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Subject: **State aid SA.35738 (2012/N) – Greece –**
 Aid for the upgrading of Katakolo port

Sir,

1. PROCEDURE

- (1) By notification of 19 November 2012, the Greek authorities informed the European Commission ('Commission') of their intention to grant EUR 11,190,240 for an infrastructure project at the port of Katakolo.
- (2) Additional information was requested by letters of 27 November 2012, 18 February 2013 and 29 April 2013 and by e-mail of 30 May 2013 and 3 June 2013. The Greek authorities provided additional submissions by letters of 8 February 2013, 15 March 2013 and 27 May 2013 and by e-mails of 3 and 4 June 2013.

2. THE BENEFICIARY

- (3) The port of Katakolo is located in the region of Western Greece in Peloponnese. It is situated at a distance of 14 km from the city of Pyrgos and at 33 km from the archaeological site of Ancient Olympia. Other important archaeological sites of the region (Mycenae), the airport of Araxos, as well as the port and city of Patras, are within a distance of approximately 200 km from the port of Katakolo. The port is connected to the regional road and rail network.
- (4) According to the Royal Decree 14/19.1.1939 (Article 63(7))¹, subsequent Presidential Decree 195/2001², Law 2738/1999³ and Common Ministerial Decision

¹ FEK 24/A/1939.

² FEK 159/A/2001.

41414/01⁴, the usage and exploitation of the port of Katakolo has been conceded to the *Pyrgos Municipal Port Fund* ('PMPF'), a Greek public law legal entity.

- (5) At present, the port of Katakolo mainly serves as a *port of call* for cruise vessels, usually stemming from Italian *turnaround ports*.⁵ The cruise vessels usually dock in the morning and, after the conclusion of the visits to the nearby sites, depart for their next destination. The port can currently host the docking of up to 3 cruise vessels of approximately 200 metres length simultaneously. During 2011, the port received a total of 819.943 passengers from 429 cruise vessel dockings.
- (6) The cruise vessel traffic has significant annual seasonality, with the majority of vessel dockings taking place between April and November.
- (7) The port of Katakolo also has a marina with a capacity of 235 yachts. The operation and the capacity of the marina are not affected by the infrastructure works assessed under this notification.

3. THE NOTIFIED PROJECT

3.1. Objective

- (8) The Greek authorities have explained that the objective of the notified project is to improve the existing port facility, one of the few in that area and an important gateway to the EU for vessels stemming from the Eastern Mediterranean or the Black Sea. The port of Katakolo is currently used by cruise vessels, but it is not excluded that it may be used by other type of vessels in the future, such as light freight, if the circumstances and the relevant market change.
- (9) The specific objectives of the notified project are to improve docking conditions, the service provided to passengers (safety and comfort) and to increase the capacity of the port. In particular, the upgraded port will improve docking safety, which is affected by *sea swell*, a physical phenomenon caused by South-East winds, which can make docking unstable and even hazardous. Road and pedestrian safety will also be improved by the reconstruction of the surrounding areas and public spaces.
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- (10) In addition, the works will allow "new generation" vessels of 300 metres long to dock safely. It has to be noted that "new generation" vessels are already visiting Katakolo, but their docking is now affected by weather conditions, a factor that the PMPF wants to improve by extending the windward pier.
- (11) The upgraded port is also expected to promote the cultural heritage of the region to visiting passengers. It will also contribute to the economic convergence of the region with the rest of the EU, since tourism represents an important economic activity of the region of Western Greece, an assisted region under Article 107(3)(a) TFEU.⁶

³ FEK 180/A/1999.

⁴ FEK 1209/B/2002.

⁵ In the cruise industry, a "port of call" is a port where cruise passengers disembark for a short period of time, in order to visit a nearby site or area, and then embark again, in order to continue the cruise. This is opposed to the "turnaround port", where a cruise vessel may begin or end a cruise journey.

⁶ Commission decision C(2006) 3867 of 31.8.2006 on State aid N 408/2006 – Greece – Regional aid map 2007-2013.

- (12) With these works, the port of Katakolo is projected to increase gradually its capacity, reaching 1,250,000 passengers from 550 cruise vessel dockings by the year 2025.
- (13) 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'), under the *National Strategic Reference Framework* ('NSRF'), which is co-funded by the *European Regional Development Fund* ('ERDF').⁷
- (14) The upgrading of the port of Katakolo is included in the list of priority EU co-funded projects selected by the Greek authorities based on their maturity, size and impact on the Greek economy. The upgrading works are expected to start on the fourth quarter of 2013 and be concluded by 31 December 2015.

