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Subject: State aid SA.38048 (2014/NN) – Greece – Upgrading of the Port of Patras (5th pier)

Sir,

1. PROCEDURE

- (1) By notification of 20 December 2013, Greece notified public funding for an investment project for port infrastructure in the city of Patras, in Western Greece.
- (2) The Commission requested additional information by letters of 27 January 2014 and 8 April 2014 and by e-mail of 28 April 2014. Greece submitted the additional information by letters of 17 March 2014 and 12 May 2014.
- (3) Since the information available showed that the public funding had already been disbursed, on 8 April 2014 the Commission informed Greece that the measure had been registered as unlawful aid (2014/NN) and the procedural rules applicable would be those laid down in Chapter III of Council Regulation No 659/1999.¹

2. DESCRIPTION

2.1. Description of the Port of Patras

- (4) The Port of Patras is located on the north-west coast of Peloponnese, in the region of Western Greece and is adjacent to the town of Patras. Western

¹ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27. 3. 1999, p.4, Article 3.

Greece has the status of assisted region under Article 107(3)(a) of the Treaty.²

- (5) The Port of Patras mainly serves passenger and ro-ro³ vessels in routes between mainland Greece and the Italian ports on the Adriatic Sea (Brindisi, Bari, Ancona, Venice, and Trieste). Secondary routes connect mainland Greece with the nearby Greek islands of Cephalonia and Ithaca. Its traffic serves both leisure and trade activities. The Port of Patras is connected via motorways and regional roads with the rest of Greece.
- (6) The infrastructure of the Port of Patras is owned by the State. Since 12 December 2002 the State has conceded the management, operation and maintenance of the port zone and infrastructure to the Patras Port Authority S.A. ('OLPa') until 2042 by means of a contract. OLPa pays an annual fee to the State, established at 2% of the annual turnover of the company. OLPa is responsible for the provision of all the port-related services and collects all the relevant charges from every vessel or passenger. The only shareholder of OLPa is the Greek State, through the State-owned Hellenic Republic Asset Development Fund S.A.
- (7) In the past, the main infrastructure of the Port of Patras was close to the centre of the town of Patras (known as 'north site'). However, the port traffic increased considerably between the 1980s and 2000s, thus creating congestion in the port and in the streets of the city. More importantly, the size of the ro-ro vessels that use the Port of Patras increased gradually, following industry developments and the need to service more cargo vehicles. Today, the typical vessels visiting the Port of Patras are 200 metres long.
- (8) As a result of the increased size of the vessels, the Port of Patras could only serve up to four vessels simultaneously at any given time, although the Port had in theory 18 docking positions. The manoeuvring of the vessels in the port were also creating security concerns.
- (9) In 1992, the Greek State took the decision to upgrade the Port of Patras and relocate the foreign traffic towards the Italian ports to a new infrastructure constructed further south, adjacent to less populated areas of the town (known as 'south site'). The notified project is part of this upgrading which is financed partially by Community Funding. on

2.2. The objective of the notified project

- (10) The objective of the notified investment project is to complete the relocation of the foreign traffic to the Italian ports to the south site. In particular, the project includes the construction of (i) a fifth pier; (ii) the extension of a breakwater, in order to cover the fifth pier; (iii) road works in the port area and other works in the surrounding area and construction of utilities and

² See Commission Decision of number SA.38450, adopted 7 May 2014.

³ Roll-on, roll-off: vessels that allow the access of wheeled cargo vehicles.

rainwater drains; (iv) two terminal buildings and an auxiliary building; (v) construction of a control tower for vessel traffic in the south site.

- (11) According to the trans-European transport networks (TEN-T) Regulation, the Port of Patras is considered as part of the core network corridor and rail-road terminal.⁴
- (12) Greece has provided an analysis of the expected development in the traffic for the reference period. The analysis shows that already in 2015, the year when the construction of the infrastructure under notification will be concluded, the Port of Patras will need up to six piers to service international traffic in the busy summer months and four piers during the less busy autumn months. At the end of the reference period, the Port of Patras will need up to eight piers to serve traffic during the busy summer months and five piers during the less busy months.
- (13) The upgraded infrastructure will allow the Port of Patras to make better use of its capacity and to service the foreign traffic mainly by the south site, which will have 5 piers in total, while keeping the north site for domestic traffic and as a fall-back infrastructure for any foreign traffic that cannot be serviced by the 5 piers of the south site.
- (14) It is noted that the construction of the control tower is not included in the notification, because the Greek authorities consider this as a construction that is necessary for the safe manoeuvring of the vessels and is not related to the economic activities of the Port, thus they argue that it falls under the public remit. They have also explained that the control tower will be used for the local Vessel Traffic Service Centre (covering the Ionian Sea), which is part of the Greek Vessel Traffic Management and Information System. Currently the traffic control functions are based in suboptimal installations.

