centres namely Athens and Thessaloniki, with 4.2 and 1.3 million inhabitants, respectively;
 - (c) relatively limited number of “medium” secondary urban centres (between 50,000 and 100,000 inhabitants);
 - (d) many “small size” towns of approx. 10-15,000 inhabitants;
 - (e) disparities in growth performance and production capabilities;
 - (f) limited extent of networking in the urban centres;
 - (g) lack of infrastructure and limited public space¹²;
 - (h) limited organizational capacity¹³;
 - (i) disparities in social indicators (i.e. unemployment rate)¹⁴;

¹⁰ “JESSICA Evaluation Study for Greece”, (2008), DTZ, on behalf of the European Investment Bank.

¹¹ Community Initiative URBAN II Municipality Of Heraklion:
<http://www.heraklion.gr/en/municipality/urban/urban.html>.

¹² According to the ROP “Attica 2007-2013”, «the population concentration of the municipality of Athens amounts to 19.133 res./sq.km, while the respective regional concentration of population amounts to 988. At the same time, the percentage of public spaces covers only 30% of total area (2007 data). Furthermore, the lack of green areas constitutes another significant problem since it causes serious degradation of the quality of life. Again Athens is a good example of an urban center facing severe lack of green areas, since according to the ROP Attica, the ratio green – resident is extremely low, precisely 2,55 m2/resident, with the lowest acceptable limit being 10 m2/resident, thus resulting in negative effects in quality of life and deterioration of the quality of the atmosphere”.

¹³ According to the ROP “Attica 2007-2013”, «a very small percentage of industrial facilities are based in organized areas, since off plan building is the dominant choice of location for the industrial sector, while there are many individual industrial units concentrated in particular areas, especially in zones of influence of large urban centers, in immediate need of remediation ».

¹⁴ According to the General Framework of Spatial Planning and Urban Development, Hellenic Ministry of Environment (2008), «80% of the unemployed is met in urban areas, mainly in the regions of Attica and Central Macedonia, where the highest rates of young people’s unemployment is also indicated. This exacerbates social problems due to the growing expansion of urban centers and increasing pressure on urban infrastructure, health infrastructure, social protection and the wider urban environment». In addition, according to the ‘Labour Force Survey: 2nd trimester 2011’ conducted by the National Statistical Service of Greece , at regional level, the highest unemployment rate during the 2nd quarter of 2011, was observed in the Regions of West Macedonia (23,1%) and East Macedonia & Thrace (20,7%), while the lowest rate was observed in the Regions of Peloponnese (13,1%) and Crete (13,4%).

- (j) de-industrialization, combined with the declining competitiveness of the Greek industries, leads to unemployment, facility abandonment, thereby transforming the production model towards the service sector.
- (47) Taking account of the above, the Greek authorities emphasise that the investments in urban areas facilitated by the JESSICA funds could help pursue genuine cohesion and social development objectives by attracting the otherwise lacking private investment into urban regeneration projects.
- (48) Furthermore, JESSICA could play a major role in addressing issues related to the lack of practical implementation experience in complex urban regeneration projects and give preference to projects in which public and private actors would be involved in the management and or the exploitation of the investment, which is expected to contribute to the revenue generating objectives of the JESSICA projects.
- (49) The JHFG, through selected UDFs, could establish the “best practices“ reflected in the identification and selection of complex urban development projects, involving both public and private actors and funds, and delivering such projects in a transparent procurement and implementation context following highest standards of professionalism and integrity.
- (50) The Greek authorities have indicated that JESSICA projects shall serve as a benchmark, to clearly demonstrate the advantages of the underlying delivery mechanism in ensuring efficient use of public funds, as well as serve as a learning tool of national and local authorities for sustainable urban projects preparation and implementation.
- (51) JESSICA will also establish a mechanism to ensure that project expenditure and revenues correspond to market levels and monitor budget allocation and execution, thus preventing potential cases for budget deviations. By demonstrating the advantages of investments in revenue-generation urban projects, JESSICA intervention will induce urban authorities to think and act entrepreneurially in the field of urban development and view themselves as investors in urban development, expecting a socio-economic ‘return’ of their investments rather than aid recipients.
- (52) Providing finance to economically viable urban regeneration projects and implementing them through a public-private investment approach, JESSICA shall promote the active role in urban regeneration to be shifted from the municipalities towards the private sector, enabling that full advantage is taken from the active participation of the private sector, both in terms of financial resources provided to the project as well as managerial expertise. JESSICA will help to address market failures by providing the necessary financial incentives for undertaking an urban regeneration initiative.
- (53) The Greek authorities have also pointed out that the categories of UDPs targeted by the JESSICA measure constitute an integral part of the Regional Operational Programme of Attica, Regional Operational Programme of Macedonia and Thrace, Regional Operational Programme of Crete and Aegean Islands, Regional Operational Programme of Western Greece-Peloponnese-Ionian Islands, Regional Operational Programme Thessaly – Mainland Greece - Epirus and the National Operational Programme Environment and Sustainable Development.

2.2. Budget, granting authority duration and legal basis

2.2.1. Duration

- (54) Notwithstanding specific provisions under EU Structural Funds rules, as far as compliance with State aid rules is concerned, the duration of the measure is until 31.12.2025. The duration corresponds to the initial UDF investments of EUR 258 million in UDPs carried out until the end of 2015 (as required by the SF Regulations), and the possible subsequent re-investments in UDPs, carried out until the end of 2025, from returns generated by the initial investments.

2.2.2. Budget

- (55) According to the Greek authorities, the initial public budget for the measure will be EUR 258 million for the first cycle of investments to be made until 31.12.2015. The Greek authorities have indicated that subsequent re-investments could be made until 31 December 2025 on the basis of the returns generated by the initial investments. The budget will be used for both investments containing State aid within the meaning of Article 107(1) TFEU, as well as investments free of State aid.
- (56) The budget consists of European Regional Development Fund (ERDF) money combined with national budget match-funding. These resources are allocated from 6 Operational Programs (13 Priority Axes):
- (a) Five Regional Operational Programmes (12 Priority Axes) which focus on specific regions (each Priority Axis reflects an individual region), and
 - (b) Sectoral Operational Programme “Environment & Sustainable Development”, which focuses on the objective 1 Regions.
- (57) The Greek authorities have indicated that the JHFG resources are monitored separately per Priority Axis, as required by the EU Structural Funds regulations, and at consolidated level.
- (58) In line with Article 4 (2) of the EC Regulation 794/2004¹⁵ budget increases of more than 20% will be subject to notification to the Commission
- (59) The value of public in kind contributions such as provision of public land granted will be established under market conditions. The Greek authorities have committed to respect applicable EU legislation such as the Commission Communication on State aid elements in sale of land and buildings.¹⁶

2.2.3. Granting Authority

- (60) The Ministry of Development, Competitiveness and Shipping is the granting authority.

¹⁵ OJ L 140, 30.4.2004, p. 1.

¹⁶ OJ C 209, 10.07.1997, p. 3.

2.2.4. *Legal basis*

- (61) The implementation of the JESSICA initiative in Greece is regulated by the Funding Agreement signed on 1 July 2010 between the representatives of the Hellenic Republic and the European Investment Bank.
- (62) The Funding Agreement's provisions are complemented by those of the five Operational Agreements concluded between the JHFG and the selected Urban Development Funds.
- (63) In the above documents, which form part of the notification, tasks and requirements for the JHFG, as well as for the Urban Development Funds are stipulated, including investment strategy and planning, selection of Urban Development Projects, monitoring and reporting, remuneration and compliance with EU State aid rules.
- (64) Additional legal sources relevant for the notified measure are the following EU Structural Funds provisions:
 - (a) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (the “General Regulation”)¹⁷;
 - (b) Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (the “ERDF Regulation”)¹⁸;
 - (c) Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (the “Implementing Regulation”).¹⁹

2.3. Form of aid: Granting of revolving investment at sub-commercial conditions to UDPs

- (65) As foreseen in Article 43 (1) of the Implementing Regulation and the respective funding agreements, investments in UDPs will be made in a revolving way. Such repayable investments will be “recycled” and become available for further reinvestment in UDPs.
- (66) To remedy the market failures and to facilitate socio-economic development in deprived urban areas in the identified regions of Greece, the measure will act as a catalyst to leverage private funding to finance UDPs. According to the Greek authorities, in order to attract private

¹⁷ OJ L 210/25 of 31 July 2006, as last amended by Regulation (EU) No 539/2010 of the European Parliament and of the Council of 16 June 2010 (OJ L 158/2010 of 24 June 2010).

¹⁸ OJ L 210/1 of 31 July 2006, as last amended by Regulation (EU) No 437/2010 of the European Parliament and of the Council of 19 May 2010 (OJ L 132/2010 of 29 May 2010).

¹⁹ OJ L 371/1 of 27 December 2006, as last amended by Commission Regulation (EU) No 832/2010 of 17 September 2010 (OJ L 248 of 22 September 2010).

investment, the measure may provide aid in the form of sub-commercial loans, as well as equity investment provided on non pari-passu terms with regards to the investment provided by private investors. Deviation from market rules will be limited to the necessary minimum (as to its limitations, including the concept and establishment of a Fair Rate of Return (FRR) please see section 2.7.6 below). The above mentioned instruments may be offered independently or combined.

- (67) Detailed investment terms and conditions, including the choice of investment instruments (i.e. sub-commercial loans, equity investments and combination thereof) will be determined on the basis of business plans prepared for each UDP and will depend on the exact nature and financing characteristics of the UDP. This will be evaluated on a project-by-project basis before the investment is made.

2.3.1. *Sub-commercial loans*

- (68) The Greek authorities have explained that preferential investment terms can be granted to private investors by sub-commercial investment of JHFG funds by UDFs through the following instruments:
- (a) partially subordinated loans with first loss exposure in favour of private loan providers capped at 15% of the JHFG resources invested into the UDP (above that level, the losses are shared proportionally);
 - (b) loans at preferential interest rate in comparison to the market rate;²⁰
 - (c) loans at maturities different from that provided by the private co-investor, which will be appropriately collateralized. No bullet loans will be granted.
- (69) Provision of loans, by the UDF, at these sub-commercial terms will result in a higher IRR for the private investor i.e. private investors will be ensured an IRR corresponding but not exceeding the relevant FRR on their loans.
- (70) In that sense the UDF public resources, invested on sub-commercial terms, will incentivise private investors to invest in UDPs, by either implementing a loss cap on private loans (and at the same time putting a limit to the public loss exposure) and/or provide more attractive interest rate on the UDF loan in comparison to that offered by the market.

²⁰ i.e. an interest rate lower than the reference rate established on the basis of the Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6–9.

2.3.2. *Equity investments²¹ of public funds*

- (71) The Greek authorities explain that under the measure, UDFs may invest JHFG public funds into the equity of the UDPs without granting any preferential rights over and above the public funds to the private co-investor.
- (72) In this regard, the Greek authorities explain that although no preferential terms are granted to the private investor as concerns profit sharing and loss mitigation mechanisms, the equity investments carried out by UDFs will nevertheless attract private co-investment due to the following:
 - (a) The foreseen public participation (not more than 30%) allows project promoters to maintain management control;
 - (b) No collaterals or other guarantees from project promoters are required;
 - (c) UDF's participation in the equity investment can help boost confidence regarding the project's prospects and facilitate efforts to attract additional commercial bank co-financing.