3.2. The works

- (15) According to the notification of the Greek authorities, the project will involve the following works:

Vessel docking infrastructure

- a. Extension of windward pier (south side) by 160 m;
- b. Extension of existing quay and construction of new quay wall in front of restaurants along the port (west side). The quay is envisaged to be extended by 8 m. length and 206 m. width. The quay wall is envisaged to be 63 m. long;
- c. Additional works on the existing main pier and construction of a new islet, extending the existing pier.

Passenger reception infrastructure

- d. Construction of a new building for passenger reception. The building will have two floors and will include a waiting room, eating area, computer room and a tourist information office;
 - e. Extension and renovation of an old warehouse, which will function as a free-entrance museum, hosting exhibitions related to the history of the region;
 - f. Construction of an open-air theatre, which will be used as a venue for theatrical plays and other cultural activities during the summer;
 - g. Reconstruction of surrounding areas and public spaces;
 - h. Construction of new building for port traffic and passport control, to be used by the port authority and the authorities in charge of public order.
- (16) A design of the port of Katakolo and the planned works can be found as an Annex to this decision.

⁷ 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.

3.3. New building for port traffic and passport control

- (17) It is noted that the construction of the new building for port traffic and passport control is not included in the notification, because the Greek authorities claim that this is not related to the economic activities of the port of Katakolo.
- (18) This building will have two floors and will house a passport control room, offices for authorities in charge of public order (Police), customs control, the office of the port master, the port operator and other similar facilities. The new building aims at complying with international standards and State obligations, such as the International Ship and Port Facility Security Code,⁸ the Schengen Agreement and other obligations related to free movement of goods and people. The existing installations do not meet the national and international standards for the performance of these activities. For instance, the Greek authorities have noted that currently there is no security and metal detection control on the handbags and other luggage, because there is no building available to house these activities.
- (19) Finally, no economic activity will be affected by the construction of that building.

3.4. Cost and financing

- (20) The total cost of investment under notification, i.e. excluding the new building for port traffic and passport control, is EUR 12,265,965. The Greek authorities have notified a total amount of EUR 11,190,240 for state aid assessment. Based on the notification, the detailed financing of the investment costs and the contribution of the involved parties is the following (rounded figures):

Table 1: Breakdown of costs and contributing party (in EUR)

Work	Total cost	State budget	ERDF funding through NSRF	Beneficiary's own contribution
a. Extension of windward pier	5,000,000	684,225	3,877,275	438,500
b. Extension of existing quay	1,000,000	136,845	775,455	87,700
c. Additional works on existing main pier	500,000	68,423	387,728	43,850
Engineer studies	260,000	35,580	201,618	22,802
d. New passenger reception building	1,995,298	273,047	1,547,264	174,988
d. Old warehouse	1,193,809	163,367	925,745	104,697
f Open-air theatre	888,249	121,552	688,797	77,899
g. Surrounding areas	1,428,609	195,498	1,107,822	125,289
Total amounts	12,265,965	1,678,536	9,511,704	1,075,725
		11,190,240		

⁸ Enacted by *Regulation (EC) No 725/2004 of the European Parliament and of the Council* of 31 March 2004 on enhancing ship and port facility security, OJ L 129, 29.4.2004, p.6.

- (21) The public financing will take the form of direct grants to PMPF, which will be given gradually as the upgrading works progress. The works shall be contracted following a public, open and non-discriminatory tender procedure, in compliance with EU and Greek public procurement law.
- (22) The Greek authorities have provided a financial and economic cost/benefit analysis for the notified project, as well as a financial calculation of the net present value of the notified investment. Over a reference period of 25 years, the project has a negative financial net present value (funding gap) of – EUR 10,166,284. The funding gap ratio, calculated as the ratio between the above-mentioned financial net present value of the project and the discounted total cost of the project, which is EUR 11,143,388, is of 91.23%.
- (23) This calculation indicates that the investment project is not financially sustainable and would not be concluded without significant public support, because over a period of 25 years the expected revenues would not cover the initial investment costs of the project.
- (24) PMPF will carry part of the investment costs as own contribution, which will amount to EUR 1,075,725. The State will contribute EUR 11,190,240. Out of that State contribution, EUR 9,511,704 will be ERDF resources, which corresponds to a co-financing rate of 85% of the eligible public expenditure. Overall, the Greek authorities have notified an aid intensity of 91.23%, i.e. the State resources as a percentage of the total costs eligible for a state aid assessment.