2.3. Planned investments

- (15) The project includes investments of a total amount of EUR 52,8 million⁵ and it involves the following construction and investment costs:

Project	Budget (EUR – exact amount)
(i) (ii) Port works (fifth pier) and breakwater	33 280 285,22
(iii) Road and rainwater drain works; Surrounding space works; Utilities; Electricity substation and infrastructure; Publicity related to EU funded works; Costs for project management consultant	8 554 140,51
(iv) Terminal building 1	4 797 820,29
(iv) Terminal building 2	4 813 676,00
(iv) Auxiliary building	801 678,05

⁴ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network, OJ L 348, 20.12.2013, p.1.

⁵ All the amounts mentioned in the text are round ups, except when it is otherwise mentioned.

Project	Budget (EUR – exact amount)
Project total (i) + (ii) + (iii) + (iv)	52 247 600,07
(v) Control tower	601 957,93

2.4. Financing of the investment project

- (16) The total cost of the investment under notification is EUR 52,2 million. The public funding will cover 100% of the investment cost, i.e. EUR 52,2 million and will be provided partly from the European Regional Development Fund ('ERDF') (85%) and partly from the national budget (15%).
- (17) The Greek authorities provided an updated financial and economic cost/benefit analysis and an analysis of the financial net present value of the project (FNPV).⁶ The FNPV has been calculated on the basis of the upgrading of the Port of Patras for part of its services. That means that the authorities have only taken into account the incremental revenue and costs resulting from the construction and operation of the works.
- (18) Over a reference period of 27 years, the project has a negative FNPV of - EUR 57 689 364. A negative FNPV leads to a corresponding funding gap, i.e. an amount of funding which is necessary for the conclusion of the investment, but which cannot be recovered by the revenues of the investment itself during the reference period of exploitation.
- (19) The new infrastructure will be at the disposal of OLPa. However, the Greek authorities explained that it was not possible for OLPa to contribute to the costs of the investment. That is because the funding gap is greater than the cost of the investment.⁷ Thus, it would not be possible for OLPa to provide funding for the investment, because OLPa would have never been able to recover that investment through its operating revenues.
- (20) In addition, if OLPa maintained the charges at the current level, the operation of the complete south site would result in an operating loss, i.e. the expenses from the operation of the infrastructure would be greater than its revenues. Thus, OLPa envisages a gradual increase of its charges by 1.21% p.a. for the period 2014-2040. According to the notification, this will balance operating costs and revenues of the entire port.

⁶ The net present value is defined as the difference between the discounted operating profits of the investment and the discounted investment costs during the given reference period, which is 27 years for this project.

⁷ This means that the incremental revenues generated by the project are negative, i.e. that the 5th pier is projected to make operating losses. However, because the 5th pier will operate in the context of the entire Port of Patras, the Greek authorities have explained that the operating profits from the other parts of the Port of Patras will contribute to the operating costs of the 5th pier and thus, overall, OLPa will not make losses.