2.4. Funding architecture I: Overview

- (73) As foreseen under Article 43 of the Implementing Regulation, investments into eligible UDPs will be made via investment vehicles, i.e. Urban Development Funds (UDFs). UDFs will be managed by professional independent fund managers, selected through an open and transparent procedure that will make investment decisions within the agreed investment strategy. The managers will carry out the due diligence and financial appraisal in the project structuring phase, price the investment instruments and monitor project performance until the exit.
- (74) By providing professional project appraisal, thus ensuring that UDPs are feasible from economic, social and technical points of view and comply with the eligibility criteria in the relevant regulations, as well as by analysing the risks involved, the information on financial structure and the expected revenues for the different stakeholders, investment becomes more reliable.
- (75) As foreseen in the Funding Agreement, as well as in the Operational Agreements, public funding to the UDFs will be channelled through the JHFG, which is an investment vehicle set up to invest the public funding under the measure into the five UDFs.
- (76) Essentially, public authorities will delegate investment decisions to investment professionals that are required to take prudent investment risks and optimise investment performance while

²¹ The Greek authorities explain that for the purpose of this notification any investment which is not debt or a guarantee shall be deemed to be equity. The defining features of debt are: a) it takes a first or second ranking security over an asset (mezzanine debt is often second ranking) whether this be a physical asset or contractual step in rights b) likely has a fixed repayment profile c) likely has a tail (i.e. requires repayment sometime before the end of a project) d) will have a series of covenants which must be observed, typically some form of ratio which must be calculated and reported periodically to the lender. The lender will typically have the power to prevent payment to equity for a small breach and will have the power to step into a project or demand accelerated repayment of the debt for a material breach.

at the same time achieving relevant policy objectives. This allows the public authorities to rely on the financial expertise of the JHFG and the UDFs in leveraging additional funding, as public resources and other public/private funding are pulled together at UDP level. Moreover, the intention is to build a portfolio of transactions diversified in terms of size and sector so as to mitigate investment risks through the "portfolio effect".

- (77) The funding objectives, terms and conditions provided to JHFG and subsequently UDFs are contractually specified in the Funding Agreement, notably its Chapter 7 and Appendix A on "Investment Strategy and Planning", as well as the Operational Agreements, and will include the investment policy, the rights and obligations of fund managers, investment process, governance rules, monitoring and reporting provisions and rules on management fees.
- (78) While a large portion of the decision-making process on investments is thus outsourced to the JHFG, as well as to UDFs, ultimate responsibility for State aid compliance remains with the Greek authorities.

2.5. Funding Architecture II: The Holding Fund

- (79) In line with the EU Structural Fund Regulations, the JHFG has been set up as a separate block of finance within the EIB on the basis of an agreement signed on 1 July 2010, between the i) Ministry of Development, Competitiveness and Shipping, ii) the twelve Regional authorities, iii) the Minister of Environment, Energy and Climate Change (as the Ministry responsible for the OP Environment Sustainable Development and, iv) the European Investment Bank.
- (80) The HF structure provides a mechanism for the diversification of investments in several UDFs and more effective controls. It is intended to achieve significant economies of scale and act as centralised manager for payments and a catalyst in the investment process.

2.5.1. Holding Fund's funding agreement

- (81) The Funding Agreement sets out the funding terms and conditions, as per Article 44 paragraph 1-2 of the Implementing Regulation, such as the investment strategy and policy, including an indication of the target UDPs and products, appraisal and selection of UDFs, monitoring, reporting and auditing systems and winding-up provisions, including the reutilisation of resources.

2.5.2. The Holding Fund's investment strategy

- (82) As foreseen in Article 44 paragraph 1 of the Implementing Regulation, the Funding Agreement makes, notably under its Chapter 7, "*Investment Strategy and Planning*" (as well as Annex A *Investment Strategy and Planning*) reference to urban development studies and IPSUDs included in the relevant regional operational programmes, as well as the sectorial operational programme. The Greek authorities further acknowledge that the investment strategy of the JHFG reflects policy goals that are in line with the SFs Regulations and are based on the investment priorities defined in the IPSUDs, as well as the objectives set out in the above mentioned operational programmes. In addition, the investment strategy reflects the key findings of the analysis on efficiency, as well as on equity objectives described above.

- (83) As for urban development studies, the analysis of specific urban development needs and actions in the regions of Greece was carried out through the so-called JESSICA evaluation studies²². They represent a key preliminary step which permitted to define urban development needs and an investment strategy, in accordance with the sustainable urban development objectives. The evaluation study comprises a market analysis and provides recommendations and proposals for appropriate actions regarding possible JESSICA implementation.
- (84) According to the Greek authorities, a wide range of UDPs mirroring the efficiency and equity objectives referred to above in section 1.1.5 and 1.1.6 could receive UDF investments.

2.5.3. *Management of the Holding Fund*

2.5.3.1. Responsibilities of the HF manager

- (85) The Greek authorities have set up the JHFG and entrusted the EIB with management of the JHFG comprising the following activities:
- (a) Pursuit of strategy set out in the Investment Strategy and Planning document;
 - (b) Selection of and investment in UDFs: launching a tender process, evaluation of the business plans submitted by UDF and the quality of the management, negotiation and signing of Operational Agreements with UDFs;
 - (c) Operation phase: evaluation of the updated business plans submitted by UDFs in the selection and operational phase, monitoring and control of UDF investment activities in accordance with of the Operational Agreements, reporting;
 - (d) Treasury management of the outstanding funds.

2.5.3.2. Selection process

- (86) Based on Article 44 of the General Regulation, the Greek authorities decided to entrust the EIB with the management of the JHFG through a direct award of a contract.²³ The General Regulation allows the EIB to be appointed without procurement procedures (Council Regulation (EC) No 284/2009 of 7 April 2009).

²² JESSICA Evaluation Study for Greece, <http://www.eib.org/attachments/greece-final-report-dtz.pdf>; JESSICA instruments for energy efficiency in Greece, <http://www.eib.org/attachments/documents/jessica-instruments-for-energy-efficiency-in-greece-en.pdf>; JESSICA instruments for solid waste management in Greece, <http://www.eib.org/attachments/documents/jessica-instruments-for-solid-waste-management-in-greece-en.pdf>.

²³ Funding Agreement signed on 1 July 2010 between the Ministry of Economy, Competitiveness and Shipping acting as the Managing Authority of the relevant Operational Programmes for Greece (2007-2013) and the European Investment Bank.

2.5.3.3. Management fee

- (87) Total management fees for the EIB may not exceed, on a yearly average, a cap of [...] *0% for the first EUR 200 million and [...] % for any amounts contributed to the measure beyond the EUR 200 million. Therefore, the weighted average management fee as applied in the total amount contributed to the measure will not exceed [...] %²⁴.

2.5.4. Holding Fund investment into UDFs

2.5.4.1. Selection of UDFs

- (88) In line with Article 44 (2b) of the Implementing Regulation, the EIB launched on 18 March 2011 a Call for Expression of Interest published on its website²⁵. Information on the Call of Expression was also published on the JHFG website (with a reference link to the EIB website). In addition, the Call for Expression of Interest to identify potential UDFs was published in the Official Journal of the European Union.²⁶
- (89) Following the final deadline for submission of offers, the EIB received offers from nine entities, which were examined under the selection and exclusion criteria. One entity was excluded due to the non-submission of required documentation. The offers and, in particular, the business plans of the remaining eight entities were evaluated in line with the selection criteria of the Call for Expression of Interest. On the basis of the evaluation performed by the EIB internal panel and the respective recommendations approved by the Investment Board of JHFG, five UDFs were selected.
- (90) In line with Article 43 (2) of the Implementing Regulation, UDFs are to be selected on the basis of the business plans submitted by the UDFs, in particular, specifying the following elements: the target market and projects, investment conditions, budget, ownership and financing, provisions on professionalism and independence of the management, winding-up provisions.
- (91) The selection of the UDFs by the JHFG was based on the assessment of the business plans submitted by the UDFs, which included: an investment policy; the financial forecast and operational budget of the UDF; the portfolio of Urban Projects; the methodology for the identification and evaluation of future Urban Projects; the policy of the UDF concerning the exit from investments in the Urban Projects; the legal and ownership structure of the UDF; the by-laws of the UDF; the governance structure of the UDF and key experts; the annual management fees; the interest rate on available funds; the ability of the UDF to provide co-financing; and the winding up provisions for the UDF.
- (92) To assess the business plan and the suitability of potential UDFs, the JHFG applied assessment criteria such as the quality of the applicant's investment strategy and the governance structure, including experience in the market, the level of the annual management fee charged and the ability to provide own investment resources or attract third party private co-financing.

* Business secret

²⁴ Article 43 paragraph 4 (a) of the Implementing Regulation foresees that the management costs for the holding fund may not exceed 2 per cent of the capital contribution to the HF.

²⁵ http://www.eib.org/attachments/eoi/vp959_tor_en.pdf.

²⁶ <http://ted.europa.eu/udl?uri=TED:NOTICE:87336-2011:TEXT:EL:HTML&tabId=1>.

- (93) Since the JHFG delegates decisions to invest in individual UDPs to the UDFs, the JHFG relies on appraisal, risk control and monitoring standards of the UDFs. Therefore, in order to ensure that the JHFG is financially sustainable and that the public investments are repaid and recycled, the JHFG has carried out the credit/investment risk assessment of the selected UDFs, as well as determined ex-ante the exit policy from such UDFs.

2.5.4.2. JHFG Investment Board

- (94) The JHFG is governed by an Investment Board, the body that supervises and is broadly responsible for governing the implementation of the JHFG, which includes approving or rejecting recommendations made to it by EIB as the JHFG manager. The Investment Board of the JHFG will carry out the following tasks:
- (a) After being notified of the selected UDF(s) by the JHFG, the Investment Board is responsible for ratifying (or rejecting) the proposal;
 - (b) The Investment Board will perform periodic reviews of the JHFG's overall performance in implementing the investment strategy;
 - (c) In consultation with the Greek authorities, the Investment Board will be reviewing the progress and the strategy of the JHFG;
 - (d) The Investment Board will be supervising the activities carried out within the scope of the Funding Agreement, including UDF selection, UDF contract management, budget, costs and reporting.
- (95) The Investment Board consists of five members appointed by the Greek authorities following a consultation with EIB. The Greek authorities proposed Investment Board members who are experts in the field of urban or public infrastructure financing, urban planning or other areas of expertise relevant to the HF's investment strategy. The members of the Investment Board are contractually obliged to act independently and in the sole interest of the JHFG. Ad-hoc members consisting of the Secretary Generals of the respective regions of Greece, shall participate and vote in any Investment Board meeting that considers matters which impact on a respective participating Operational Programme.

2.5.5. *Monitoring implementation at UDF level*

- (96) In accordance with Article 43 paragraph 2 of the Implementing Regulation, the JHFG will monitor the implementation of the business plan and the performance of each selected UDFs. After signing the Operational Agreements with the UDFs, the UDF managers must propose an updated portfolio of potential urban projects which is subject to the approval of the JHFG.

2.6. Funding architecture III: The UDF(s)

- (97) Following the competitive procedure described above, the five UDFs have been set up and will invest JHFG's funds in UDPs in the form of equity and sub-commercial loans.

- (98) As it is the case of the HF structure, the UDF structure provides a mechanism for the diversification of investments in several types of UDPs and more effective controls. It allows achieving significant economies of scale and acting as centralised manager for payments and a catalyst in the investment process.

2.6.1. Operational agreements

- (99) As required by Article 43 paragraph 5 of the Implementing Regulation, the Operational Agreements between the JHFG (the EIB) and the respective UDFs were signed in the following time frame:

- (a) The Operational Agreement with EFG EUROBANK ERGASIAS S.A was signed on 9 February 2012;
- (b) The Operational Agreement with Investment Bank of Greece was signed on 9 February 2012;
- (c) The Operational Agreement with National Bank of Greece SA was signed on 9 December 2011;
- (d) The Operational Agreement with Pancretan Cooperative Bank & TT Hellenic Postbank was signed on 24 November 2011;
- (e) The Operational Agreement with PIRAEUS Banks S.A. was signed on 9 February 2012.

- (100) The Operational Agreements set out the funding terms and conditions, such as the investment strategy and policy of the UDFs, monitoring, reporting and auditing systems as well as winding-up provisions, including the reutilisation of resources.