3.5. Competition context

- (25) The Greek authorities claim that the aid for the upgrading of the port of Katakolo shall not result in a substantial distortion of competition at European level, whereas it may even have a positive effect at the level of cruise travelling in the Mediterranean Sea in general. First of all, they maintain that the project will not increase the number of docking positions in the port of Katakolo. However, they admit that the upgrading will allow for the safe docking of larger vessels and may increase the season during which the port can safely be visited by large vessels, due to the improved safety (extension of windward pier). Indeed, as indicated in recital (12) above, with this project, the port of Katakolo shall increase its capacity and is expected to attain a total annual maximum of 1,250,000 passengers from 550 cruise vessel dockings by the year 2025.
- (26) Secondly, the Greek authorities have explained the particularities of the cruise market and the functions of *ports of call*. The port of Katakolo is mainly used by cruise vessels and is one of many *ports of call* in the Mediterranean Sea, one of the most important cruise regions worldwide. The Greek authorities further supported that, when certain ports in the Mediterranean Sea improve the level of services, this may have a positive effect on the other ports in the area, since it is the Mediterranean Sea in general that becomes a more attractive destination for cruises.
- (27) The Greek authorities also explained that the port of Katakolo is located at an ideal distance from certain Italian *turnaround ports* (Venice, Trieste, Genova, Rome-Civitavecchia) in order to offer a stop on the route between the Adriatic Sea and the Eastern Mediterranean.⁹ Cruise vessels stemming from those ports have a choice to

⁹ That is because, according to the Greek authorities a typical cruise vessel normally needs to dock at a *port of call* every 250-350 miles, which corresponds roughly to a 24-hour journey, and Katakolo is within this range of distance from the Italian turnaround ports.

stop either at Katakolo or the nearby ports of the Greek islands Zante (Zakynthos) and Kefalonia, but will not normally stop at other *ports of call* (such as Corfu, Dubrovnik or Split) that are closer to the port of departure.

- (28) Thirdly, with regards to the fees charged by the port of Katakolo, there are two categories: (i) port fees for passengers based on the initial ticket price, which are established by a national legal act¹⁰ and are applicable to all ports in Greece; (ii) docking fees for vessels, charged by the port of Katakolo (approx. EUR 600/vessel).
- (29) The notification of the Greek authorities indicates that the port fees for passengers (as per (i) above) are the same for all Greek Port Funds, and in particular the ports in competition with Katakolo, i.e. Zante (Zakynthos) and Kefalonia. The fees are not expected to be increased and, in any event, any change will be *erga omnes*.
- (30) The docking fees (as per (ii) above) are regulated horizontally by the Greek Ministry of Maritime Affairs, which is supervising all Greek Port Funds, such as the PMPF. In addition, the Greek authorities have argued that the docking fees charged by PMPF cannot not be considered as any indirect advantage to the port. This is because the docking fees in Katakolo are identical to the fees of its direct competitors and similar to the fees charged by other comparable ports of the EU. Furthermore, the port of Katakolo covers its operating costs through the revenue from the docking fees. Finally, the Greek authorities have clarified that the end users of the new infrastructure, i.e. cruise vessels and the companies operating them, will enjoy equal and non-discriminatory access to the new infrastructure.
- (31) In conclusion, despite the upgrading, the Greek authorities do not expect that the port of Katakolo will adversely distort competition, given in particular its geographical location and limited competition with nearby *ports of call*.

3.6. Cumulation

- (32) The Greek authorities have undertaken the commitment that the aid received for this project will not be cumulated with aid received from other local, national or EU sources for the same eligible costs.

4. ASSESSMENT

4.1. Existence of state aid

- (33) By virtue of Article 107(1) TFEU, 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (34) In order to conclude on whether state aid is present, it must therefore be assessed whether the cumulative criteria listed in Article 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of competition and effect on intra-EU trade) are met for each of the measures identified.

¹⁰ Presidential Decree 195, FEK 236/A/30.09.2005.

4.1.1. Existence of state aid at the level of the PMPF (the port authority)

4.1.1.1. Notion of undertaking

- (35) Pursuant to the legal acts described in recital (4) above, the PMPF is a public law entity which exploits the port of Katakolo and which will be responsible to carry out the notified project.
- (36) According to established Court jurisprudence,¹¹ 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. According to the *Leipzig-Halle* judgment,¹² the construction of an infrastructure which shall be commercially exploited constitutes an economic activity. Therefore the funding of the construction of such infrastructure falls within the scope of EU state aid rules. In the same line, the Commission recognised in a series of decisions that the construction and exploitation of port infrastructures is an economic activity.¹³
- (37) The notified project concerns the upgrade of infrastructures at the port of Katakolo, which are and will continue to be commercially exploited by the PMPF through the charging of fees for the docking of vessels. The PMPF is therefore considered to be an undertaking for the purposes of the construction and operation of the port infrastructures that will be exploited commercially.
- (38) The Greek authorities have also confirmed that it is the PMPF that currently operates and will continue to operate the port of Katakolo. Thus, the project will not entail any advantage to any other port-operating entity.

