1. EXEMPTION OF CULTURAL SECTOR PROJECTS IN MUSEUMS – MONUMENTS FROM THE CONCEPT OF STATE AID

The Constitution of Greece protects the cultural heritage in an express provision included in Part Two concerning individual and social rights. According to Article 24 of the Constitution, “The protection of the natural and cultural environment constitutes a duty of the State and a right of every person” (§ 1) and “Monuments and historic areas and elements shall be under the protection of the State. A Law shall provide for measures restrictive of private ownership deemed necessary for protection thereof, as well as for the manner and the kind of compensation payable to owners.” (§ 6).

The State, therefore, through the competent Archaeological Service, is obliged to protect, gather together, preserve, guard and exhibit the monuments of the country’s cultural heritage, both movable (museum exhibits) and immovable.

More specifically, Law 3028/2002 “On the protection of antiquities and cultural heritage in general” (implementing Law of the Constitution in accordance with the aforementioned), provides in Article 21 that “Movable ancient monuments dating up to 1453 or those which constitute finds from excavations or other archaeological research, regardless of their dating, belong to the State in terms of ownership and possession, are imprescriptible and are extra commercium according to Article 966 of the Civil Code”.

From the aforementioned, the following are made clear:

- Provision of services to guard, preserve, in general protect and exhibit to the public the aforementioned monuments – services provided by the state museums or ephorates of antiquities of the Ministry of Culture and Sport – does not constitute an economic activity since there is no market for comparable services for the monuments in question, which are the sole property of the Greek state, and therefore the state has reserved the right to carry out the said activity (that is, the provision of services to guard, preserve, in general protect and exhibit to the public the aforementioned monuments) exclusively for itself. Any for-profit exploitation thereof is illegal and criminally punishable.

- There are no private entities that are allowed to provide the aforementioned services for the same goods for a profit, and the aforementioned goods certainly could never be replaced in the market by other similar goods. In other words this concerns the provision of services in relation to goods that are unique and incomparable and therefore non competitive with relative exhibits.
• Access to and use of infrastructures relating to museums and immovable monuments in the aforementioned category are public and general in nature, and are available to all potential users on equal and unprejudiced terms.

• Since culture is regarded first and foremost as a social good, the cost of tickets for entry to the said museums-monuments and archaeological sites is low, and income from tickets is also similarly low. Such revenues constitute revenues of the regular State budget, are directed to a central agency of the Ministry of Culture and Sport (the Archaeological Resources Fund) and solely as part thereof are made available to meet the general operating needs of the services of the Ministry of Culture and Sport.

We therefore consider that the following instances of financing cannot constitute state aid within the meaning of Article 107.1 of the Treaty on the Functioning of the European Union (TFEU), since they represent a general economic policy measure which cannot be tested in accordance with the rules of the Treaty on state aid, a measure whose purpose is to meet national programming needs and to implement national policies in the sensitive area of protection of the country’s antiquities and cultural heritage:

a) Financing of museums and buildings with broader cultural use, exhibiting monuments dating up to 1453 and/or finds from excavations and/or archaeological research, regardless of their dating. Financing may relate to the new construction, extension, repair, modernisation, preservation, reconstruction, upgrading of building infrastructures, supply of equipment, organisation of exhibitions or other cultural, artistic, musical and visual events, etc., to the improvement of the quality of the services provided to visitors, spectators, etc., as well as to the upgrading of the skills of the human resources (public servants) serving therein.

b) Financing of archaeological, historical sites and immovable monuments dating up to 1453 and/or finds from excavations and/or archaeological research, regardless of their dating, as well as all immovables that have been recognised as monuments by decision of the Ministry of Culture and Sport. The financing may regard the protection, conservation, preservation, research, documentation and promotion of the monuments, the improvement of the physical and digital access to archaeological sites for the public and especially for handicapped people, the improvement of the quality of the services provided to visitors, as well as the upgrading of the skills of the human resources (public servants) serving in the services of the Ministry of Culture and Sport, within whose geographical competency the aforementioned sites and monuments are located.

In addition, many of the cultural projects involve an initial investment (such as the construction of a new museum for example), after which the new museum operates using means and resources that – as mentioned above – do not
derive from any revenues from its operation (e.g. monies collected from tickets or the sale of cultural objects, rental of cafeterias, etc.).