- (101) The Operational Agreements also set out the amount of funds allocated to the UDFs taking into account their geographical focus:

- (a) The UDF set up by EFG Eurobank Ergasias S.A. will manage appx. EUR 68,000,000 of the JHFG resources and ensure that appx. EUR 40,000,000 is exclusively applied to the Priority Axis 5 "Sustainable Development and Quality of Life in the Region of Mainland Greece" of the OP Thessaly - Mainland Greece - Epirus and EUR 28,000,000 is exclusively applied to the Priority Axis 8 "Sustainable Development and Quality of Life in the Region of Peloponnese" of the OP Western Greece - Peloponnese -Ionian Islands";
- (b) The UDF set up by Investment Bank of Greece will manage appx. EUR 50,000,000 of the JHFG resources and ensure that appx. EUR 10,000,000 shall be exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 9 "Sustainable Development and Quality of Life" in the Region of Eastern Macedonia and Thrace" of the OP of Macedonia and Thrace; appx. EUR 10,000,000 will be exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 8 "Sustainable Development and Quality of Life in the Region of North Aegean" of the OP of Crete and Aegean Islands; appx. EUR 15,000,000 will exclusively be utilised for the objectives of and in compliance with the eligibility criteria set out in the Priority Axis 8 "Sustainable Development and

Quality of Life in the Region of Western Macedonia" of the OP of Macedonia and Thrace; and appx. EUR 15,000,000 will be exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in the Priority Axis 6 "Sustainable Development and Quality of Life in the Region of Epirus" of the OP Thessaly - Mainland Greece – Epirus;

- (c) The UDF set up by the National Bank of Greece will receive appx EUR 85,000,000 and ensure that appx. EUR 50,000,000 is exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 4 "Regeneration of the Urban Areas" of the OP Attica; appx. EUR 15,000,000 is exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 7 "Sustainable Development and Quality of Life in the Region of Western Greece" of the OP Western Greece-Peloponnese - Ionian Islands; appx. EUR 10,000,000 is exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 9 "Sustainable Development and Quality of Life in the Region of Ionian Islands" of the OP Western Greece - Peloponnese - Ionian Islands; and appx EUR 10,000,000 is exclusively utilised for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 6 "Protection of Atmospheric Environment - Managing Climate Change" of the OP Environment and Sustainable Development.
- (d) The UDF set up by Pancretan Cooperative Bank & TT Hellenic Republic will manage appx. EUR 15,000,000 of JHFG resources and invest them in the region of Crete.
- (e) The UDF set up by the PIRAEUS Bank S.A. will manage appx. EUR 40,000,000 of JHFG resources and ensure that appx. EUR 20,000,000 is used exclusively for the objectives of and in compliance with the eligibility criteria set out in Priority Axis 7 "Sustainable Development and Quality of Life in the Region of Central Macedonia" of the OP of Macedonia and Thrace; and appx. EUR 20,000,000 is used for objectives of and in compliance with the eligibility criteria set out in Priority Axis 4 "Sustainable Development and Quality of Life in the Region of Thessaly" of the OP of Thessaly - Mainland Greece – Epirus.

2.6.2. *Legal form and structure of the UDFs*

(102) In line with the EU Structural Funds Regulations, the UDFs are established as a “separate block of finance” within an existing financial institution i.e.:

- (a) The UDF managed by EFG Eurobank Ergasias S.A. is established as a separate block of finance within the financial institution EFG Eurobank Ergasias S.A.;
- (b) The UDF managed by the consortium of the Investment Bank of Greece is established as a separate block of finance within the financial institution of Investment Bank of Greece;
- (c) The UDF managed by National Bank of Greece is established as a separate block of finance and an autonomous National Bank of Greece Unit within the Project Finance Division of National Bank of Greece;

- (d) The UDF managed by the consortium of Pancretan Cooperative Bank and TT Hellenic Postbank is established as a separate block of finance within the members of the consortium;

The UDF managed by PIRAEUS Bank S.A. is set up as a separate block of finance within the financial institution of Piraeus Bank S.A.

2.6.3. *UDF Management*

2.6.3.1. Responsibilities

(103) The JHFG delegates to the UDFs individual investment decisions that will be made on using commercial appraisal principles within the limits of the investment strategy agreed and the policy objectives sought. The key tasks envisaged for the UDFs, i.e. its management, are:

- (a) Identify, appraise and structure investments in viable UDPs which fit within the agreed business plan of the UDF and the investment strategy of JHFG;
- (b) Monitor UDPs' operational and financial performance and manage appropriate exit strategies from UDPs to ensure most profitable investment exits;
- (c) Seek to secure maximum co-financing at UDF level and/or, project level to ensure that JHFG's investment is sufficiently and appropriately leveraged;
- (d) Monitoring and reporting to the HF on the UDP portfolio performance, providing the necessary information to ensure compliance with the relevant EU rules;
- (e) Appropriately promote investments in UDPs.

2.6.3.2. Remuneration

(104) The JHFG will compensate the UDFs for investment management services in the form of a management fee agreed in advance and contractually defined in the Operational Agreements with EFG Eurobank Ergasias S.A., Investment Bank of Greece, National Bank of Greece, Pancretan Cooperative Bank & TT Hellenic Postbank and PIRAEUS Bank S.A.

(105) The management fee structure, being an important part of the selection criteria, has been determined through the outcome of the competitive process launched by the JHFG to select the UDFs.

(106) In line with the EU Structural Funds Regulations and signed Operational Agreements, the management fee shall not be calculated on the interest earned by a UDF on any deposits of funds contributed to the UDF by the JHFG and not yet invested in Urban Projects or returned to the UDF from investments in Urban Projects and not yet re-invested. Remuneration provisions contained in the Operational Agreements foresee an overall limit of 3% p. a. of the capital to be contributed by the JHFG to the UDF.

- (107) In this regard, before the end of 2015, a fixed element of the fee structure is paid as a percentage of the JHFG resources allocated to each UDF. Furthermore, the remuneration fee structure is based on the assumption that JHFG resources allocated to the UDFs should be fully disbursed to eligible UDPs according to the following scheme: (i) at least 50% of the funds made available to the UDF should be disbursed by the UDF by 31 December 2013; (ii) 80% of the funds made available to the UDF should be disbursed by the UDF by 31 December 2014; and (iii) 100% of the funds made available to the UDF should be disbursed by the UDF by 30 June 2015. In addition, a contingent fee may be paid only under the condition that the UDF accelerates its investment beyond the mandatory limits set in the Call for Expression of Interest. According to the Greek authorities this mechanism will incentivize UDFs to invest in UDPs in a timely, constant and efficient way, ensuring at the same time the overall completion of the set target.
- (108) The Greek authorities have agreed that after 2015, the management fees paid to the UDF managers will be linked to the performance of the investment i.e. the remuneration fee will be linked to returns generated by the investment. The applicable remuneration mechanism has been described for each UDF below. In any case, if the amount available in the reserve account is not sufficient to cover the management fee, the risk lies with the UDF and unpaid amounts of management fee may accrue and be payable only on the four following payment dates of the management fees and exclusively from the amounts that remain on the Reserve Account after full payment of the management fee on such following payment dates.
- (109) According to the Greek authorities, the remuneration mechanism of the selected UDF fund managers represents a healthy intersection between the market practice and the common interest objectives sought by JESSICA, which combined with the selection criteria contained in the Call for Expression of Interest, ensure that the envisaged mechanisms comprise a remuneration system rewarding success both on acceleration of investment activity, as well as on the performance of investments.
- (110) The Greek authorities' emphasise that the remuneration mechanism will incentivise the UDF fund managers to take economically sound decisions and invest in performing investments.
- (111) The management fee structure applicable in the case of each of the selected UDFs has been indicated below:
- (a) Remuneration provisions concerning the UDF managed by EFG EUROBANK ERGASIAS S.A.
- (112) Within the restrictions mentioned above, the management fee comprises a fixed and variable component. The parameters are defined in 3 distinct periods and shall be calculated in the following way:
- (113) Until 30 June 2014, the UDF shall receive a Fixed Management Fee of [...] % per annum on the aggregate amount of JHFG funds allocated to the Priority Axis 5 of the OP Thessaly - Mainland Greece - Epirus (Region of Mainland Greece); and [...] % per annum on aggregate amount of funds allocated to the Priority Axis 8 of the OP Western Greece - Peloponnese - Ionian Islands (Region of Peloponnese),

- (114) In addition, in the period until 30 June 2014 the UDF may receive a variable management fee for exceeding the respective target fund absorption rates, specified for each operational agreement, as follows:
- (a) For the period ending 31 December 2013, a variable management fee of [...] % per annum will be paid, if at least [...] % and up to [...] % of the relevant part of the JHFG resources have been invested into UDPs by 31 December 2013, or [...] % per annum if more than [...] % of the relevant part of the JHFG resources have been invested in UDPs projects by 31 December 2013.
 - (b) For the remaining part of the period until 30 June 2014, a variable management fee of [...] % per annum will be paid, if at least [...] % and up to [...] % of the JHFG resources have been invested in UDPs by 31 December 2014, or [...] % per annum if more than [...] % of the relevant part of the JHFG resources have been invested in UDPs by 31 December 2014.
- (115) From 30 June 2014 and until 31 December 2015, the UDF shall receive a fixed management fee of [...] % per annum on aggregate amount of JHFG funds allocated to Priority Axis 5 of the OP Thessaly - Mainland Greece - Epirus (Region of Mainland Greece); and [...] % under Priority Axis 8 of the OP Western Greece - Peloponnese - Ionian Islands (Region of Peloponnese).
- (116) In addition, the UDF shall receive a variable management fee of [...] % per annum, if at least [...] % and up to [...] % of the relevant part of the JHFG resources have been invested in UDPs by 31 December 2014, or [...] % per annum if more than [...] % of the relevant part of the JHFG resources have been invested in UDPs by 31 December 2014.
- (117) From 1 January 2016, to the final repayment date, the charged management fee will amount to [...] % per annum and shall be applied to the total JHFG funds disbursed and/or invested in UDPs and not yet returned to the Reserve account. The basis for calculating the fee will also include interest, dividends and any other returns earned on the invested capital and paid during the period (calendar quarter) preceding the Management Fees payment date.
- (b) Remuneration provisions concerning the UDF managed by Investment Bank of Greece
- (118) The negotiated management fee for Investment Bank of Greece fulfils the general conditions mentioned in recitals (104) – (111) and is composed of a fixed, one-off and investment success fee.
- (119) The annual fixed management fee amounts to [...] % on the aggregate amount of allocated JHFG funds for the period until 30 June 2014; from 1 July 2014 until 31 December 2015 the fixed rate amounts to [...] %. An investment fee of [...] % will be applied only once on the amount disbursed and/or invested in Urban Projects from the date of first disbursement until 31 December 2015. From January 2016 until final repayment a fee of [...] % will be charged on the JHFG funds disbursed and/or invested not yet returned to the Reserve Account.
- (120) The contingent one off payable fee foresees that if: i) on 31 December 2013 above [...] % of the JHFG funds are invested, the UDF is entitled to a [...] % fee (less fixed management fees and investment fee paid up to that point) applied on the amount of funds by which the threshold of [...] % has been exceeded; ii) if on 31 December 2014 the UDF has invested more

than [...] % of funds it is entitled to receiving a fee of [...] % (less fixed management fees investment fee and contingent management fee paid up to that point) applied on the amount of funds by which the threshold of [...] % has been exceeded. The contingent management fee mentioned in i) is only payable if [...] % of the funds are disbursed by 31 December 2014 and [...] % of the funds are disbursed by 30 June 2015. The contingent management fee mentioned in ii) is payable only when the UDF disburses [...] % of funds until 30 June 2015.

(121) The Operational Agreement with the UDF also foresees a success fee paid on any returns on payments made by UDPs which exceed [...] % per annum. These profits will be split [...] % for the EIB and [...] % for the UDF, providing that the EIB receives re-payment of the total principal of the initially allocated JHFG funds.

(c) Remuneration provisions concerning the UDF managed by National Bank of Greece

(122) The management fee fulfilling conditions mentioned in recitals (104) – (111) shall consist of a fixed and a variable part, which will be calculated as follows:

(123) In the period running up to 30 June 2014 the fixed management fee will amount to [...] % p.a. of the aggregate amount of JHFG resources allocated to Priority Axes 4 of the OP Attica and 7 and 9 of the OP Western Greece - Peloponnese - Ionian Islands; and [...] % p.a. of the aggregate amount of JHFG resources allocated to Priority Axis 6 of the OP Environment and Sustainable Development.

(124) From 1 July 2014 to 31 December 2015 the fixed fee amounts to [...] % p.a. of the aggregate amount of allocated JHFG resources.

(125) In addition, the fund management will be entitled to a contingent fee providing that the following conditions are fulfilled:

(a) [...] % of the total JHFG funds invested in UDPs under each Priority Axis, payable one-off if the said funds are equal or exceed [...] % of the portion of the JHFG resources, allocated to each Priority Axis by 31 December 2013. This management fee is applied to the total JHFG funds disbursed and/or invested by 31 December 2013 and is payable in the second semester of 2015 under the condition that [...] % of the JHFG resources will have been disbursed and/or invested by 31 December 2014 and [...] % of the JHFG resources will have been disbursed and/or invested by 30 June 2015.