4.1.1.2. General vs. project-specific infrastructures

- (39) The Greek authorities considered that part of the expenses for this infrastructure project, and more specifically the expenditure for the new building for port traffic and passport control (see recital (15)h and section 3.3 above) is linked to the exercise of activities within the public remit by the PMPF and other authorities in charge of public order.
- (40) 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.¹⁴ This may concern expenses for

¹¹ 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.

¹² 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 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.

¹³ See e.g. Commission Decision C (2009) 9949 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 C (2011) 3052 final of 15/06/2011 in State aid case no. N 44/2010 *Public financing of port infrastructure in Krievu Sala*, OJ C 215 of 21.7.2011, p. 19; Commission Decision C(2012) 939 final of 22/02/2012 on State aid case no. SA.30742 (N/2010) *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.

¹⁴ 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.

performing tasks of ensuring security, safety, police services,¹⁵ or environmental protection functions – insofar as they are not an intrinsic part of a project with a commercial end. The financing of such activities has to be limited the costs to which they give rise and may not be used instead to fund other activities.

- (41) In the case at hand, the Greek authorities have explained that the construction of a new building for port traffic and passport control is necessary irrespective of the project upgrading the port of Katakolo. The new building aims at complying with international standards and State obligations, which are currently provided at a suboptimal level.
- (42) In addition, the Greek authorities have confirmed that the financing of such activities is limited to what is necessary for the establishment of the relevant installation and does not cover other economic activities of the port.
- (43) The Commission agrees with the assessment of the Greek authorities that indeed the construction of the new building for port traffic and passport control is not related to the port's economic activity. Therefore, public funding of these costs in question should not amount to state aid within the meaning of Article 107(1) TFEU, taking note of the fact that they only cover costs necessary for the activities under the public remit.

4.1.1.3.State resources and imputability

- (44) As indicated above, this project shall be financed partly through public resources, up to the total amount of EUR 11,190,240. The ERDF resources that shall be made available for co-financing this project are placed at the disposal of the Greek authorities, and in particular the relevant Managing Authority. Therefore, they amount to State resources.
- (45) As regards imputability to the State of the public financing mentioned above, 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. The notified funding for this project was directly chosen by, and is therefore imputable to the Greek State.

4.1.1.4.Selectivity

- (46) As the public financing is granted specifically to the PMPF, the measure is selective.

4.1.1.5.Economic advantage

- (47) In order to establish whether the public resources granted to the PMPF provide it with an economic advantage, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test). In this case, the Commission must assess if the public investment in the port infrastructure is likely to yield a rate of return that would be acceptable to a private investor acting in normal market conditions.
- (48) The Commission's Guide to the cost-benefit analysis of investment projects¹⁶ ('the Guide') suggests certain financial indicators to evaluate the financial sustainability of the investment, such as the financial net present value (FNPV).
- (49) In the case at hand, the financial data show a negative value of the FNPV, i.e. the expected revenues do not cover the investment costs of the project. Given the

¹⁵ Case C-343/95 *Diego Cali & Figli* [1997] ECR-I-1547.

¹⁶ See http://ec.europa.eu/regional_policy/sources/docgener/guides/cost/guide02_en.pdf

results of the financial analysis provided by the Greek authorities, it must be concluded that the investment would not have been undertaken by a private investor. Therefore, the notified measure provides PMPF with an advantage that it would not have received under normal market condition.

- (50) Therefore, in the light of the above and of the fact that the Greek authorities do not claim that the market investor test is met, it must be concluded that in this case the State did not act as a market investor, and the measure confers an economic advantage to the PMPF.

