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**Subject:** **State aid SA.36877 (2013/N) – Greece –**

***Reset of Greek Motorway concession projects - Aegean Motorway S.A. –***

Sir,

## 1. PROCEDURE

(1) Following informal contacts, by SANI notification of 20 June 2013 the Greek authorities notified to the Commission a series of measures amending the concession agreement regarding the Aegean Motorway project.

(2) Additional information was requested by e-mail of 4 July 2013 and letters of 5 August 2013 and 8 November 2013. The Greek authorities provided additional information by e-mail of 8 July 2013 and letters of 5 September 2013 and 25 November 2013 and clarifications by e-mails between 25 November and 2 December 2013.

(3) By their letter of 3 September 2013, the Greek authorities informed the Commission that in the interest of adopting the present decision as soon as possible, they accept that the decision is adopted in English.

## 2. DESCRIPTION

### 2.1. THE PROJECT

(4) The Aegean motorway project concerns:

a. The design, construction, operation, maintenance and exploitation of a new 26 km motorway linking Tempi (Evangelismos) to Skotina;

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b. The upgrading of the existing national road from the Evangelismos I/C to Leptokaria I/C, emphasising road safety and environmental issues; and

c. The upgrading of the PATHE motorway sections: Raches-Evangelismos, Rapsani-Platamonas and Skotina-Kleidi.

(5) The project is divided in two distinct periods: a) the design-and-construction period ("T1"), which includes the design and construction of the new infrastructure together with the operation, maintenance and management of traffic of the existing motorway; and b) the operation period ("T2"), which includes the operation and maintenance of the whole infrastructure.

(6) Aegean motorway is part of the priority projects of the TEN-T network, which connects Greece to the rest of the EU[1], and as such it will improve the connectivity of Greece with the rest of the EU. In particular, the Aegean motorway is part of the Pan-European Corridor IV (Patra-Athens-Thessaloniki-Sofia-Budapest-Prague-Nuremberg-Dresden) and part of Priority Axis No.7 (Patras/Igoumenitsa-Athens-Sofia-Budapest/Bucharest-Constanta). Given the condition of the existing network currently serving the traffic in the region, the Greek authorities have argued that the project will significantly improve traffic speed, capacity and safety and will provide an improved interconnection with other modes of transport, especially ports. In particular, the motorway will connect the following: a) the regions of Macedonia and Thessaly, which include three major cities, Thessaloniki (the country's second largest city and a major port), Patras and Larissa; to b) Athens and Piraeus (the country's capital and major sea port, respectively).

(7) Finally, the Greek authorities estimate that the construction and operation of Aegean will have significant positive effects on the Greek economy, as it is expected to improve competitiveness, create direct (through the construction) and indirect (through improved mobility) employment and boost growth. This is supported by a study prepared by the Greek Foundation for Economic and Industrial Research.

(8) The Greek authorities provided a cost/benefit analysis for the notified project, and an analysis based on the Financial Net Present Value ("FNPV") method[2]. Over a reference period of 30 years, the project has a negative financial net present value ("FNPV") of minus EUR 860.3 million with a discount rate of 6%. The funding gap ratio[3] is 74%[3]. This analysis indicates that the project is not financially sustainable without public support.

[1] Decision No 66/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network , OJ L 204, 5.8.2010, p.1.

[2] The Financial Net Present Value is calculated as the difference between the discounted investment costs and the discounted net revenues to be obtained for the project during the given reference period (which for the project at stake is of 30 years).

[3] The funding gap ratio is defined as the ratio between the Financial Net Present Value of the project (calculated as the difference between the discounted investment costs and the discounted net revenues to be obtained for the project during the given reference period, which for this project is of 30 years) and the discounted total costs of the project ().

### 2.2. THE BENEFICIARY

(9) The construction and operation of the above project were conceded in 2007, through an open tender, to a purpose-made SPV, the *Aegean Motorway S.A.* ("Concessionaire"). The Concessionaire has the following shareholders (Greek and international construction firms): Hochtief PPP Solutions GmbH (35.00%), Ellaktor SA (20.00%), J&P Avax SA (16.25%), Vinci Concessions SAS (13.75%), Aegek SA (10.00%) and Athina SA (5.00%).

### 2.3. CONTEXT OF THE MEASURES

#### 2.3.1. The original concession agreement

(10) The agreement for the construction and operation of the above project ("the original concession agreement") was signed between Greece and the Concessionaire on 28 June 2007 and ratified by Law 3605/2007[4].