(b) [...] % of the total JHFG funds disbursed and/or invested in UDPs under each Priority Axis, payable one-off if the said funds are equal or exceed [...] % of the portion of the JHFG funds, which is to be allocated to each Priority Axis respectively, by 31 December 2014. This management fee is applied to the total JHFG funds disbursed and/or invested by 31 December 2014 and is payable in the second semester of the 2015 on the condition that [...] % of the JHFG funds will have been disbursed and/or invested by 30 June 2015. The achievement of the targets for the Contingent Part of the management fee will be evaluated in relation to each Priority Axis.

(126) From 1 January 2016 onwards the remuneration fee amounts to [...] % p.a. of invested funds in UDPs and not yet returned to the Reserve Account. The basis for calculating the fee will also include interest, dividends and any other returns earned on the invested capital and paid during the period (calendar quarter) preceding the Management Fees payment date.

(d) Remuneration provisions concerning the UDF managed by Pancretan Cooperative Bank & TT Hellenic Postbank

- (127) The management fee fulfilling conditions mentioned in recitals (104) – (111) shall consist of a fixed and a variable part, which will be calculated as follows:
- (128) A fixed annual management fee of [...] % will be paid for the period up to 30 June 2014 on the total amount of JHFG funds, [...] % for the period from 1 July 2014 to 31 December 2015.
- (129) In addition, a contingent fee of [...] % shall also be paid one-off when the total JHFG funds invested in UDPs, exceed [...] % of the JHFG resources by 31 December 2013. This management fee is applied to the total JHFG funds invested by 31 December 2013. In case less than [...] % of the JHFG resources are invested by 31 December 2014, this management fee will be returned to the EIB by way of set off against any other management fees payable to the EIB after 1 January 2015.
- (130) The contingent fee will amount to [...] % of the total JHFG funds invested in UDPs, payable one off if the said funds exceed [...] % of the allocated JHFG resources by 31 December 2014. This management fee is applied to the total JHFG funds disbursed and/or invested by 31 December 2014 and is payable in the second semester of the 2015 on the condition that [...] % of the JHFG resources will have been disbursed and/or invested by 30 June 2015.
- (131) From 1 January 2016 onwards a remuneration fee of [...] % will be calculated on the total amount of funds invested and/or disbursed in UDPs and not yet returned to the Reserve Account. The basis for calculating the fee will also include interest, dividends and any other returns earned on the invested capital and paid during the period (calendar quarter) preceding the Management Fees payment date.

(e) Remuneration provisions concerning the UDF managed by PIRAEUS Bank S.A.

- (132) The management fee fulfilling conditions mentioned in recitals (104) – (111) shall consist of a fixed and a variable part, which will be calculated as follows:
- (133) For the period up to 30 June 2014 the fixed management fee is [...] % of the aggregate amounts of the JHFG; from 1 July 2014 to 30 June 2015 the fixed fee amounts to [...] % and from 1 July 2015 to 31 December 2015 it is [...] % p.a.
- (134) In addition a one-off contingent fee will be applied amounting to [...] % of the total JHFG funds invested in UDPs under each Priority Axis, payable if the said funds are equal or exceed [...] % of the portion of the JHFG funds to be allocated to each Priority Axis by 31 December 2013. This management fee is applied to the total JHFG funds invested by 31 December 2013 and is payable in the second semester of 2015 on the condition that [...] % of the JHFG resources will have been disbursed and/or invested by 30 June 2015. The achievement of the targets for the contingent part of the management fee will be evaluated in relation to each Priority Axis.
- (135) Furthermore a contingent fee of [...] % of the total JHFG funds invested in UDPs under each Priority Axis will be paid, if the said funds are equal or exceed [...] % of the portion of the JHFG resources, to be allocated to each Priority Axis by 31 December 2014. This management fee is applied to the total JHFG funds disbursed and/or invested by 31 December 2014 and is

payable in the second semester of the 2015 on the condition that [...] % of the JHFG resources will have been disbursed and/or invested by 30 June 2015. The achievement of the targets for the contingent part of the management fee will be evaluated in relation to each Priority Axis.

- (136) From 1 January 2016 onwards a remuneration fee of [...] % will be applied to the total amount of JHFG funds invested/and or disbursed and not yet returned to the Reserve Account. The basis for calculating the fee will also include interest, dividends and any other returns earned on the invested capital and paid during the period (calendar quarter) preceding the Management Fees payment date.

2.7. Funding architecture IV: eligibility criteria for UDF investments

2.7.1. Eligible beneficiaries

2.7.1.1. General conditions

- (137) Under the notified measure, the Greek authorities intend to grant aid to private investors²⁷ investing in UDPs. Such investors can benefit from preferential investment conditions, as compared to public investors.
- (138) Beneficiaries of aid under the measure must be exercising economic activities in Greece.
- (139) UDPs supported under the measure must be carried out in the urban areas of the targeted regions of Greece covered by an IPSUD (as pointed out above).
- (140) The physical delivery of a UDP, e.g. construction of buildings, shall be carried out under market conditions and therefore not benefit from any State aid granted under this scheme.
- (141) If the preferential investment conditions granted under the measure translate into sub-commercial conditions for operators or end-users of UDPs, e.g. a shop tenant paying a sub-commercial rent in a building that has been built or renovated as part of UDPs, State aid potentially included in these conditions is not part of the current notification.
- (142) Each UDF receiving funding from the JHFG under the measure will operate in accordance with a business plan compliant with the UDF investment strategy and will include an indicative list of eligible projects. The quality of the UDF's investment strategy is one of the selection criteria established by the JHFG.
- (143) Each UDF's investment policy and business plan will be in line with the investment strategy of the JHFG.
- (144) UDPs can either be organised as a separate account following international accounting standards and normally within the legal structures of the beneficiary. A UDP can also have a

²⁷ Under the measure, the term "private investor" means any investor no matter whether private or public that invests its money in a profit oriented way, following market economy logic in a way defined by the Court for meeting the requirements of the Market Economy Investor Principle, see for example case T163/05, Bundesverband deutscher Banken/Commission, OJ C 100 17.4.2010, page. 37.

legal entity of their own e.g. a Special Purpose Vehicle established in order to run a development project.

2.7.1.2. Contribution to policy objectives

- (145) UDPs will comply with SF Regulations. Each UDP will in addition contribute to the objectives defined in the regional OP and comply with relevant IPSUDs.

2.7.1.3. Repayment of initial investments plus inflation rate

- (146) Selected UDPs will be economically and technically sound and have a minimum prospect of financial viability. The existence of positive project cash flows is a key financial requirement. This is necessary to at least repay investments plus inflation rate. All projects will be assessed in detail by the UDF to determine the robustness of their financing structure.

2.7.1.4. Incentive effect

- (147) Investments may in general only be made in non-started UDPs, i.e. if the beneficiary has submitted his proposal for UDF funding before the start of the project work. As pointed out in the Guidelines on National Regional Aid for 2007-2013²⁸, the notion of ‘start of work’ will mean either the start of construction work or the first legal commitment in a specific project, excluding preliminary feasibility studies.
- (148) When investments are made in UDPs not meeting the requirements mentioned above, the conditions listed in recital (180), resulting in the substantial increase of an existing project must be complied with.

2.7.2. *Eligible costs*

- (149) Investment into urban projects will be made into eligible expenditure determined by the SF Regulations.
- (150) In this regard, the Greek authorities will ensure that eligible costs under the measure relate to initial investments i.e. investments in material and immaterial assets²⁹, which are to be made available for the purpose of setting up new establishments or extending existing establishments. In line with the Investment Strategy of the JHFG, the following activities related to UDPs are eligible for UDF investment:
- (a) Site clearance and remediation;
 - (b) Development of site-specific infrastructure and site servicing, including site-specific IT/broadband, utilities, energy infrastructure, site-specific transport, etc.;

²⁸ OJ C 54/13 of 04 March 2006, paragraph 38, footnote 40.

²⁹ As defined in Article 2(1(e) of Regulation 1628/2006.

- (c) Construction of new buildings and/or renovation of existing ones, including landscaping and public realm works.

(151) Furthermore only expenditure that corresponds to the following cost categories can be supported by the measure:

- (a) **Land acquisition:** the cost of purchasing land which is not built on may not exceed the limit of 10% of the total eligible project costs. A higher percentage may be permitted by the managing authority for operations concerning environmental conservation³⁰;
- (b) **Building acquisition:** the cost of acquiring a building if there is a direct link between the purchase and the objectives of the project;
- (c) **Site investigation and preparation:** the cost of preparing the land for development, including the cost of site investigation, remediation, reclamation, decontamination and demolition and preparation;
- (d) **Building and construction:** external/internal refurbishment and conversion of existing buildings, new build premises, provision of services (i.e. infrastructure and related services specific to the property) and landscaping;
- (e) **Plant and machinery:** tangible fixed assets used for the purpose of providing a service for the project. If plant and machinery is subject to hire/lease purchase agreements, the capitalised value of leasing and hire purchase can be included. The purchase costs of second-hand equipment are eligible provided they meet the needs of the projects and have not been purchased with the aid of national or EU grants. If there are any mobile or portable items then an apportionment of costs should be provided separately; and
- (f) **Fees and salaries for design and supervision:** fees include legal consultancy fees, notary fees and the cost of technical and financial experts if they are directly linked to the project and are necessary for its preparation or implementation, including marketing and disposal fees.

2.7.3. *Excluded investments*

(152) In line with SF Regulations, the Greek authorities have committed that the creation and development of additional financial instruments, such as venture capital funds, loan funds or guarantee funds is excluded in line with Article 46.1 of the Implementing Regulation.

(153) No investment will be granted to projects which are active in any of the sectors or is linked to any of the activities specified in Article 1(2) of Regulation (EC) 800/2008³¹, i.e. aid to export related activities towards third countries or Member States, namely aid directly linked to the

³⁰ Article 7, ERDF Regulation.

³¹ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214/3 of 9 August 2008.

quantities exported, to the establishment and operation of a distribution network or to the other current expenditure linked to export activities; aid contingent upon the use of domestic in preference to imported goods.

- (154) Enterprises in the shipbuilding, coal, synthetic fibres and steel industry are excluded from the measure, so are enterprises in fisheries and agriculture³².
- (155) No investment will be granted to undertakings which are subject to an outstanding recovery order following a previous Commission Decision declaring an aid illegal and incompatible with the Internal Market.
- (156) No investment will be granted to "a firm in difficulty" within the meaning of Chapter 2 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.³³
- (157) Furthermore, in line with the SF Regulations, the Greek authorities have declared that the following expenditure is not eligible: interest on debt, decommissioning of nuclear power plants and recoverable value added tax.

2.7.4. Conditions for private co-investment

2.7.4.1. Minimum size co- investment at risk

- (158) As the existence of private co-investors is a significant indicator for the degree of economic soundness of the investment, in the case of UDF preferential non pari-passu investment involving sub-commercial loans and/or equity, the private investment at risk in any UDP will be significant.
- (159) In order to qualify as investment at risk, private investment will either be in the form of equity or any other contribution the repayment of which is subject to the UDPs economic success. For example, standard senior loans do not qualify as investment at risk.

2.7.4.2. Minimum participation in overall eligible project costs

- (160) Private co-investors will provide for at least 30 % of the overall eligible project costs³⁴, which must be free of any public support. The total amount of public investment (in any form) cannot exceed 70% of the project eligible costs.
- (161) The Greek authorities have indicated that as part of the private co-investment the following conditions will be fulfilled (not necessarily cumulatively):
 - (a) The private co-financing to be provided by way of loans will represent at least of 10% of the total eligible costs of the UDP;

³² The multisectoral framework of the RAG, OJ C 54, 4.3.2006, p.13.

³³ OJ C 244 of 1.10.2004.

³⁴ All Greek regions are qualified as assisted areas, with Attica falling under Article 107 (3) (c) and the rest under Article 107 (3) (a) and accordingly, the minimum 30% private co-investment requirement will concern assisted areas.

- (b) The private co-financing to be procured by way of contribution in kind may not exceed 10% of the total eligible costs of each UDP;
- (c) The private co-financing to be procured by way of equity (i.e. investment at risk) shall be equal to at least 10% of the total eligible costs of the UDP.