4.1.1.6. Distortion of competition and effect on trade

- (51) 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 intra-Union trade, then there is at least a potential effect on trade between Member States and on competition.¹⁷
- (52) Following the information provided by the Greek authorities (see recital (25) above), the Commission concludes that the upgrade results in an increase in capacity for the port of Katakolo. In particular, it is expected to attain a total annual maximum of 1,250,000 passengers from 550 cruise vessel dockings in the year 2025. Although the port of Katakolo is not expected to increase its current market share and notwithstanding the specificities of the cruise market, the added transport capacity of the port of Katakolo may nevertheless affect both competition and intra-Union trade, as different ports in several Member States are at least potentially in competition with the port of Katakolo to attract traffic.
- (53) According to the Greek authorities, the cruise traffic in the Mediterranean Sea may be increased overall, when the infrastructure of any port of call is improved, whereas only a few ports are in direct competition with the port of Katakolo. However, the Commission notes first that the above confirms that the aid will have an effect on the cruises market and second that this cannot mitigate the fact that the port of Katakolo will be strengthened vis-à-vis certain competitors, by having upgraded infrastructure. Thus, the measure has the potential to distort competition and affect trade between Member States.
- (54) The Greek authorities have undertaken the commitment that, if they grant the concession for the operation of (part of) the port of Katakolo to another entity in the future, this will be done through an open, transparent and non-discriminatory tender. No such plans exist at this stage.

4.1.2. Existence of aid at the level of port users

- (55) With regard to the end users of the new infrastructure, cruise operators, the Commission observes that they shall enjoy equal and non-discriminatory access to the new infrastructure.
- (56) The Greek authorities have provided evidence that the docking fees charged by PMPF are similar to the fees charged by other comparable ports in the EU and allow PMPF to cover its operating costs. This is an indication that the docking fees charged by PMPF do not provide an undue advantage to the users of port of Katakolo. Indeed, a port authority would choose to charge docking fees to cover its operating costs.

¹⁷ 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.

- (57) Moreover, the docking fees charged by PMPF are equal to the docking fees charged by its immediate possible competitors, i.e. the ports of Zante (Zakynthos) and Kefalonia. As explained in recitals (30)-(31) above, the level of the docking fees for these three ports is centrally regulated, thus, based on the information provided, it will not be possible for Katakolo to change its fees unilaterally and thus potentially provide an advantage to its users. Thus, in the present case that Commission concludes that the notified measure does not grant an advantage to the end users.
- (58) In the light of the above the Commission concludes that there will be no advantage in favour of end users.

4.2. Compatibility of the aid

- (59) Insofar as the measure identified above constitutes state aid within the meaning of Article 107(1) TFEU, its compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.
- (60) The Greek authorities have argued that the notified measure is compatible under 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 found compatible with the internal market". The Commission observes that, according to established practice,¹⁸ the appropriate legal basis for assessing compatibility of the State aid to port investment projects is indeed Article 107(3)(c) TFEU.
- (61) It should therefore be examined if the notified public funding meets a clearly-defined objective of common interest, is necessary and proportional to this objective, and does not affect competition and intra-EU trade to an extent contrary to the common interest.

4.2.3. Objective of common interest

- (62) At the time of the notification, the Commission had laid out its strategic goals for the European maritime policy in the 2009 *Communication on Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018*,¹⁹ identifying key areas, where action by the EU would strengthen the competitiveness of the sector while enhancing its environmental performance. The Commission underlined in particular that port infrastructures should ensure the exploitation of the full potential of short-sea shipping and sea transport services for business and citizens in Europe. In that respect, the Communication concluded that providing new port infrastructure as well as improving the use of existing capacities, including for ferries and cruise ships, was essential to ensure that ports can cope efficiently with their gateway and connection functions.
- (63) The Commission notes that, following the afore-mentioned 2009 Communication, it has now adopted the *Communication Ports: an engine for growth*,²⁰ in the context of a new initiative to improve port operations and onward transport connections at 319 key seaports along Europe's coastline. In that respect, the Commission identified the main challenges faced by the sector of maritime ports,

¹⁸ See the recent Commission Decisions on port infrastructure projects cited in footnote 5.

¹⁹ Communication of 21 January 2009, COM(2009) 8 final

²⁰ Brussels, 23.5.2013 COM(2013) 295 final, available at http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/05/ports_en.htm

including the need for ports to adapt to new technical requirements, dictated by new types of vessels or updated environmental standards.