(11) The original concession agreement has the form of Public-Private Partnership for Building, Operating and Transferring back (B-O-T) the motorway for a 30 year period from March 2008 to March 2038. According to the concession agreement, the construction during T1 of the Aegean motorway was envisaged to be financed both by private and public sources. The public sources were: a) a State Financial Contribution ("SFC") of EUR 296 million; and b) motorway revenues of EUR 305 million[5] collected from the parts of the motorway already in operation (such as the section Raches-Kleidi). The private sources were: a) long term loans of EUR 571 million; and b) equity by the Concessionaire of EUR 136 million. The loans were provided by a group of 14 foreign and Greek banks[6]. The loans would be drawn progressively during T1 and would be repaid during T2 period.

(12) In addition, according to the concession agreement, during T2 the Greek State would receive part of the motorway revenues and part of the Concessionaire's profits.

#### 2.3.2. The 2008 decision

(13) The concession was the subject of a decision of the Commission on 30 January 2008 finding that no state aid was involved[7].

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[4] Government's Gazette FEK A 190 of 8 August 2007.

[5] Revenues stemming from tolls, Motorist Service Stations and deposit interest.

[6] ING Bank (9.98%), Dexia Credit Local (8.99%), Depfa (8.98%), KBC Finance Ireland (6.65%), Mizuho Corporate (6.65%), KfW-IPEX Bank (2.50%), Calyon (2.33%), Société Générale (0.83%), Piraeus Bank (9.98%), Alpha Bank (9.98%), NBG (10.81%), Geniki Bank (9.15%), EFG Eurobank (8.98%) and Emporiki Bank (4.16%).

[7] N 633/2007, OJ C 70, 15.3.2008, p. 6.

### 2.3.3. Construction suspension and renegotiation

(14) The construction works have been partially suspended since June 2011 and have since been advancing at a reduced rate. As of January 2013 the works stood at 70% of the total motorway length, including the upgrading parts. The Greek authorities have submitted that the main cause for this suspension was the decline in the motorway's revenues, forecasted to be equal to 52%, due to the worsening economic conditions in Greece, notably the 25% decline of GDP since 2008 and increasing of unemployment rate, which in February 2013 reached 27%. In addition, public unrest led to demonstrations and the occupation of toll booths, with the subsequent inability of the Concessionaire to collect tolls on certain occasions.

(15) According to the Greek authorities, as a result of the loss of revenue brought about by the crisis, the contractually specified loan cover ratios of the project (i.e. the minimum levels of debt servicing by the lenders to continue lending to the project) were breached. At the same time, the financial institutions involved faced lack of liquidity and a steep increase in their funding costs. The above led the lenders of the project to cease providing funding to the Concessionaire as they no longer believed in its viability (the "draw stop").

(16) According to the Greek authorities, the project has also faced significant judicial and administrative delays, linked mainly to environmental permits, archaeological excavations and expropriation procedures. The draw stop combined with these judicial and administrative delays resulted in an overall delay of the construction period of 2.7 years.

(17) As a result of the suspension period, the construction of the Aegean motorway was delayed by 2.7 years. In this context, since the works were suspended for reasons imputable to one of the contractors, the time for finishing the works is extended appropriately and thus the completion deadline of the construction is prolonged by 3 years, from December 2012 to December 2015, although this does not have an impact on the overall duration of the concession agreement.

(18) The Greek authorities have also explained that a termination of the concession agreement would have an adverse impact on the Greek budget, delay economic recovery and compromise the allocation of structural funds (past and future) to the project, and was therefore not a viable option.

(19) The concession's terms were therefore the subject of renegotiations between the Greek State, the Concessionaire and the lending banks, in order to ensure that the project has a sustainable financial basis and that the construction works can be finalised, on the basis of revised traffic estimates. On the basis of these renegotiations, a final agreement between the State and the Concessionaire was signed on28 November 2013. The result of these negotiations is referred to hereafter as the "Reset". The Greek authorities have undertaken to only implement the agreement after the Commission has adopted its decision regarding the state aid.

(20) The Greek authorities have explained that three other motorways, which were tendered at approximately the same period as the Aegean motorway and had similar funding mechanisms, are facing similar problems. These are the Ionia

motorway, the Olympia motorway and the Central motorway. Measures related to these three motorways are the subject of separate Commission decisions[8].

## 3. THE NOTIFIED MEASURES

### 3.1. New conditions on financing by financial institutions

(21) As explained in paragraph (15) above, the breach of the project's coverage ratios due to lower than expected Motorway revenues, in addition to the severe lack of liquidity and steep increase in the funding costs of financial institutions, led to a draw stop. It is noted that the lending financial institutions were not under an obligation to keep providing funding if the latter's repayment was uncertain

(22) As a result, the following changes in lending conditions were agreed between the Concessionaire and the financial institutions:

a. reduction of committed amounts of loans by EUR 260 million (from EUR 571 million to EUR 311 million);

b. reduction of average duration of loans by approximately 7 years;

c. increase of margins by 300-400 points.