(162) Additionally, the Greek authorities have indicated that public investment of UDFs by means of equity will be limited to maximum 30% of the total project eligible costs. This condition will allow to limit the risk exposure of the investment made by UDFs.

2.7.4.3. Special conditions for co-investments by the UDF manager

- (163) The ability of the UDF managers to provide investment resources from sources other than JHFG or attract third party private co-financing is one of the selection criteria. In order to meet this criterion, the UDF manager may also invest its own resources.
- (164) UDF managers will be contractually prevented from imposing on private co-investors the acceptance of the UDF managers' own resources as a requisite to obtain preferential UDF financing. In other words, private investors may choose to provide co-financing from sources other than the co-financiers selected by the UDF.
- (165) Whenever investing own resources, the UDF manager will respect arm's length principles and keep transparent records for reporting, monitoring and auditing purposes.
- (166) In case a UDF manager intends to invest its own resources, the conditions will be assessed by an Independent Expert. The same is true in cases, when a UDF manager provides in-kind contribution as a co-investor to a certain project, where the value of the contribution has to be assessed by an Independent Expert. For further details on Independent Experts see below section 1.7.1.2.

2.7.4.4. Special conditions for co-investment at the level of the UDP

- (167) Article 78(6) of the General Regulation allows private or public co-financing to be effectively paid in cash or in kind at the level of UDPs without having to be paid at the level of the UDFs. According to the SF Regulations, private or public co-financing paid at the project level would only be eligible if it complies with the following conditions:
 - (a) The UDF retains overall responsibility for the investment operation including subsequent monitoring of the contributions from the operational programme according to the funding agreement;
 - (b) The expenditure paid by such private or public entities is reported formally to the UDF which is responsible for verifying the reality and eligibility of the expenditure claimed;
 - (c) The audit trail is maintained down to the level of the payment of private/public co-financing to the final recipient UDP.

2.7.5. *Investment process*

(168) The UDF manager is responsible for making commercial decisions within the agreed investment strategy regarding the UDF funds invested into individual UDPs.

2.7.5.1. Identification of potential UDPs

(169) The measure is a demand driven instrument where investments are made in principle on a “first come, first serve basis”.

(170) To this end, a website for the JHFG has been created by the Ministry of Development, Competitiveness and Shipping, where information and indications for potential UDP promoters is included.

(171) After signing the operational agreements the UDF managers shall carry out adequate information and publicity measures in accordance with the provisions of EU Structural Funds Regulations. The UDF will identify potential UDPs through a call for tender.

2.7.5.2. Investment appraisal and commercial investment decisions

(172) The UDF manager is contractually obliged to assess the creditworthiness of each UDP using criteria and processes that are in line with international investment management practices and in line with the UDF's investment policy, as well as use all reasonable efforts to ensure optimal investment exits from UDPs. Failure to comply with the above management duties would constitute a breach of the managing contract.

(173) The Investment Committee of each UDF will approve/reject recommendations made by the UDF manager and ensure that decisions concerning investments, divestments and risk diversification are implemented in accordance with the Operational Agreement. Each UDF Investment Committee will include an observer appointed by the Intermediate Managing Authorities involved for each Regional Operational Programme Priority Axis that contributed resources to the JHFG as well as an observer of the EIB in its capacity as the JHFG manager. All members of the UDF Investment Committee must act independently in the sole interest of the UDF and are only responsible towards the UDF. Each Operational Agreement includes conflict of interest procedures. Each UDF will be required to provide the EIB with details of the composition and qualifications as applicable of its Investment Committee as a pre-condition for the effectiveness of the first disbursement.

(174) The UDF takes commercial risk on the success of the UDPs, as its investments will be repaid either through debt service and/or equity remunerated through dividends and investment exit. Therefore, the UDFs will invest only in projects that are technically and - together with the UDF investment - economically viable projects (see the requirement above).

(175) UDFs are contractually obliged not to invest into each urban project an amount that exceeds a certain percentage of the JHFG funds allocated to it for management. This percentage varies from 20% to 35% and is applied unless specifically waived by the EIB.

(176) For any form of investment, the UDFs will carry out investment appraisal of estimated investment performance based on the Discounted Cash Flow (DCF) method. They will assess

investment costs, operating costs and revenues throughout the project cycle in order to determine the financial return on investment through the following indicators that measure the capacity of the net revenues to remunerate the investment cost of equity: the financial net present value of the project (NPV)³⁵ and/or financial internal rate of return (IRR).³⁶

(177) Following standard investment appraisal practice, cash flow forecasts will be estimated for a certain time frame, typically between 5 and 10 years unless the specific features of UDP require a longer investment horizon.

2.7.5.3. Necessity test

(178) The UDFs may invest on sub-commercial terms only when a project is unable to secure the necessary equity or debt finance at normal market terms, due to the identified market failures or socio-economic deprivation. The UDF manager will verify that prior to concluding any sub-commercial investment, reasonable efforts have been taken to secure the maximum level of private finance under normal market conditions. It must present estimates of the project viability with and without UDF investment, demonstrating that the profitability of the project is insufficient and would not be undertaken by private investors absent of UDF sub-commercial loan and equity investment.

(179) The UDF managers are responsible for the precise identification and record keeping of alleged market failures and/or socio-economic factors that affect project's viability. In cases where the UDF manager also acts as a co-investor, this assessment will be carried out by an Independent Expert in order to avoid possible conflicts of interest. For further details on Independent experts see below.

(180) The UDF managers will verify that its investment will have one or more of the following effects on a specific project:

- (a) A substantial increase of the project/activity size arising from the aid;
- (b) A substantial increase of project/activity geographical scope arising from the aid;
- (c) A substantial increase of the project/activity amount invested by the beneficiary arising from the aid;
- (d) A substantial increase of the project/activity execution speed arising from the aid.

(181) It is also possible that the UDF may require evidence from an Independent Expert that the project would not have been undertaken under normal market conditions. The Independent Expert would be appointed by and report to the UDF. In this context, the UDF would be required to obtain the opinion of an Independent Expert, with the aim to analyze whether the project is affected by a market failure. The Independent Expert would be required to confirm i)

³⁵ The NPV is defined as the difference between the expected revenues and costs discounted with a suitable discount rate, i. e. a risk adjusted cost of capital.

³⁶ The IRR is defined as the discount rate that produces a zero NPV.

whether the project is unable to support the interest coupon required by the market, with the costs of servicing the debt making the project unviable ii) whether the project is unable to provide the equity return requested; and/or iii) other reasons why the project lacks commercial viability.

2.7.5.4. Investment structuring: limiting preferential conditions for private investors to a Fair Rate or Return

- (182) Detailed terms and conditions for financing to be provided by a UDF must be determined prior to making an investment for each UDP on the basis of financial forecasts prepared for this UDP and verified by a UDF. Financial criteria will differ according to the projects and financial products selected by the UDF and shall be established by a UDF manager on a case by case basis. These criteria may include: internal rate of return, net present value, pay-back period, cash flow profile, availability and form of collateral (if required) and other financial indicators typically used in credit analysis.
- (183) According to the Greek authorities, UDF preferential investments, in the form of sub-commercial loans and equity, will be limited to the minimum necessary to make UDPs commercially viable for project promoters to undertake investment activities and market investors to provide additional funding. It is to be understood that as an overall principle, to limit the aid to the minimum amount necessary for the particular UDP, the advantageous terms provided by the UDFs investment instruments may only improve expected returns for market investors investing at the project level up to a Fair Rate of Return (FRR), equivalent to a risk adjusted discount rate which reflects the level of risk of the project and the nature and level of capital the private investors plan to invest.
- (184) The FRR is to be understood as the hurdle rate set ex-ante up to which the private project promoter will benefit from preferential non pari-passu conditions in case of successful exit from UDP. The FRR is therefore never guaranteed to the private UDP partner. Given the risk of UDP failure, the FRR mechanism will result in an average profitability for UDPs after exit which is likely to be significantly below the FRR.

2.7.6. *Establishing the Fair Rate of Return (FRR)*

- (185) The methodology for assessing the FRR should be based upon standard market risk assessments, that is: (i) analysis of comparative data on returns currently expected on similar eligible Urban Projects in the market place and (ii) a credit risk assessment, including, among others: a) construction cost risk, including inflation; b) demand risk, taking into account the geographical location and the particularities of the investment; c) economic and social environment; d) complexity of urban project; e) financial climate and conditions.
- (186) In the case that grant funding will also be necessary for the UDP to go ahead, the UDF Manager will take the grant into account before undertaking the Fair Rate of Return estimation. This would ensure the robustness of the FRR and ensure that the UDP received the minimum amount of required public support.

2.7.6.1. Preferable option: a competitive process to establish FRR

- (187) The preferred approach to establish the FRR for investors in a specific UDP is to run a competitive process among potential investors. Where such a competitive process has been followed, the resulting rates agreed for investors would then constitute the FRR.
- (188) For cases where there is no EU or national legal obligation to launch a formal public procurement, competition is ensured by the UDF manager through a transparent and non-discriminatory open selection process, addressed to any interested parties, followed by appropriate negotiations with potential investors, through a process similar to a competitive dialogue.
- (189) An appropriate competitive process will involve negotiations with at least two potential investors. Evidence that that has been the case will be recorded by the UDF manager.

2.7.6.2. Second option: use of Independent Experts in non-competitive scenarios

- (190) While a properly conducted competitive process would always be the preferred way of establishing the FRR, it cannot be applied in all cases due to the characteristics of project financing. Competition may not always be an option e.g. in case where the potential private investor is the owner of the site/building to be developed and therefore the requirement concerning the tender cannot be met. Where competition is limited or non-existent, the FRR will be determined by an Independent Expert on the basis of a professional analysis of industrial benchmarks and market risk using the discounted cash flow valuation method.

(d) Methodology for establishing the FRR by the Independent Expert

- (191) The Independent Expert's report will always be based on a standardized methodology.
- (192) Review of Industry Benchmarks: Starting point of the process of ascertaining the FRR will be a review of comparative data as to the returns currently expected on similar projects or regeneration investments in the market place. The Independent Expert will pool various sources of information and collate the most relevant data for each particular project or fund.
- (193) In certain cases such data might not be publicly or readily available. Therefore, the Independent Expert will be allowed to draw upon its own past and recent experience of involvement in other projects or financings. The FRR report should specify which benchmarks have been referred to, and how these benchmarks have been taken into account.
- (194) Review of Project Risk: This part of the assessment will have similarities with the credit committee / credit risk assessment processes in place in banks as part of loan approval.
- (195) The project risk review will include, among other elements: a) construction cost risk; including also inflation and exceptional factors, b) planning risk; c) demand risk, including impact of geographic location; d) economic environment and funding climate; e) complexity of project; f) competence of project sponsor and ability to deliver the project to time and budget; g) financial analysis - this should include sensitivity analysis on the project financial model; h) project sponsors cost of finance; g) security of other funding streams; i) appropriateness of

contingencies and extent to which assets are pledged as debt security (equity as a percentage of project value).

- (196) Calculating of FRR by Independent Expert: having assessed relevant Industry Benchmarks and specific risks, the FRR should then be assessed, starting with the minimum level of FRR, adding on the appropriate margin to reflect project/fund risk. The minimum rate may be taken as the base from which a margin reflecting equity risk is added to produce the equity FRR. The Independent expert may in the absence of any direct market benchmarks, use its own expert knowledge and judgment to assess such risk premium.