Therefore the purpose of the financing of the said projects is exclusively the protection, preservation, promotion and accessibility to the public of the country’s monuments and cultural heritage in general (part of which constitutes a common cultural heritage of Europe-wide importance). As a result, the financing of the abovementioned infrastructures is regarded as being part of the exercise of public authority, falls within the area of the privileged operation of state authority and is in the public interest as a characteristic aim of the state.

Moreover, practically, there would be no possibility for private citizens to invest in projects of such a type, without any state funding, due to the high cost of establishing and/or operating such museums and, similarly, of the maintenance and reconstruction of the aforementioned monuments in conjunction, on the one hand, with the strict –based on national and international legislation– terms and conditions of execution and, on the other, with the relatively small profit from such an investment (given that the cost of tickets is low) and as a result financing is deemed to be necessary. Therefore this is not an investment undertaken on a purely commercial basis.

Furthermore, we note that the aforementioned are also applicable to the digital projects (virtual museums, digital tours, promotion of intangible cultural heritage via the Internet, etc.) conducted by state museums or ephorates of antiquities with regard to the monuments mentioned above, given that they regard the creation of applications that include exhibits – movable and immovable monuments, which, in accordance with the above, are solely owned by the Greek state and therefore no other agency can create or exhibit electronic databases regarding these monuments.

Finally, special reference must be made to the museums and archaeological sites that are local in scope; since these constitute the majority of the museums and archaeological sites in Greece. The financing of such museums and monuments is not regarded as state aid, because it cannot affect intra-Community trade due to their purely local nature which is reinforced, at the same time, by their non–international promotion (with the exception, of course, of a target group of visitors with relevant scientific interests) and in this way they are directed mainly towards local users (inhabitants of the same town and/or surrounding areas and/or, at the most, of the country itself), whereas the inhabitants of the other countries of the EU do not cross borders exclusively in order to visit them [Cases N.258/2000, NN.136/A/2002, N.731/2007]. Therefore, no possible effect on intra-Community trade or distortion of competition is expected, since these are museums/monuments that are local in scope.
In view of the above, it is proposed to include a special phrasing in the Regulation, according to which the following categories shall be expressly exempted from the scope of state aid (that is, their financing shall not constitute state aid within the meaning of Article 107.1 of the Treaty on the Functioning of the EU):

a) projects to create, modernise and upgrade cultural infrastructures,

b) supplies of equipment,

c) actions related with research, documentation, protection, reconstruction, preservation and promotion of cultural heritage,

d) digital information and communication technology applications,

e) actions to upgrade human resources,

f) organisation of exhibitions or other cultural, artistic, musical and visual events, as well as,

g) every type of actions aiming to the qualitative improvement of the cultural services provided,

which are implemented at archaeological sites, monuments, museums and cultural buildings in accordance with the aforementioned.
INSTANCE OF FINANCING OF ACTIONS IN THE CULTURAL SECTOR THAT MAY BE CONSIDERED COMPATIBLE WITH THE MEANING OF STATE AID

Aid for certain projects or actions in the cultural sector may be considered compatible aid on the basis of Article 107 para. (d) and Article 167 of the TFEU for the following reasons:

- The financing of the said projects and actions is exclusively aimed at ensuring public accessibility to important cultural, artistic, visual and musical activities and events.
- Any possible effect on intra-Community trade or possible distortion of competition is expected to be on a small scale, since these are events that are local in scope. Therefore any effect on intra-Community trade and/or competition is not of an extent contrary to the public interest.
- The beneficiaries are non-profit bodies (mainly state agencies, urban non-profit organizations and non-governmental organizations) which however usually have no equity capital. In parallel, the events are open to the public at large, and whatever resources they have (mainly from low-cost tickets) are not sufficient, so that without any state funding, it would be hard for them to be sustainable. As a result, the said financing is deemed to be necessary and justified.

Some examples of such actions are the following: organisation of exhibitions and musical – dance and theatrical performances, visual, artistic and film events, organisation of festivals, publishing and translation activities.

In the context of such actions mainly the following activities can be financed: construction, upgrading, improvement and maintenance of infrastructures, supplies of equipment, organisation of visual exhibitions and cultural events, publicity – promotion, digital information and communication technology applications, etc.

Eligible for financing may be projects with budget up to EUR 70,000,000 (in the case of infrastructure works) and up to EUR 25,000,000 (in the case of actions including supply of equipment, organisation of visual exhibitions and cultural events, publicity – promotion, digital information and communication technology applications and activities for the operation of cultural events more generally).