### 3.2. The State support measures

(23) Greece notified to the Commission under Article 108 (3) TFEU the following support measures stemming from the Reset:

a. in T1, settlement of contractual obligations (measure 1);

b. also in T1, additional State grants to cover the financing gap in construction (measure 2); and

c. in T2, recycling of T2 payments to the State (measure 3).

#### 3.2.1. Measure 1: Settlement of contractual obligations

*Compensation for claims*

(24) During the construction period, the State had the contractual obligation to undertake the necessary administrative actions and clearances for ensuring the availability of the construction sites (including expropriations, archaeological investigations, environmental permits and the relocation of public utility network). The original concession agreement allocated risks associated with delays in obtaining vacant possession entirely to the Greek State.

(25) The judicial and administrative delays, linked mainly to environmental permits, archaeological excavations and expropriation procedures (see paragraph 16 above), have thus resulted in claims of EUR 202.9 million by the Concessionaire against the State. Those claims were related to loss of revenue (due to e.g. late payment of SFC or inability to increase toll rates), as well as additional costs and expenses caused by the above delays (such as additional transportation costs due to non-availability of construction site). Those claims have been reviewed separately by

[8] SA. 36894 Ionia motorway, SA.36878 Olympia Odos motorway and SA.36893 Central motorway (E65).

independent engineers, auditors and the Greek administration, on the basis of supportive detailed documentation. As a result, the Greek administration has accepted to pay a final compensation of EUR 117.1 million, on the basis of identifiable and non-contested contractual grounds.

### 3.2.2. Measure 2: Additional State Financial Contribution

(26) The Aegean motorway project has a financing gap of EUR 401 million in T1, due mainly to lower revenues compared to initial estimations[9]; a decrease in the loans; and an increase in financial costs combined with an increase in construction costs. The breakdown of the financing gap of the Aegean motorway in T1 is depicted in Table 1 below:

| Table 1: Financing gap of T1 (in EUR million) | | | |
|---|---|---|---|
| **Sources** | **Initial concession** | **Reset** | **Difference** |
| Revenue | 305 | 361 | 56[10] |
| Loans | 571 | 311 | (260) |
| SFC | 296 | 296 | 0 |
| Claims of concessionaire | 9 | 103[11] | 94 |
| Other State funds[12] | 0 | 169 | 169 |
| Concessionaire's equity | 136 | 206 | 70 |
| **Total sources** | **1 446** | **1 317** | **(129)** |
| **Uses** | **Initial concession** | **Reset** | **Difference** |
| Construction costs | 885 | 1 089 | 205 |
| Expenses (working capital, operating and maintenance) | 172 | 368 | 196 |
| Net Working Capital variations | 114 | 99 | (15) |
| Financing cost (incl. interest cost | 123 | 290[13] | 167 |

[9] Motorway revenues appear higher at Reset when compared to initial concession in the table above, due to the extension of T1 by 3 years, however, on a like-to-like comparison, the Greek authorities have explained that the revenues are calculated as 38% lower than at the initial concession

[10] Se footnote 9 : Increase stemming from the extension of T1 by 3 years according to the Greek authorities, under the assumption that T1 would end as originally foreseen, i.e. by 31 December 2012, revenues at Reset would be lower by EUR 117 million (by 38%).

[11]. The Greek authorities have explained that the amount of EUR 103 million does not reflect the full amount of claims payments, described in paragraph 25 above. That is because part of the claims payments by the State is given directly to the Construction Joint Venture passing through the Concessionaire.

[12] Funds for the construction of an emergency lane, agreed in 2009 on the basis of existing contractual provisions (i.e. provisions which were part of the Initial concession).

| | | | |
|---|---|---|---|
| and fees) | | | |
| Corporate tax | 23 | 1 | (21) |
| **Total uses** | **1 317** | **1 847** | **530** |
| **Financing gap** | | | **401** |

(27) The Greek authorities have explained that the above financing gap will be covered with an additional State Financial Contribution (additional SFC), which will come from Structural Funds (EUR 180 million) and part of a loan from the European Investment Bank (EIB) to the State which will be passed on from the State to the Concessionaire, as a grant (EUR 221 million), with the reservation that this amount may change marginally only as regards the costs for swap breakage.[14]

(28) A claw-back mechanism is introduced, whereby, if the total amount of the funds available to cover the cost of T1 exceeds the amount of the T1 cost, then the additional SFC will be reduced by the respective amount. The reduction will be effective at the last payment of the additional SFC.