(e) Selection of Independent Experts

- (197) The Greek authorities pointed out that the mission of the Independent Expert, as described above, is of great importance for the success of the measure. It requires industry and market knowledge as well as financial expertise, both related to the investment policy and strategy in the particular type of project. Therefore, the professionals eligible to perform the function of an Independent Expert should be registered with and licenced by a regulated professional association.
- (198) The Greek authorities assure that the Independent experts will need to comply with the professional rules issued by those professional associations in order to ensure the independence and professional behaviour of their members.
- (199) Professional associations have to enjoy supervisory powers and may impose sanctions on its members. In exceptional cases where matters are not covered by official qualifications and professional rules, experts must be appointed among persons with a proven expertise in the subject.
- (200) The choice of eligible Independent Experts would depend on the type of UDPs to be financed and the sector and geographical area in which the concerned project will take place. Generally speaking, Independent Experts may fall in the following categories:
- (a) Professional Service Firms, such as accounting firms;
 - (b) Property Firms, such as chartered surveyors or real estate development consultants;
 - (c) Investment banks carrying out advisory work;
 - (d) Specialist consultancies involved in public private investment funds and project finance.
- (201) In order to facilitate finding appropriate Independent Experts and, as a safeguard, to prevent risks of collusion, the JHFG will carry out an open pre-qualification and pre-selection procedure at national level resulting in a list of eligible Independent experts from which UDFs would appoint individual Independent Experts for specific projects exclusively.
- (202) The JHFG will also provide UDFs with a contract template to be used when appointing an Independent Expert, including a declaration that the Independent expert has no conflict of interest at the time of appointment and that he undertakes to inform the UDF and JHFG if any

conflict of interest should arise in the course of carrying out his duties. In this template it will be stated that the Independent Experts are liable for the accuracy of their expertise not only to the UDF but also to the JHFG.

(f) *Ensuring independence of Independent Experts*

(203) Independence of Independent Experts from the UDF will be crucial and any potential candidate will be required to ensure the absence of any potential conflict of interest for each single Urban Project. This will imply that:

- (a) The Independent Expert shall disclose all current relationships with the UDF or the candidate investor at the time at which its mandate is entered into;
- (b) If the Independent Expert is a legal person, no capital links shall exist between the Independent Expert and the UDF or the candidate investor offered to co-finance a UDP;
- (c) During the term of the mandate, the Independent Expert shall undertake not to create a conflict of interest by having or accepting employment or appointment as a member of the board of the UDF or the candidate co-investor, or by having or accepting any assignments or other financial interests in the UDF or the candidate investor;
- (d) If the Independent Expert becomes aware of a potential conflict of interest during the mandate, the Independent Expert will be obliged to notify the UDF and/or the Management Authority and resolve the problem immediately and, if the conflict of interest cannot subsequently be resolved, the UDF and/or the Management Authority shall be entitled to require the termination of the Independent Expert mandate.

(204) The above stated rules concerning conflicts of interests will apply to the Independent Expert itself, members of its team, their spouses and the Independent Expert Partner Firms as members of the same group of companies or organisation.

(205) A UDF shall not use the same Independent Expert more than twice within a period of six months.

2.7.6.3. Monitoring and accounting of UDFs

(206) For compliance with the monitoring and reporting requirements on the implementation of investments, UDFs will contribute to the monitoring system of the Holding Fund. To this extent, UDFs will establish a system with the view to collect any relevant data that should be transmitted to the JHFG.

(207) Annual reporting will provide a detailed analysis on the execution of the operations carried out during the year, and will contain an analysis of the implementation of the investment and planning strategy as well as detailed information on the progress of the UDPs.

- (208) The Holding Fund will be entitled to realize a monitoring and active follow-up of the projects, mainly towards the UDFs, but also and if necessary to the UDPs themselves, with the purpose to verify the accuracy and veracity of the referred information, the transparency of the selection process, and to ensure that funds are invested in compliance with the OP of the Greek regions.
- (209) In case irregularities occur, the UDF and the JHFG will actively collaborate with the view to solve them. This may include all measures aiming at obtaining a payback of the financing, the exclusion the UDPs from financing or its replacement by another UDP. The JHFG will report the irregularities to be processed to the Greek Authorities.
- (210) Representatives of the European Commission, the European Union Court of Auditors, the Holding Funds, the Greek authorities or any other institutions properly empowered by law to realize audit and control will have constant access to the documents of the UDF, with a view to obtain guarantees on the legality and regularity of the financial contribution.
- (211) For compliance with State aid requirements, records will be kept for ten years from the date the last award of aid under the scheme. Records will be sufficiently detailed to establish that the conditions of the scheme are met, to include confirmation of the beneficiaries' status and eligibility of supported costs.
- (212) The UDF will establish fiscal controls and accounting procedures conforming to international accounting principles.

2.7.6.4. Treasury management of the UDF

- (213) Provisions regarding the utilisation of interests and other gains generated by payments from the JHFG and for the utilisation of returns and resources returned to funds and returns from investments at the level of final recipients, as referred to in Section 5 of this note in compliance with Article 78(7) of the General Regulation and Article 43(5) of the Implementing Regulation will be respected. The interest rate applicable on available funds (funds transferred to the UDF and not yet invested in UDPs) will be in line with market rates.

2.7.6.5. Winding up provisions of the UDF

- (214) Resources returned to the UDF – even after the liquidation of the UDF – must be used for sustainable urban development (Article 78 paragraph 7 of the General Regulation). Returned resources will be reemployed in the area targeted by the Operational Programmes of the Greek regions through repayable instruments, with a view to ensuring further multiplier and recycling of public money. This does not apply to the resources of private investors, which can be returned to them after the completion of the project.

2.8. Cumulation and applicability of other EU legislation

- (215) Notwithstanding limitations in existing EU State aid legislation, aid provided under the measure can be granted together with other State aid as long as the latter is taken into account when structuring investment conditions and notably calculating the appropriate FRR under the current measure.

- (216) Once investment conditions and notably FRR under the current measure are fixed, no additional State aid can be granted.
- (217) In the cases of investments aimed at repairing environmental damage (e.g. land decontamination), the polluter pays principle will be respected, i.e. no aid should be provided if there is a private entity responsible for the pollution of a contaminated brownfield or greenfield³⁷ and it is still legally possible for this entity to repair and compensate the consequences of the latter.
- (218) In the case of investments in the field of transport, the notification has no prejudice to legally binding EU legislation in the form of regulations and directives.

2.9. Monitoring, Record Keeping, Individual Notification and Standardized Information Sheets (SIS)

- (219) Notwithstanding additional obligations under EU Structural Funds rules, an annual report on the expenditure under this scheme, allowing assessment of compliance with State aid rules, will be provided to the Commission.
- (220) For compliance with State aid requirements, records will be kept for ten years from the date the last award of aid under the scheme. Records will be sufficiently detailed to establish that the conditions of the scheme are met, to include confirmation of the beneficiaries' status and eligibility of supported costs.
- (221) If the Commission requests information necessary for it to assess whether the State aid conditions have been complied with, the Managing Authorities will provide it within the agreed time period.
- (222) The Greek authorities have agreed to notify individually, for approval by the Commission, major projects as defined in the SF Regulations³⁸ (currently projects exceeding EUR 50 million) irrespective of what proportion of these costs is financed by the UDF.
- (223) The Greek authorities will provide a Standardised Information Sheet (SIS) for each sub-commercial UDF public investment exceeding EUR 5 million in a single project. The format of the SIS will be agreed between the Greek authorities and Commission services. The Commission will not approve each SIS as a condition for making investments.

3. ASSESSMENT

3.1. Presence of State aid pursuant to Article 107(1) TFEU

- (224) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. Firstly, the aid is granted by Member State or through State resources.

³⁷ By entity or person responsible for the pollution is meant the person liable under the law applicable in each Member State, without prejudice to the application of European Union Law rules in the matter, such as Directive 2004/35/CE of the European parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143 of 30 April 2004, p. 56).

³⁸ Article 39 of the General Regulation.

Secondly, the measure confers an economic advantage by relieving the recipients of costs they would normally have to bear. Thirdly, the measure is selective as it targets certain undertakings or the production of certain goods. Fourthly, the measure is liable to affect trade between Member States and distort or threaten to distort competition in the internal market.

3.1.1. Types of State resources

- (225) The measure's initial budget is composed of resources from the ERDF as well as national match funding and therefore entirely qualifying as State resources.
- (226) In the case at hand, at all material times the State exercises (indirect) control over the resources under consideration. The funding provided by the Greek authorities (cash or in-kind) to the JHFG and then provided by the JHFG (cash or in-kind) to the UDFs is financed out of the State budget, i.e. the ERDF and the national contributions. The decision to provide these State resources is imputable to the State, as the Greek authorities have decided to set up the JHFG to deploy the public funding via the UDFs for the purposes of financing eligible urban projects.
- (227) Additional public in-kind contributions (e.g. land or buildings at the UDF and/or project level) will also constitute State resources.

3.1.2. Advantage: Levels of assessment

- (228) Under the measure, State resources will be transferred to the JHFG and further on to UDFs Funds that will invest those resources together with private co-investors in UDPs, where they will be used to provide for goods and services such as construction of buildings required for physical project delivery.
- (229) To verify whether an undertaking has benefited from an economic advantage, the Commission applies the criterion of the 'market economy investor principle'. The assessment makes no distinction between the different types of beneficiaries in terms of their legal structure or ownership (public or private). The principles of non-discrimination and equality do not exempt public authorities or public companies from complying with EU competition rules.
- (230) The investment of capital or provision of loans by the State is considered State aid within the meaning of Article 107(1) TFEU, if the funds would not have been provided by a private undertaking under the same market conditions. This is considered to be the case if the (monetary) compensation that the State receives in exchange for the loan or equity investments is lower than what a private investor would have required in the circumstances.
- (231) However, the Commission will consider the investment not to constitute State aid in a situation where the investments are effected pari-passu between public and private investors and public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and normally where at least 50 percent of the funding is provided by private investors that are independent from the companies in which they invest.
- (232) Similar to Commission's considerations on potential State aid at various levels under point 3.2 of the Community Guidelines on State Aid to promote Risk Capital Investments in Small and

Medium-Sized Enterprises (RCG)³⁹, the Commission has assessed the existence of a selective advantage at several levels.

3.1.2.1. Advantage at the level of the Holding Fund and/or its management

- (233) As pointed out under the fifth paragraph of point 3.2 of the RCG, the Commission in general considers that an investment fund is an intermediary vehicle for the transfer of resources rather than a beneficiary of aid itself. Applying that consideration to the present notification, the Commission finds that no State aid within the meaning of Article 107 (1) TFEU is granted to the Holding Fund.
- (234) With regard to the Holding Fund's management, the Commission has taken note that, as pointed out above, the EIB has been entrusted with the management in line with applicable EU provisions, including the foreseen average remuneration fee cap of [...] % of the funds administered. The HF management is therefore not receiving State aid within the meaning of Article 107(1) TFEU.

3.1.2.2. Advantage at the level of an UDF and/or its management.

- (235) As regards potential State aid at the level of the UDF, the Commission finds that, based on the same arguments as stated in recital (233) with regard to the Holding Fund, no State aid within the meaning of Article 107(1) TFEU is present.
- (236) As far as the UDF management is concerned, the Commission has assessed whether under the measure a remuneration arrangement for management of UDF resources might be established that entails a management fee higher than under normal market rules thus comprising State aid. As pointed out above in recital (88), the selection of the management for UDFs under the notified measure is carried out by means of open tender. The remuneration, while capped at 3% p.a. of administered resources, is therefore subject to negotiations between the Holding Fund and candidates for UDF management. Given the number of potential applicants for UDF management, the Commission finds that the tendering procedure will result in a level of remuneration for the UDF management that is in line with market rules and no State aid within the meaning of Article 107(1) TFEU will be provided to the UDF managers.

3.1.2.3. Advantage at the level of private co-investors and project promoters

- (237) Private investors can invest their resources at an individual project level together with resources managed by the UDF. They can invest money or contribute in kind, e.g. land owners contributing their land into a UDP in exchange for a share of potential profits or losses incurred in that project. As pointed out above, private investors can, following the procedure for establishing a FRR, benefit from investment conditions that are more favourable than those entered into by the UDF. The latter accepts a compensation lower than a private investor would have required in the same market conditions. Therefore, private investors can carry out investments on terms more favourable than public investors, or on terms that the market would

³⁹ OJ C 194, 18.8.2006, p. 2.

not offer in the absence of the measure. For example, private investors may benefit from higher profit options in comparison to the public investment carried out by the UDF or the UDF may accept to incur a higher risk of losses on its investment. Moreover, preferential conditions can be granted to the private investor through sub-commercial loans of the UDF.