2.5. Competition context

- (21) As mentioned in recital (5) above, the Port of Patras is active in the markets of passenger and cargo vehicles transportation mainly between mainland Greece and the Italian ports of the Adriatic Sea and, to a lesser extent, between mainland Greece and the nearby Greek islands of Cephalonia and Ithaca.
- (22) However, the project under notification only concerns the foreign traffic to the Italian ports of the Adriatic Sea. In that sense, Greece has explained that the project under notification is expected to have an impact mainly on other Greek mainland ports serving the Italian ports of the Adriatic Sea.
- (23) The only other Greek port which is serving these routes is the Port of Igoumenitsa, in northern Greece. Some vessels call at the Port of Igoumenitsa, on their way between the Port of Patras and the Italian ports.
- (24) Greece has provided a comparative analysis of the traffic from the Ports of Patras and Igoumenitsa to the Italian ports of the Adriatic Sea since 1987, both for passengers and cargo vehicles. In 1987, 80% of the total traffic between Greek and Italian ports went through the Port of Patras and only 20% of the traffic went through the Port of Igoumenitsa. For the period 1987-2006 both ports increased the volume of traffic that they served, while Igoumenitsa increased its volume much more than Patras. The volume of traffic through the Port of Patras decreased during the period 2006-2011, while the volume of traffic through the Port of Igoumenitsa continued to increase and only decreased in 2012. As a result, in 2012 only 37% of the total traffic between Greek and Italian ports went through the Port of Patras, while 63% of the traffic went through the Port of Igoumenitsa.
- (25) According to Greece, the reason for this shift is related to external factors outside the control of the port authorities. In particular, the Port of Igoumenitsa seems to have a geographic position which allows it to attract traffic from Northern Greece, the Balkans and Turkey. The Port of Igoumenitsa has also benefitted from the crisis in Yugoslavia during the 1990s, which forced traffic to use the sea connection to Western Europe, instead of the road connection through the Balkans. It also benefitted from the construction of Egnatia Odos, which is a motorway with important capacity and connects the Port of Igoumenitsa with regions of important economic production in northern Greece.
- (26) Conversely, the Port of Patras is serviced by motorways of smaller capacity and attracts traffic from a smaller area, namely the Peloponnese and Athens.
- (27) Thus, Greece has argued that the upgrade of the Port of Patras is not expected to have adverse effects in the competition with the Port of Igoumenitsa, as the quality or size of the infrastructure does not seem to play a major role in the development of the traffic. Similarly, the fact that vessels call at both ports does not seem to be relevant for competition, since it is the incoming and outgoing traffic that determines where vessels call and not the quality or size of the infrastructure.

2.6. Legal basis

- (28) This project will be constructed in the context of Greek public investments and in particular the *Regional Operational Programme for Western Greece, Peloponnese and Ionian Islands 2007-2013* ('ROP DEPIN' – Priority Axis 1 - Infrastructure and Accessibility Services for Western Greece), under the *National Strategic Reference Framework* ('NSRF'), which is co-funded by the *European Regional Development Fund* ('ERDF').⁸

2.7. Form and duration of the aid

- (29) The public funding for this project takes the form of a direct grant from the ERDF and the national budget.
- (30) The construction of the project is carried out in phases and part of the funding has already been granted. By January 2014, Greece had already paid EUR 19 081 088,14 for the project. The construction of the entire project is expected to be finalised in December 2015.

2.8. Cumulation

- (31) Greece undertakes the commitment that aid received for this project cannot be cumulated with aid received from other local, national or EU sources for the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid

- (32) Article 107(1) of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the internal market.
- (33) It follows that, for a measure to constitute State aid within the meaning of Article 107(1) the Treaty, the following cumulative criteria must be met:
- (a) the measure must be granted by the State or through State resources,
 - (b) confer an advantage on the recipient undertaking(s),
 - (c) favour certain undertakings or the production of certain goods (selectivity),
 - (d) distort or threaten to distort competition and affect trade between Member States

⁸ The ERDF funding for the ROP DEPIN was approved by the *Commission Decision E(2007) 5441* of 5.11.2007 (CCI 2007 GR 161 PO 007). For the general provisions of the Community Funds see *Council Regulation (EC) No 1083/2006* of 11 July 2006, OJ L 210, 31.7.2006, p.25.

- (34) In the present case, the existence of state aid must be examined at the level of OLPa, which is the present and future operator of the infrastructure.

3.1.1. *Notion of undertaking*

- (35) According to established Court jurisprudence,⁹ whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of EU competition law. The Commission established in a series of decisions that the exploitation of some types of infrastructure can be considered as being of an economic nature.¹⁰
- (36) In the wake of the *Leipzig-Halle* judgment,¹¹ it is the future use of the infrastructure, i.e. whether the infrastructure shall be commercially exploited or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not.
- (37) The notified project concerns the construction of infrastructure at the Port of Patras, which shall be managed and commercially exploited by OLPa through its provision of services to ro-ro and passenger vessels. In this context, OLPa will engage in an economic activity, and it is therefore considered to be an undertaking for the purposes of the present decision.