- (64) The Greek authorities have explained that the upgrading of the port of Katakolo will contribute to the safer docking of the "new generation" of cruise vessels (300 m.), especially when weather conditions are not calm. It will also contribute to safe disembarkation and embarkation of passengers and improve the level of service and comfort provided to passengers.
- (65) In addition, the upgraded port of Katakolo will serve as an infrastructure, which can potentially serve other maritime purposes, depending on the future demand in the relevant markets.
- (66) As regards other EU objectives, the Greek authorities have provided evidence that the upgrading of the port of Katakolo will be beneficial for the connectivity of the region of Western Greece and possibly the entire area of the Mediterranean Sea. It will also contribute to the economic convergence of the region with the rest of the EU, since tourism represents an important economic activity of the region of Western Greece, an assisted region under Article 107(3)(a) TFEU. The economic, social and territorial cohesion are EU objectives recognised by Articles 174-178 TFEU.
- (67) The above elements demonstrate that the project contributes to objectives of common EU interest and in particular the EU maritime transport policy and the economic convergence and cohesion. This is because the upgrading of the infrastructure will allow a better exploitation of sea transport services and in particular the cruise industry, while supporting the regional development.

4.2.4. Necessity of the aid

- (68) As explained above, the negative FNPV of the overall project shows that the net revenues to be derived over a period of 25 years do not remunerate the investment costs. It is consequently very unlikely that any market investor would be willing to finance the PMPF for undertaking this project. In addition, the Commission has consistently accepted that port infrastructure projects require considerable capital investments that can only be recovered in the very long term, and their economic viability may not normally be ensured without public funding.²¹
- (69) It is furthermore noted that the works on the project have not started prior to the application for obtaining public funding and the financial projections show that the investment would not be realised in the absence of State aid (see recital (14) above).
- (70) Therefore the public funding is necessary and has incentive effect, insofar as it enables the PMPF to undertake an investment project that, in the absence of the public support, neither the PMPF nor any other market investor alone would have undertaken.

4.2.5. Proportionality of the aid

- (71) As regards proportionality (i.e. keeping public funding down to the minimum necessary) an aid intensity of 91.23% appears relatively high. For instance, in the recent case on the port of Klaipeda, the aid intensity assessed by the Commission

²¹ See the recent Commission Decisions on port infrastructure projects cited in footnote 5.

was at the level of 65%. Similarly in the case of the Augusta Port, the aid intensity was 68.9%.²²

- (72) However, it needs to be stressed that the aid intensities of different infrastructure projects at different ports are not directly comparable. The necessity for public funding for each project is in 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 specific infrastructure project.
- (73) In the case at hand, the Greek authorities have explained that the projected revenues are affected by the fluctuations of the traffic during the year, as well as the fact that even large cruise vessels (in tonnage) carry a limited number of passengers. This is different to the case of freight ports, where the vessels generate much higher revenue as a function of their tonnage. This means that the infrastructure under notification has on the one hand high initial cost but there is no balanced demand all year long and the targeted market does not provide sufficient revenue.
- (74) It should in any event be noted that the public funding provided for this project is in line with the funding gap ratio identified for the project, namely of 91.23%. Therefore the aid is limited to what is necessary in order to make the project feasible.
- (75) In addition, the fact that the design and constructions works for the project shall be contracted following public, open and non-discriminatory tender, and that the economically-most-advantageous offer shall be chosen, is also an indication that the public financing shall be kept to the minimum necessary and may possibly be reduced, as a result of discounts by the bidding contractors.
- (76) In this context, it should be observed that the PMPF shall contribute EUR 1 million from its own resources for this project.
- (77) Furthermore, the Commission has already observed in recitals (56)-(59) above that there will be no advantage to the end users of the port.
- (78) In the light of the above, the Commission concludes that the aid to the PMPF for the upgrading of the port of Katakolo infrastructure is proportional.

4.2.6. Distortion of competition and effect on intra-EU trade

- (79) With this project, the port of Katakolo will upgrade its infrastructure, which will allow it to receive larger vessels in a safer manner and for an extended period during the year. This will subsequently increase its capacity. As indicated in recital (25) above, the port of Katakolo is not expected to increase its market share, but the project has the potential to distort competition. The main attraction of traffic to the port of Katakolo is not the infrastructure of the port itself, but rather its location and the nearby archaeological sites, which are factors not affected by the upgrading project. Finally, the docking fees charged by the port will not become more attractive for visiting vessels.
- (80) In light of the above, it is therefore very unlikely that the additional capacity created with this project will allow the port of Katakolo to acquire a significant share in the relevant market as a *port of call*.

²² Ibid.

- (81) Moreover, as the Greek authorities pointed out, it also needs to be taken into account that there is a potential positive effect for the cruise market of the Mediterranean Sea in general, which will benefit from the improved infrastructure in the region.
- (82) The above elements allow the Commission to conclude that the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

4.3. Conclusion

- (83) On the basis of the foregoing findings, the Commission concludes that the notified measure constitutes state aid. However, the aid totalling EUR 11,190,240 is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to the PMPF is not disproportionate, and the aid does not affect competition and intra-EU trade to an extent that would be contrary to the common interest. On these grounds, the Commission concludes that the aid is compatible with the Treaty under Article 107(3)(c).