### 3.2.3. Measure 3: Recycling of T2 payments to the State

(29) According to the original concession agreement, the revenues and profits from the toll proceeds in T2 were shared between the Greek State and the Concessionaire. Under the Reset, Greece proposes a mechanism whereby the share of payments to the State deriving from the operation of the Aegean motorway will be put at the disposal of the Concessionaire, in case that the motorway's revenues are not enough to cover the Concessionaire's costs and a certain profit. This measure is hereafter referred to as the "recycling mechanism".

(30) In the context of this recycling mechanism, the revenues originally attributed to the State will serve the eligible costs and base IRR of the Aegean motorway, as follows:

a. Certain eligible costs (e.g. operating and maintenance costs);

b. Debt servicing;

c. Income tax payment;

d. Base IRR of 6%;

e. A Shared IRR between the Concessionaire and the State.[15]

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[13] Includes swap breakage cost of EUR 98 million, as calculated by the Greek authorities on 8 November 2013. The final amount can only be calculated on the date of entry into force of the Reset, because the valuation depends on market interest rates on the date, on which it becomes effective.

[14] As explained in footnote 13, the exact amount of the financing gap depends on the final amount of the swap breakage costs, which will only be known on the day of entry into force of the Reset.

[15] If the amounts are sufficient for the first three elements, a Shared IRR will be paid to the Concessionaire and to the State, according to the following sequence (nominal terms):

a. A Shared IRR in excess of the Base IRR and up to 7% to be shared at a ratio of 10:90 between the Greek State and the Concessionaire;

b. An additional Shared IRR above 7% up to 8.5% to be shared at a ratio of 30:70 between the Greek State and the Concessionaire;

(31) The Greek authorities forecasted that an amount of EUR 1 112 million of revenues that originally should have benefitted the State will finance the recycling mechanism of the Aegean motorway. This amount is based on projections of traffic and is therefore indicative.

(32) In the event that one year before the expiry of the contractual duration, the anticipated IRR of the whole concession period is below the "Effective IRR"[16], of 11.8%, then the overall concession period will be extended by 3 years, if requested by the Concessionaire. The Effective IRR is the target rate of the Concessionaire's sponsors. It is considered by the Greek authorities as acceptable and proportionate, given the current economic conditions in Greece.

### 3.3. Cumulation

(33) The Greek authorities commit 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

(34) 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.

(35) Greece only notified to the Commission the new State support measures deriving from the Reset, considering these measures as being distinct from the measures assessed under the Commission's 2008 decision.

(36) In order to establish whether the notified measures under the Reset can be separated from the ones previously approved by the Commission (cf. 2008 decision), the Commission refers to relevant jurisprudence, in order to determine whether the assessment of the existence of aid should be limited only to the new measures under notification or whether it should include the entirety of the State contributions stemming from both the original concession agreement, and the Reset.

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c. An additional Shared IRR above 8.5% up to 10.5% to be shared at a ratio of 50:50 between the Greek State and the Concessionaire;

d. Any additional Shared IRR above 10.5% to be shared at a ratio of 70:30 between the Greek State and the Concessionaire.

[16] The Effective IRR is the amount of the nominal IRR after taxation of the concessionaire and before taxation of the latter's shareholders. The IRR of an investment is the discount rate at which the net present value of costs of the investment equals the net present value of the benefits (positive cash flows) of the same investment.

(37) According to the jurisprudence[17], the following non-exhaustive list of elements should be taken into account when determining whether a given measure can be reasonably separated from the previous ones: a) the chronology of each measure; b) its purpose; and c) the financial and risk situation of the beneficiary.

(38) In the case at hand, the Commission notes that the Reset takes place almost five years after the original concession agreement, therefore, there is a significant time-difference between the original concession agreement and the measures included in the Reset. The Commission also notes that the notified measures serve the same purpose as the previous ones, i.e. the financing of the construction and operation of the motorway. Finally, the Greek authorities have explained that the measures under notification are being implemented because the beneficiary's situation deteriorated significantly, due to the significant recession of the Greek economy and the inherent financial problems with the project. This situation could not be foreseen at the time of the signing of the concession agreement.

(39) In light of the above, the Commission shares the Greek authorities' conclusion that, although the notified measures serve the same general purpose as the measures assessed in 2007 decision, i.e. the financing of the construction and operation of the motorway, the notified measures can reasonably be separated from the measures assessed under the 2007 Commission decision.

(40) 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 as well as potential distortion of competition and effect on trade between Member States, are met for each of the notified measures.