3.1.2. *General vs. project-specific infrastructures*

- (38) Greece considers that part of the expenses for this investment project, and more specifically, the expenditure for constructing of a control tower (see (14) above) is linked to the exercise by the OLPa of activities within the public remit.¹²
- (39) According to the case-law, activities that normally fall under State responsibility in the exercise of its powers as a public authority are not of an economic nature and do not fall within the scope of the state aid rules.¹³ This

⁹ See e.g. Case C-41/90 *Hofner and Elser* [1991] ECR I-1979, para. 21; C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, para. 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

¹⁰ See e.g. Commission Decision of 15.12.2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventspils Port*, OJ C 72 of 20.03.2010; Commission Decision in State aid case no. 44/2010 *Public financing of port infrastructure in Krievu Sala* – Latvian Republic, OJ C 215 of 21.7.2011, p. 19; Commission Decision on State aid case no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1; Commission decision C(2012) 9468 final of 19/12/2012 on state aid SA.34940 (2012/N) *Port of Augusta*, OJ C 77 of 15.03.2013.

¹¹ Joined cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T-443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000 confirmed by ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission* ECLI:EU:C:2012:821; see also Case T-128/89 *Aéroports de Paris v. Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P [2002] ECR I-9297, and Case T-196/04 *Ryanair v. Commission* [2008] ECR II-3643, paragraph 88.

¹² See e.g. Commission Decision on *Ventspils Port*, OJ L 319, 2.12.2011, p. 92.

¹³ See e.g. Joined cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T-443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000.

may concern expenses for performing tasks of ensuring security, safety, police services,¹⁴ or anti-pollution surveillance in ports¹⁵ – insofar as they are not an intrinsic part of a project with a commercial end. The financing of such activities has to be limited to the costs to which they give rise and may not be used instead to fund other activities.

- (40) In the case at hand, Greece has explained that the construction of a control tower is necessary irrespective of the upgrading project of the Port of Patras. That is because the control tower will perform tasks related to the manoeuvring of vessels in the Port of Patras, but will also control sea traffic in a large part of the Ionian Sea. Currently the traffic control functions are based in suboptimal installations.
- (41) Greece has confirmed that the financing of the control tower construction is limited to what is necessary for the establishment of the relevant installation and does not cover other economic activities of the port.
- (42) The Commission agrees with the assessment of Greece that indeed the construction of the control tower is not related to the port's economic activity. Therefore, public funding of the construction costs in question should not amount to state aid within the meaning of Article 107(1) of the Treaty, taking note of the fact that it only covers costs necessary for the activities under the public remit.

3.1.3. State resources and imputability

- (43) As regards the part of the project that concerns the economic activities of OLPa, it is financed up to the total amount of EUR 52,2 million exclusively through public resources. The EU funds that are made available for co-financing this project are placed at the disposal of the Greek authorities, and therefore amount to State resources. The Greek authorities themselves, through the national budget, also provide funding for this project.
- (44) As regards imputability of the public financing to the State, it is noted that the Greek authorities enjoy a high degree of control in the selection at national level of the projects of this nature to be financed partly with EU funds. The notified project was directly chosen by the Greek State. Therefore, the notified measure is imputable to the State.

3.1.4. Selectivity

- (45) As the public financing is granted specifically to OLPa, the measure is selective in nature.

¹⁴ Commission Decision N309/2002 of 19 March 2003 on *Aviation security - compensation for costs incurred following the attacks of 11 September 2001*.

¹⁵ Case C-343/95 *Diego Cali & Figli* [1997] ECR-1547, paragraphs.22 and 23

3.1.5. *Economic advantage for the Concessionaire*

- (46) The public financing to be provided for the project clearly confers an economic advantage to OLPa, insofar as the measure covers the investment costs that the latter would otherwise have had to bear to carry out the project.
- (47) The negative funding gap of the project makes it unlikely that OLPa could have obtained the necessary financing for this investment on the market without any State support.
- (48) It therefore follows that the measure confers an economic advantage to OLPa.