- (238) Therefore, under the measure, in any of the scenarios described above, private investors will be in a position that is economically advantageous compared with normal market conditions in the absence of State intervention, where co-investment would normally be carried out at identical, *pari-passu* conditions for all investors and no sub-commercial loans terms would be available.
- (239) While in some specific cases the advantages granted might correspond to specific additional economic burdens that the private investor accepted, such as provision of publicly available infrastructure, there will also be a significant number of cases where the UDF will provide advantageous investment conditions simply in order to increase economic viability in a project facilitating sustainable urban development.
- (240) The Commission has also assessed, whether the establishment of the FRR by a competitive process or by using an Independent Expert respectively will exclude the existence of a selective advantage within the meaning of Article 107(1) TFEU. However, given the numerous eligibility criteria and the UDF manager's discretion when choosing and structuring projects, the Commission has concluded that the provision of preferential investment conditions will normally confer a selective advantage to private investors under the measure.
- (241) As a result, the Commission concludes that private investors under the measure can receive an advantage within the meaning of Article 107(1) TFEU.

3.1.2.4. Advantage at the level of UDPs

- (242) While UDPs can have the form of a block of finance that is sufficiently transparent for monitoring and auditing purposes, UDPs might also constitute a legal entity of their own. In that case, UDPs can be recipients of State aid provided all conditions in Article 107(1) TFEU are met. The Commission thus finds that under the notified measures, UDPs can receive an advantage within the meaning of Article 107(1) TFEU.

3.1.2.5. Effect on Trade and Potential Threat to Competition

- (243) Under the measure, as pointed out above, private co-investors as well as UDPs themselves can benefit from a selective advantage. The undertakings in question, among them project developers and possibly financial institutions, will be active in markets open to competition and in many cases subject to intra-Union trade. The measure therefore has an effect on trade and poses a potential threat to competition.
- (244) In the light of the foregoing, the Commission finds that the notified measure contains State aid within the meaning of Article 107(1) TFEU.

3.2. Notification of aid

(245) In notifying the current measure prior to implementation, the Greek authorities complied with the obligation in Article 108(3) TFEU.

4. COMPATIBILITY ASSESSMENT

4.1. Applicability of existing State aid provisions

(246) Prior to considering a JESSICA specific assessment directly under Article 107(3)(c) TFEU, the Commission had to verify whether the notified scheme falls within the scope of existing secondary State aid provisions. Given the large variety of UDPs to be funded under the notified measure, the Commission has limited that verification to a number of horizontal rules which in principle apply across all industries.

4.1.1. Applicability of EU rules on the provision of Services of General Economic Interest (SGEI)

(247) The Commission has assessed applicability of EU rules on the provision of SGEIs pursuant to the Community EU framework for State aid in the form of public services compensation (hereinafter the "SGEI Framework")⁴⁰ and the Commission Decision of 20 December on the application of Article 106(2) of the EC Treaty on the Functioning of the European Union Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (hereinafter the "SGEI Decision").⁴¹ While these provisions have not been invoked by the Greek authorities and their specific requirements therefore have not been addressed in the notification, some of the possible UDPs (e.g. creation of social housing) might fall within the applicability of SGEI rules. It is in particular worth noting that one of the key principles inherent to SGEI rules (avoiding overcompensation) shows similarities with the mechanisms under the current measure in order to limit the granting of advantages to private investors.

(248) However, a significant number of UDPs, such as the creation or refurbishment of shopping centres or hotels as well as the creation of office space will most likely fail to meet the wide definition of SGEI under point 2.2 of the SGEI Framework. Furthermore, it is not sufficiently sure that the selection of UDPs by UDFs in cooperation with the JHFG would, despite the large discretion involved in the process, fulfil conditions for entrustment by a Member State laid down in Article 4 of the SGEI decision.

(249) It follows that EU rules on the provision of SGEI are not applicable to the notified measure.

⁴⁰ OJ C 8, 11.1.2012, p. 15-22.

⁴¹ OJ L7, 11.01.2012, p. 3-10.

*4.1.2. Applicability of the Guidelines on national Regional Aid for 2007-2013 (RAG)*⁴²

- (250) When assessing the applicability of the RAG, Commission has taken note that, while the entire territory of Greece is in principle eligible for national Regional Aid under the current Greek Regional Aid Map,⁴³ the notified measure does not comply with a number of provisions on aid ceilings and eligible expenditures laid down under point 4.1.2. of the RAG. On the contrary, the notified measure does not provide for fixed maximum amounts of aid, but lays down rather general limitation criteria reflecting the asymmetric sharing of investment risks and options.
- (251) As a result, the Commission finds that the notified measure does not fall within the scope of the RAG.

*4.1.3. Applicability of the Community Guidelines on State aid to promote Risk Capital Investments in Small and Medium-Sized Enterprises (RCG)*⁴⁴

- (252) As regards the applicability of the RCG, Commission has taken note that the funding structure involving investment funds as well as joint public-private investments at preferential terms for private investors present some analogies with the set-up foreseen in point 3 of the RCG.
- (253) At the same time, the RCG stipulate a series of requirements (e.g. maximum joint public private investments of EUR 2.5 million for standard assessment and general restriction to SMEs as target enterprises) that will not be met by all possible UDPs under the measure. Moreover, the notified measure includes the significant additional element of addressing integrated sustainable urban development. Furthermore, the current measure provides for fine-tuned mechanisms aimed at limiting the advantages granted to private investors, whereas the RCG provides hardly any such limitations⁴⁵ and rather relies on safe- harbour clauses concerning investment amounts.
- (254) In the light of the above, the Commission concludes that only smaller projects under the notified scheme could be covered by the RCG. The Commission therefore finds that the RCG do not prevent an assessment of the notified measure directly under Article 107(3) c) TFEU.

4.2. Conclusion

- (255) As pointed out above, none of the existing State aid provisions is applicable to all UDPs which can be possibly supported under the notified measure. It follows that no existing secondary State aid legislation would provide UDFs with a uniform set of compatibility conditions for State aid compliance. At the same time, no current legislation fully reflects the integrated approach to fostering sustainable urban development projects of the scheme notified by the Greek authorities.

⁴² OJ C 54, 4.3.2006, p.13.

⁴³ State aid N 408/2006 - *EL*National regional state aid map 2007-2013.

⁴⁴ OJ C 194, 18.8.2006, p. 2.

⁴⁵ The upper limit for loss limitation to 50% of the private contribution as stipulated under point 4.2.(b)of the RCG being the only explicit exception.

(256) The Commission therefore finds that no existing EU legislation prevents the notified measure from being assessed directly under Article 107(3)(c) TFEU.

4.3. Assessment under Article 107(3) c) TFEU

(257) Taking into account that no specific secondary EU legislation appears directly applicable, the Commission has examined whether the measure could be approved on the basis of Article 107(3)(c) TFEU, which stipulates 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 to be compatible with the Internal Market.

(258) In examining the compatibility directly under Article 107(3)(c) TFEU, the Commission has carried out a detailed economic assessment to evaluate its positive and negative effects. The Commission takes into account whether the aid measure is aimed at a well-defined common interest objective, is an appropriate instrument, is well targeted and proportionate to the targeted objective and does not adversely affect trading conditions to an extent contrary to the common interest. Positive and negative aspects are balanced against each other.

4.3.1. Targeting an objective of common European interest

(259) State aid may be authorised by the Commission if it contributes to the achievement of one or more of the objectives of common interest identified in Article 107(3) TFEU. Whether a measure contributes to an objective of common interest can be understood in terms of its contribution to efficiency or equity.

(260) As pointed out above in section 2.1, the measure aims at facilitating sustainable urban development by providing sub-commercial investment conditions to private investors with a view to achieving greater market efficiency or equity objectives.

(261) The Commission notes that the Greek authorities correctly refer, as pointed out in section 2.1.2, to Structural Funds rules, underlining the importance of sustainable urban development in order to increase market efficiency and social cohesion.

(262) Also in previous decisions, the Commission has considered that the physical, economic and social regeneration of urban areas is clearly a European objective⁴⁶.

(263) The Commission therefore finds that the notified measure targets an objective of common European interest.

⁴⁶ European Commission (2009), decision N555/2008, Centrumplan gemeente Mill en St. Hubert, OJ C 294, 3.12.2009 p. 1 rec. 48; European Commission 2011, SA.32835 (2011/N) - United Kingdom Northwest Urban Investment Fund (JESSICA) OJ C 281, 24.9.2011, p.7 and SA. 32147 (2011/N) Andalusia Jessica Holding Fund, OJ C 79, 17.3.2012, p.1

4.3.2. *Appropriateness*

- (264) The Commission must examine whether the measure is an appropriate policy instrument to support sustainable urban development in the targeted regions of Greece. In this context, the Commission takes into account whether there are measures that are better suited to overcome market failures and foster socio-economic cohesion.
- (265) Member States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid falling under Article 107(1) TFEU must be justified by the appropriateness of that particular instrument of State intervention to meet a well-defined public policy objective and contribute to one or more objectives of common European interest.⁴⁷
- (266) The Commission will consider a measure to constitute an appropriate instrument where the Member State has considered policy options equally suitable to achieve a given objective of common European interest, including measures less distortive to competition than the selective grant of State aid, and where the Member State can demonstrate to the Commission that the measure is suitable in view of achieving the relevant efficiency or equity objectives.

4.3.2.1. Consideration of other policy options less distortive to competition

- (267) Traditionally, urban development and regeneration projects, including infrastructure development projects, have been structured around types of activity involving public and private sectors with clearly delineated roles. While the public sector traditionally undertook the role of acquiring and assembling land, addressing the need for site clearance, remediation and the provision or improvement of large-scale infrastructure and the public realm, the private sector has traditionally focused on commercial development.
- (268) Due to the pressures facing government budget, public authorities are no longer in a position to provide the necessary funding required for addressing urban development needs. Therefore, private capital is needed to provide financing of urban investment projects, which means that projects must be commercially viable to remunerate market investors and service the debt. In that respect, public funds can act as a catalyst to leverage additional funding to finance urban investments.
- (269) As pointed out above in recital (17) in the past, the Greek authorities have mainly used grant oriented measures targeting the development of public infrastructure, by municipalities and no undertakings involved.
- (270) Those policy options differed significantly from the current approach under the JESSICA scheme, which is designed to provide new opportunities for urban development by the following means:

⁴⁷ See for a discussion of appropriateness cases C25/2004 - DVB-T Berlin-Brandenburg (OJ L 200, 22.07.2006) or N 854 / 2006 - Soutien de l'agence de l'innovation industrielle en faveur du programme mobilisateur pour l'innovation industrielle TVMSL, OJ C 182, 04.08.2007.

- (a) Ensuring long-term sustainability through the revolving character of the funds invested in UDPs;
- (b) Creating stronger incentives for successful implementation of UDPs by beneficiaries, by combining grants with loans and other financial instruments;
- (c) Leveraging additional resources for UDPs with a focus on their sustainability and recyclability in the target area; and
- (d) Contributing financial and managerial expertise from specialist institutions to UDPs.

(271) When assessing whether the Greek authorities have considered alternative and less distortive options equally suitable to achieve the common European interest objective, the Commission has taken into account that the notified measure includes numerous components aimed at maximising the participation of private investment and professional expertise, while at the same time limiting State aid to a minimum through the application of the FRR criterion in combination with commercial management of UDFs.

(272) As a result, the Commission concludes that the Member State did not fail to consider alternative options as suitable to achieve the common interest goal but less distortive to competition.

4.3.2.2. Measure's suitability to address efficiency objectives

a) Existence of market failures

(273) As pointed out above in recitals (19) to (41), the Greek authorities provided the Commission with evidence of possible market failures in the context of affecting UDPs in Greece. In addition, as pointed out above in recital (179), the claimed existence of a market failure will be duly verified and recorded prior to any UDF investment into specific UDPs.

b) Addressing market failures with JESSICA Greece

(274) In order to assess the measure's appropriateness, the Commission has also assessed whether the identified market failures will be properly addressed by the instruments foreseen under the notified measure.

c) Addressing market failures due to externalities

(275) By ensuring that regeneration projects are sustainable and integrated in their approach and are part of a broader plan for the area, the measure will create long-term value and help address investors' negative perceptions of regeneration areas.

(276) The interventions carried out under the measure will lead to the internalisation of the positive externalities generated by those components of an integrated urban plan that produce no or insufficient revenues for private investors, such as the improvement of public spaces or other public goods components.

(277) As regards problems due to negative externalities such as pollution, by favouring, for example, the installation of solar panels, the notified measure also enables UDF managers to grant favourable investment conditions in order to attract private investment to projects addressing renewable energy solutions, that otherwise, without the public support, may have been abandoned by the private investor.

d) Addressing market failures due to information asymmetries and risk aversion

(278) By ensuring that regeneration projects are sustainable and integrated in their approach and are part of a broader plan for the area, the measure will create long-term value and help address investors' negative perceptions of regeneration areas.