5. DECISION

The Commission has accordingly decided that the public financing totaling EUR 11,190,240 for the upgrading of the infrastructure at the port of Katakolo constitutes State aid within the meaning of Article 107(1) of the Treaty. The aid is however compatible with the Treaty under Article 107(3)(c) of the Treaty.

This Decision is without prejudice to any possible scrutiny under environmental or Structural Funds rules. Similarly, the Decision does not prejudice 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/eu_law/state_aids/state_aids_texts_en.htm.

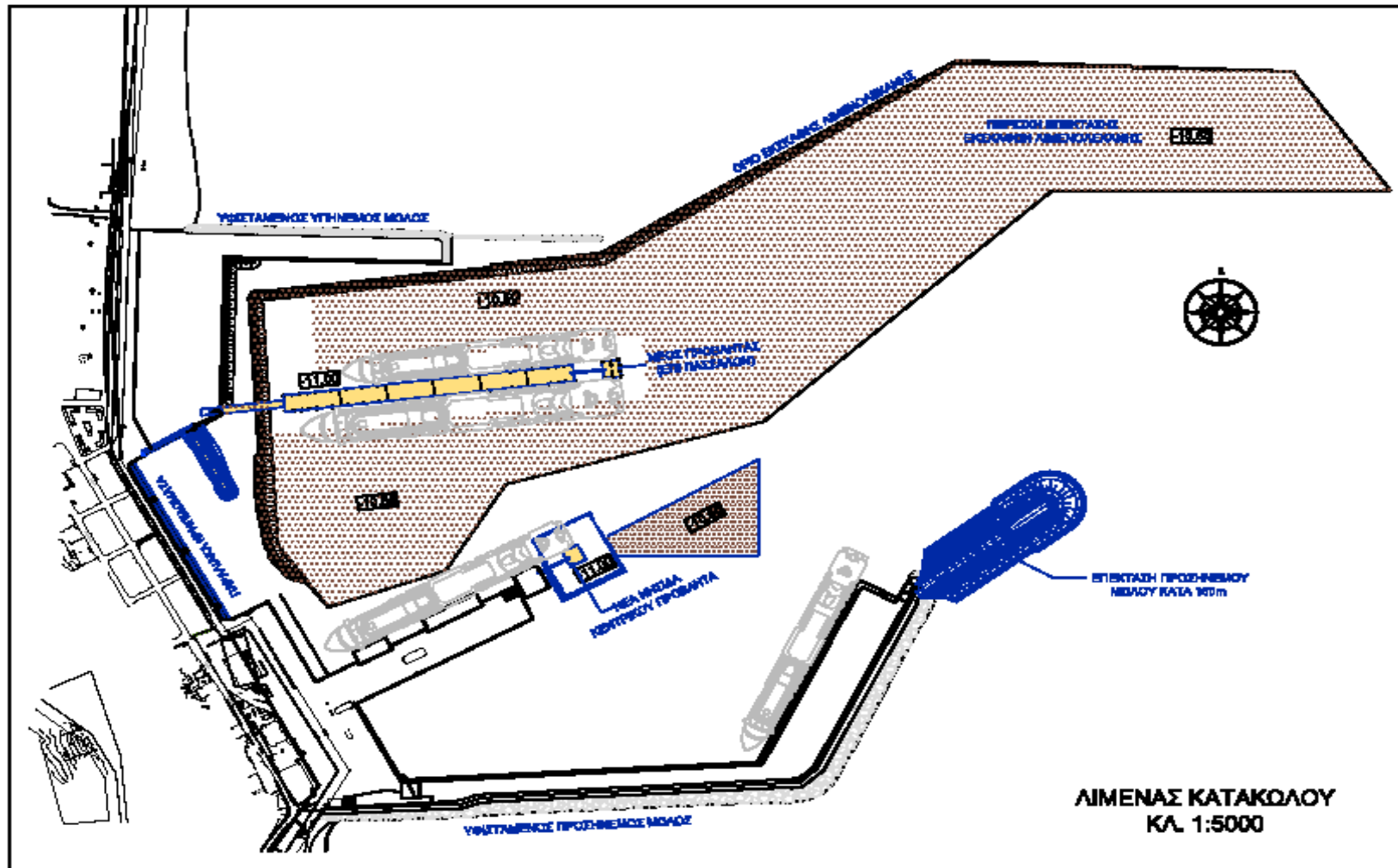
Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Greffe
B-1049 Brussels
Fax No: +32 (0)2 2961242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president

Annex: Design of the upgrading project of the port of Katakolo provided by the Greek authorities. The design includes an envisaged third pier, which is not part of this upgrading project under notification.



INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

Factsheet for publication in the OJ, C series

Authorisation for State aid pursuant to Articles 107 and 108 TFEU

Cases where the Commission raises no objections

Text with EEA relevance

Date of adoption of the decision		
Aid number	SA.35738 (2012/N)	
Member State	Greece	
Region	DYTIKI ELLADA	Article 107(3)(a)
Title (and/or name of the beneficiary)	ΑΝΑΒΑΘΜΙΣΗ ΛΙΜΕΝΟΣ ΚΑΤΑΚΩΛΟΥ	
Legal basis	<p>A. Ο Νόμος 3669/2008 περί κατασκευής δημοσίων έργων</p> <p>B. Ο Νόμος 3614/2007 «Διαχείριση, έλεγχος και εφαρμογή αναπτυξιακών παρεμβάσεων για την προγραμματική περίοδο 2007-2013» (ΦΕΚ 267/Α/3.12.2007)</p> <p>Γ. Το Π.Δ. 195/2001 με βάση το οποίο μεταφέρονται οι αρμοδιότητες του Λιμενικού Ταμείου Κατακώλου στον Δήμο Πύργου και συστήνεται Ν.Π.Δ.Δ. το οποίο φέρει την επωνυμία «Δημοτικό Λιμενικό Ταμείο Πύργου» και εποπτεύεται από το Δήμο Πύργου</p> <p>Ε. Η με αριθμό πρωτ.: 4033/02-10-2012 Απόφαση Ένταξης της πράξης «ΕΚΤΕΛΕΣΗ ΣΥΜΠΛΗΡΩΜΑΤΙΚΩΝ ΕΡΓΩΝ ΣΤΟΝ ΛΙΜΕΝΑ ΚΑΤΑΚΩΛΟΥ: Α΄ ΥΠΟΕΡΓΟ: ΕΠΕΚΤΑΣΗ ΠΑΡΑΛΙΑΚΟΥ ΚΡΗΠΙΔΩΜΑΤΟΣ ΕΜΠΡΟΣΘΕΝ ΚΑΤΑΣΤΗΜΑΤΩΝ, Β΄ ΥΠΟΕΡΓΟ: ΕΠΕΚΤΑΣΗ ΠΡΟΣΗΝΕΜΟΥ ΜΩΛΟΥ ΚΑΙ ΚΕΝΤΡΙΚΟΥ ΠΡΟΒΛΗΤΑ ΜΕ ΚΑΤΑΣΚΕΥΗ ΝΗΣΙΔΑΣ ΠΑΡΑΒΟΛΗΣ» στο Επιχειρησιακό Πρόγραμμα ΔΕΠΠΝ 2007 -2013.</p> <p>Ζ. Η Πρόσκληση της Διαχειριστικής Αρχής του Επιχειρησιακού Προγράμματος Επιχειρηματικότητα και Ανταγωνιστικότητα» με Α.Π. ΤΟΥΡ1 (Α.Π. ΕΥΔ ΕΠΑΕ 7702/Β1/ΑΡ-3/2895/04.07.08), όπως τροποποιήθηκε (Α.Π ΕΥΔ ΕΠΑΕ 4846/946/Α2/23.09.11) (αφορά τις υπόλοιπες κτιριακές υποδομές του λιμένα). ...</p>	
Type of measure	Ad hoc aid	Pyrgos Municipal Port Fund
Objective	Other, Regional development	
Form of aid	Direct grant	
Budget	Overall budget: EUR 11,19 (in millions)	
Intensity	91.20 %	
Duration (period)	From 31.12.2013	
Economic sectors	Sea and coastal passenger water transport	
Name and address of the granting authority	<p>ΕΝΔΙΑΜΕΣΗ ΔΙΑΧΕΙΡΙΣΤΙΚΗ ΑΡΧΗ ΔΥΤΙΚΗΣ ΕΛΛΑΔΑΣ</p> <p>Ν.Ε.Ο. Πατρών – Αθηνών 28, 26441 Πάτρα</p> <p>ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ</p>	

	Μεσογείων 56, 11527, Αθήνα
Other information	-

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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