3.1.6. *Distortion of competition and effect on trade between Member States*

- (49) According to an established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in trade between Member States, there is at least a potential effect on competition and trade between Member States¹⁶.
- (50) The Greek authorities have explained that the Port of Patras is a regional port, mainly in competition with one similar port in Greece, Igoumenitsa. However, the Commission notes that it cannot be excluded that the public funding granted to the Port of Patras could potentially also affect other ports in Europe. Indeed, since OLPa provides services to transport undertakings and passengers of any origin, the measure has the potential to attract the provision of shipping and transport services which are sectors open to competition and trade at EU level.
- (51) Therefore, the measure granted to OLPa strengthens its position in the market for port services.

3.2. **Compatibility of the aid**

- (52) According to established practice,¹⁷ the appropriate legal basis for assessing compatibility of the State aid to port investment projects is Article 107(3)(c) of the Treaty, 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 found compatible with the internal market.
- (53) It should therefore be examined if the notified public funding meets a clearly-defined objective of common interest, has an incentive effect, is necessary and proportional to this objective, and does not affect competition and trade between Member States trade to an extent contrary to the common interest.

¹⁶ See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, para. 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, para. 44.

¹⁷ See Commission Decisions on State aid no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1; SA.35418 (2012/N) – Greece – *Extension of Piraeus Port*, OJ C 256 of 5.09.2013, p. 2; SA.36953 (2013/N) – Spain – *Port Authority of Bahía de Cádiz*, OJ C 335 of 16.11.2013, p. 1; SA.38302 (2014/N) — Italy - *Investment Aid to the Port of Salerno*, not yet published.

3.2.1. Objective of common interest

- (54) According to the trans-European transport networks (TEN-T) Regulation, the Port of Patras is considered as part of the European core network corridor.
- (55) In the development of the comprehensive network, *"general priority shall be given to measures that are necessary for [...] promoting the efficient and sustainable use of the infrastructure and, where necessary, increasing capacity, [as well as] improving or maintaining the quality of infrastructure in terms of safety, security, efficiency [...]."* Finally, in the promotion of projects of common interest related to maritime infrastructure, *"priority shall be given to [...] modernisation and expansion of the capacity of the infrastructure necessary for transport operations within the port area."*
- (56) In its Communication entitled *Ports: an engine for growth*,¹⁸ the Commission underlined (section 2) the importance of upgrading existing port infrastructures, in order to meet technological, industrial, safety, security, and other challenges.
- (57) The project under notification will allow the upgrading of the Port of Patras, in order to service more efficiently the ro-ro vessels of increased size, as well as the expected traffic development, under safer conditions, while contributing to improving the traffic within the centre of Patras. It will improve the connectivity between Greece and Italy within that part of the TEN-T network.
- (58) By supporting the transport activities of the Port of Patras, the project will also have wider positive effects on the regional economy in Western Greece.
- (59) The above elements show that the project contributes to an objective of common interest.

3.2.2. Necessity and proportionality of the aid

- (60) As regards the necessity of the aid, the FNPV evaluates the financial sustainability of the investment. This indicator measures the present (discounted) amount of the inflow of net revenues generated by the investment and the capacity of the net revenues to remunerate the investment cost.
- (61) Over a reference period of 27 years, the project under notification has a negative FNPV of - EUR 57 689 364. This shows that the net revenues to be derived over the reference period do not remunerate the investment costs and thus the investment has a funding gap.
- (62) The Commission has consistently considered that port infrastructure projects require considerable capital investments that can only be recovered in the very long term, and their economic viability may not be ensured without public funding¹⁹. Given the results of the funding gap, it must be concluded that this

¹⁸ Communication from the Commission *Ports: an engine for growth*, COM/2013/0295 final, 23/05/2013.

¹⁹ See the recent Commission Decisions on port infrastructure projects cited in footnote 17.

investment could not have been undertaken by a private operator placed in a similar situation.