(279) Furthermore, by providing for professional project appraisal, the notified measure ensures that selected UDPs are feasible from an economic, social and technical point of view and comply with the eligibility criteria in the relevant regulations. In that context, the analysis of the financial structure, risk profile and the expected revenues for the different stakeholders makes investment decisions more transparent and therefore more reliable.

(280) In addition, the portfolio approach developed in the financing of UDPs ensures greater long-term investment opportunities and a diversification of the financial risk.

e) Addressing market failures due to transaction and agency costs

(281) By centralising and internalising project appraisal, transaction and agency costs, project participants can benefit from economies of scale.

f) Conclusion as to the measure's suitability to address efficiency objectives

(282) In the light of the above, the Commission concludes that the measure is suitable to tackle the identified market failures, thus addressing efficiency objectives.

4.3.2.3. Measure's suitability to address equity objectives

(283) When considering the measure's suitability to address equity objectives, the Commission notes that the Greek authorities, as stated in recitals (42) to (53), can underpin the identified need to tackle socio-economic problems in deprived urban areas both by reference to general EU documents, as well as to scientific publications for Greece. In addition, the Greek authorities correctly refer to the Regional Operational Programmes 2007-2013 that cover measures to tackle socio-economic issues. The Commission therefore finds that the need for tackling socio-economic problems in deprived urban areas of the Greek regions is sufficiently explained.

(284) Moreover, the Commission has taken note that, as pointed out in recital (145), every UDP must comply with the SF Regulations and in addition contributes to the objectives defined in the relevant IPSUD and Regional Operational Programmes applicable to the respective Greek regions targeted by this measure, including the quantitative outputs stipulated in the latter.

(285) The Commission concludes therefore that the measure is suitable to address equity objectives.

4.4. Incentive effect

(286) The existence of a market failure or a cohesion objective is a *necessary* but not sufficient condition for granting State aid. State aid must be effective, i.e. have an incentive effect. The measure at issue contains sufficient safeguards aimed at ensuring this condition is fulfilled in all UDPs concerned.

4.4.1. Application for UDF investment prior to the start of a project

(287) State aid will only be considered to have an incentive effect if, before starting a project or activities, the beneficiary submitted an application for the aid, i.e. submitted an application for UDF funding. That condition is fulfilled in the present case.

4.4.2. Necessity test for every UDP

(288) Due to the nature of the investment or characteristics of deprived urban areas, the investment would not have been implemented by the market on its own because of the fairly low expected financial return and the relatively high risk of investing in the area. The necessity test essentially shows that projects of the same nature, i.e. with an IRR below the FRR, would not be carried out by the market (a counter-factual scenario) or, at least, the investments would not take place to the same extent and in the same timeframe.

(289) Moreover, UDF managers will carry out an investment appraisal for each project and will examine technical quality and economic and financial viability. In the context of that exercise, they will duly establish a viability gap to justify any finding that the market would not proceed on its own.

(290) The Commission finds therefore that the measure's incentive effect is sufficiently demonstrated.

4.5. Proportionality

(291) State aid must be proportionate in relation to the legitimate objective in order to be compatible with the internal market. The Commission must therefore examine whether State aid granted to project developers and other private investors at the UDF or project level is proportionate to securing their participation. The aid is considered to be proportionate only if the same result could not be reached with less aid and less distortion.

4.5.1. Commercial management and success-based remuneration

(292) When it comes to assessing the measure's proportionality, i.e. whether mechanisms are in place to minimize State aid granted under the measure to a minimum, the Commission has paid particular attention to those parts of the measure that enhance decision-making in line with commercial logic.

(293) In that context, the Commission has noted that under the measure, investments entered into by UDFs, while potentially granting sub-commercial investment conditions benefiting private investors, are selected and structured by professional and independent fund managers that have

been chosen in a transparent process. The Commission finds that the selection of professional fund managers adds to the likelihood of economically sound investment decisions with limited deviations from market rules.

- (294) The Commission also notes that in addition to the selection of professional management, the remuneration system as explained above in section 2.6.3.2 foresees a variable part which is subject to overall fund performance. It will normally encourage UDF managers to limit to the extent possible the sub-commercial terms of the UDF investment, benefiting private co-investors, because it will at the same time reduce the management's remuneration.
- (295) In addition, management requirements such as the existence of a business plan including an exit strategy and the governance structures including reporting obligations to the JHFG will further improve the commercial soundness of the UDF management.

4.5.2. *Required repayment of initial investments plus inflation rate*

- (296) As pointed out above in recital (146), UDFs can only invest in UDPs whose business plan foresees the full repayment of UDF investment plus inflation rate. The Commission considers that "zero floor" requirement a suitable tool to ensure a minimum economic viability of selected projects and, at the same time, a transparent means to exclude excessive deviation from market rules.

4.5.3. *Private participation*

- (297) The notified measure foresees, as explained in section 2.7.4, a minimum participation of private investors, i.e. investors following purely profit-oriented goals in line with market logic in the form of investment at risk for every UDP. Private co-investment is a requirement that limits the use of public resources and, at the same time, ensures the benefit of market experience and professionalism in joint investment projects. In addition, the requirement for any UDF investment to find a private investor willing to put his own investment at risk increases the economic soundness of funded projects significantly.

4.5.4. *Limiting preferential investment conditions for private investors*

- (298) When weighing the effect that private participation has on public investments' compliance with State aid rules, the Commission has paid special attention to advantages granted to private co-investors at the expense of public investment. While the Commission normally considers public investments carried out at identical - *pari-passu* - investment conditions with private investors to be in line with the Market Economy Investor Principle and therefore free from State aid, public-private investments with preferential conditions for the private partner can under certain circumstances constitute compatible State aid as pointed out for example in the Risk Capital Guidelines.
- (299) The Commission has verified the mechanism implemented under the notified measure, as indicated in recitals (182) to (205), limiting the preferential investment conditions granted to private investors in the form of sub-commercial loans and equity up to a properly established FRR. As a result, the Commission considers that the application of the FRR criterion a suitable tool in order to avoid any over-compensation of private investors.

(300) The Commission has also noted that any profits beyond the FRR agreed beforehand between the UDF and private investors will be shared proportionally. Thus both private investors and the UDF will benefit from unforeseen project over-performance in proportion to their investment.

4.5.5. Limited project size and diversification of investment portfolio

(301) The Greek authorities explained, as stated in recital (175), that UDFs are contractually obliged not to invest into each urban project an amount that exceeds a certain percentage of the JHFG funds allocated to it for management. This percentage varies from 20% to 35% and is applied unless specifically waived by the EIB.

(302) Taking into account the overall limitation of projects, the Commission finds that it adds another element averting the risk of non-proportionate State aid.

4.5.6. Conclusion as to proportionality of the measure

(303) In the light of the above, the Commission finds that the measure is proportionate.

4.6. Distortion of competition and trade

4.6.1. Relevant markets

(304) The Commission has identified several relevant markets, potentially affected by a distortion of competition due to the notified measure: the market for financial investments, for investment intermediation (asset management companies and financial institutions), as well as the market for property and infrastructure development.

4.6.2. Effects on the market

(305) The Commission has analysed the effects of the notified measure taking into account (i) the aid granting process, (ii) the characteristics of the relevant markets and (iii) the type and amount of aid when assessing the significance of the distortive effects of the measure and its effect on trade.

4.6.2.1. Long-term dynamic effects

(306) State aid may have long-term dynamic effects on the incentive to invest and compete in affected markets. In the longer run, such a change in dynamic incentives leads to less choice, and potentially to lower quality or higher prices for consumers.

(307) The Commission notes that the aid increases the supply of new commercial property on the Greek market. That property will however be open to any interested end user or buyer. Besides, the current notification only covers the supply of commercial property at prices corresponding to those customarily observed for similar property in that area.

- (308) The Commission considers that the aid, to the extent that it covers the UDPs' viability gap does not provide the companies undertaking the project with resources that they can use for cross-subsidizing future projects in order to distort competition and affect trade. On the contrary, regeneration efforts targeted at remedying market failures can actually unlock opportunities for commercial developments, which had previously been inhibited.
- (309) Investments will be made on the basis of business plans and realistic prospects of profitability. Therefore, State aid will not be granted in markets featuring overcapacity and in declining industries, as investments will have to be repaid through efficient operations.
- (310) While the absolute amount in any given UDP is not calculated, the amount of aid is in all cases limited to what is strictly necessary in order to cover a viability gap. Thus, it would not result in project promoters or financial investors obtaining significant market power as a result of the measure.

4.6.2.2. Crowding out

- (311) At a more specific level, State aids may affect competition in the product market when competitors react by reducing their own sales and investment plans (crowding out).
- (312) The Commission notes that State aid will be exclusively provided to unlock those projects where the market would not undertake the activities on its own. Besides, there will be an overall increase in the level of investment activity in the markets due to the minimum private participation requirement. Thus, crowding-out effects remain unlikely.

4.6.2.3. Input markets and location

- (313) State aid may affect competition in the input markets, in particular as regards the location of investments, if State aid favours the use of particular inputs. The overall effect on input markets may be negative if it discourages competitors' investment.
- (314) The measure will support development activities that are predominantly of local character and for which the effects on trade are purely indirect (e.g. through input markets) and the distortion of competition and trade is most likely to be limited.

4.6.3. *Conclusion as to distortion of competition and trade*

- (315) On the basis of the above, the Commission can therefore conclude that the aid does not distort the proper functioning of the internal market to any significant extent and does not produce significant disparities between undertakings established in different Member States or in the location of the production factors within the EU.

4.7. Cumulation

- (316) As pointed out in recital (215) – (218), the notified aid scheme contains rules in order to prevent a cumulation with State aid granted under different provisions that would result in State aid beyond the limitations foreseen in the current notification.

(317) The Commission finds that the notified scheme contains appropriate provisions on cumulation with other aid.

4.8. Monitoring and reporting

(318) As pointed out above in recitals (96) and (206), substantial monitoring requirements will enable the EIB, acting as the JHFG, to verify compliance with UDF investment rules that also result in compliance with State aid provisions including this decision. In addition, as explained in section 2.9, exhaustive monitoring requirements and reporting obligations will provide Commission with sufficient information to verify compliance with State aid rules.

(319) Simplified information sheets for UDPs above EUR 5 million of sub-commercial UDF investment and individual notification for UDPs above EUR 50 million irrespective of the proportion of that amount financed by the UDF will further enhance transparency for the Commission services.

4.9. Balancing test

(320) In order to decide about the measure's compatibility with the internal market, the Commission had to weigh its contribution to common European objectives against a possible distortion of competition.

(321) In addressing lack of efficiency in the form of market failures as well as socio-economic problems in the context of Sustainable Urban Development, the scheme thrives to reach a common European objective of great importance.

(322) The common European objective of great importance mentioned above will be achieved by a minimum public intervention. It will be ensured by means of professionally managed financial engineering instruments, providing sub-commercial investment conditions resulting from either a competitive selection process or impartially established industry benchmarks to private investors who will in exchange leverage public investment. Compared to grant funding, the aid amount will be particularly low. As far as market distortion is concerned, the requirement of in-depth knowledge of local specificities will limit distortive effects of aid granted under the scheme to non-aided EU competitors, the aid therefore not being likely have significant impact on EU trade.

(323) In the light of the above, the measure's positive effects clearly outweigh any potential distortion of competition.

5. FINAL REMARKS

(324) In the light of the foregoing, the Commission has decided not to raise objections to the notified measure, because the aid can be found compatible with the internal market in accordance with Article 107(3)(c) TFEU. This decision does not prejudice the position the Commission might take on the compatibility of the relevant measure with the EU rules on free movement of services.

(325) The Commission reminds the Greek authorities that, in accordance with Article 108(3) TFEU, plans to refinance, alter or change that aid have to be notified to the Commission pursuant to Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁴⁸.

(326) The Commission notes that Greece has agreed the present decision to be adopted in the English language.

6. CONCLUSION

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market in accordance with Article 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 by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
1049 Brussels
Belgium
Fax No: (0032) 2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA,
Vice-President

⁴⁸ OJ L 140, 30.4.2004, p. 1.