- (63) Therefore, the public funding is necessary for the realisation of the project and has an incentive effect.
- (64) As regards proportionality (i.e. limiting public funding to the minimum necessary), the public funding provided for this part of the project will be EUR 52,2 million, i.e. 100% of the investment costs. However, this is below the funding gap identified for this project, which is approximately - EUR 57,7 million.²⁰ Aid to an infrastructure up to the funding gap is in line with the practice of the Commission.
- (65) The Greek authorities have also provided evidence (see recital (20) above) which showed that the OLPa will increase the charges to the users of the port in order to balance operating costs and revenues of the entire port.
- (66) In the past, the Commission has authorised investment aid for ports up to an aid intensity of 50 %.²¹ Recently, where Member States have demonstrated the economic need for higher aid intensity, the Commission has been willing to accept such higher intensities in duly justified cases.²²
- (67) In the present case, the Greek authorities have notified a measure which foresees an aid intensity of 100 % in favour of OLPa. The Commission stresses that the necessity for public funding for each project must be determined as a function of certain variables, such as the kind of activities to be carried out with the infrastructure, volumes of traffic, expected revenues, costs for constructing the infrastructure, etc., which are specific to the features of each individual infrastructure project.
- (68) Indeed, the Commission notes that in this case, such high aid intensity is justified mainly because the project under notification concerns the relocation of the foreign traffic towards the Italian ports to the south site. The relocation was necessary, in order to address safety and efficiency issues encountered in the operation of the north site so far (see recitals (7) and (8) above). This relocation entails high costs because of the construction of a new infrastructure, while the incremental revenues from the new infrastructure would not be sufficient to cover such high investment costs.
- (69) In any event, OLPa will ensure that operating costs of the entire port are covered through its revenues.
- (70) The above elements show that the aid has an incentive effect and is necessary and proportionate to achieve the objective of common interest.

²⁰ See footnote 7.

²¹ See e.g. Commission Decision of 18 September 2013 in State Aid case no. SA.36953 (2013/N) – Spain – *Port Authority of Bahía de Cádiz*, OJ C 335 of 16.11.2013, p. 1.

²² See Commission Decision of 20 December 2011 in case SA.33434, France - *Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre*; Commission Decision of 17 October 2012 in case SA.34501, Germany – *Extension of the inland port of Königs Wusterhausen/Wildau*; Commission Decision of 19 June 2013 in case SA.35738, Greece - *Aid for the upgrading of Katakolo port*; Commission Decision of 2 July 2013 in case SA.35418, Greece - *Extension of Piraeus port*.

3.2.3. *Distortion of competition and effect on trade between Member States*

- (71) The Port of Patras is a regional port serving a limited area in Western Greece. The geographic location and the historic use of the Port of Patras indicate that there is little risk of relocation of traffic from other ports in the EU towards the Port of Patras. That is because the Port of Patras is the only port, with the exception of the Port of Igoumenitsa, that can serve the traffic coming from the identified areas in Greece (see recital (25) above). It is highly unlikely that in the future any other EU and Mediterranean ports may compete with Patras for a significant part of its traffic, because of its location.
- (72) Moreover, the Greek authorities have provided evidence (see recitals (21)-(27) above) which showed that competition between the Port of Patras and its main competitor is not substantially affected by the quality or size of the port infrastructure. Indeed, that evidence shows that competition between the two ports is affected by other factors that are not modified by the notified investment, such as the geographic location, the economic production of the surrounding areas serviced by each port and its accessibility.
- (73) That is because the passengers and cargo vehicles who need to travel between the two areas (Greece or further east on the one side and Italy and further west on the other) need to take into account many factors, among which the most important seem to be the quality of the road connection to the port and the proximity to the point of original departure or final destination (e.g. industrial zones, main consuming markets). Thus, it can be concluded that an improvement of the infrastructure in one port cannot lead to direct increase in the traffic that will go through that port.
- (74) The above elements allow concluding that the aid for this project does not affect competition and trade between Member States to an extent that would be contrary to the common interest.

3.3. Conclusion

- (75) On the basis of the foregoing findings, the Commission concludes that the amount of EUR 52 247 600,07 for the upgrading of the Port of Patras constitutes state aid within the meaning of Article 107(1) of the Treaty, which however is compatible with the Treaty under Article 107(3)(c).

4. CONCLUSION

The Commission regrets that Greece put the aid for the upgrading of the Port of Patras (Phase A, section 3) into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, not to raise objections to this aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

This Decision is without prejudice to any possible scrutiny under environmental or Structural Funds rules. Similarly, the Decision does not prejudge any possible further analysis by the Commission as far as compliance with public procurement rules is concerned.

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
State aid Greffe
1049 Brussels
Belgium
Fax No: +32 (0)2 2961242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president

ANNEX: SCHEME OF THE PROJECT UNDER NOTIFICATION