#### 4.1.1. Existence of aid at the level of the Concessionaire

##### 4.1.1.1. Notion of undertaking

(41) The Concessionaire is a private law company, which is responsible for constructing and subsequently operating and exploiting the infrastructure in question. According to established Court jurisprudence[18], 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[19], the construction of an infrastructure which shall be commercially exploited constitutes an economic activity. Since this is the case for

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[17] Joined Cases C-399 10 P and C-401 10 P Bouygues SA, Bouygues Télécom SA v Commission. Also judgment of the Court of First Instance of 15 September 1998 in case T-11/95 – BP Chemicals Limited v Commission of the European Communities (BP Chemicals), [1998] ECR II-3235.

[18] See e.g. Case C-41/90 *Hofner and Elsner* [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.

[19] Joined cases T-455/08 *Flughhafen 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.

the Aegean motorway, the funding of the construction and subsequent operation of such infrastructure falls within the scope of EU state aid rules.

(42) Since the Aegean motorway will be commercially exploited by the Concessionaire, the latter is therefore considered to be an undertaking for the purposes of state aid assessment.

#### 4.1.1.2. Measures in T1

##### *4.1.1.2.1. Measure 1: Settlement of contractual obligations*

*Compensation for claims*

(43) The Commission notes that the payments for claims referred to in paragraphs (24)-(25) above have been reviewed separately by independent engineers, auditors and the Greek administration, on the basis of supportive detailed documentation. The final compensation accepted by the State is based on identifiable and non-contested contractual obligations of the State. Indeed, under the original concession agreement the State is responsible for compensating the Concessionaire for delays and any financial impact on the Concessionaire's operations under certain specified circumstances.

(44) In light of the above, the Commission concludes that, measure 1, although partly involving State resources in the form of payment for compensation of claims and being imputable to the State, reflects contractual obligations of the State vis-à-vis the Concessionaire and as such does not confer and advantage to the latter. The Commission, thus, concludes that measure 1 does not involve State aid to the Concessionaire.

##### *4.1.1.2.2. Measure 2: Additional State Financial Contribution ("additional SFC")*

(45) The Commission notes that the EU resources (Structural Funds and EIB loan) together with the resources from the Greek budget that shall be made available for co-financing this project are placed at the disposal of the Greek authorities, and therefore amount to State resources.

(46) Furthermore, 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 project was directly chosen by the Greek State. Therefore its financing, whether by Structural funds resources or directly by resources coming from the Greek budget is imputable to the State.

(47) As regards the advantage criterion conferred by measure 2, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test).

(48) The Commission recalls that the question that is being assessed here is whether a private investor would be willing to provide an additional financial contribution in order to bridge the financing gap of the project, as notified by the State. In this respect, the Commission notes that, following the Reset negotiations, the lenders of the project took the decision to reduce the amount of loans committed to the

project, in the light of lower debt capacity of the motorway. The Commission considers this to constitute evidence that the market was not willing to provide the additional funding required by the project, in the light of the more severe conditions brought about by the crisis. The Commission therefore concludes that the measure of the additional SFC does not reflect the behaviour of a private investor. 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 private investor, and the measure confers an economic advantage to the Concessionaire, equal to the amount of EUR 401 million.

##### 4.1.1.3. Measures in T2

###### *4.1.1.3.1. Measure 3: Recycling of T2 State revenue*

(49) According to the original concession agreement, the revenues and profits from T2 were shared between the Greek State and the Concessionaire. Under the Reset, the State is forgoing this potential revenue in favour of the Concessionaire[20]. Therefore, the measure involves State resources in the form of forgone State revenue. The decision to forgo that revenue is imputable to the State.

(50) It is noted that in the event the concession term is extended by three years after 2038 (see paragraph 32 above), this would also involve waiving of State resources in the form of loss of the right of operating and exploiting the motorway, which the State would otherwise enjoy after 2038. As regards the advantage criterion, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test). The State following the implementation of measure 3, agrees to forgo its contractually anticipated revenue, in order to allow the Reset of Aegean motorway. By doing so, the State is financing expenses and a certain level of profit that should be borne by, or at the risk of, the Concessionaire in its normal course of business. Therefore, as is the case in measure 2, it must be concluded that measure 3 does not reflect the behaviour of a market economy investor. Thus, measure 3 provides the Concessionaire with an advantage that it would not have received under normal market conditions.

##### 4.1.1.4. Selectivity of measures 2 and 3

(51) As the public financing is granted specifically to the Concessionaire, measures 2 and 3 are selective.

##### 4.1.1.5. Distortion of competition and affectation of trade between Member States of measures 2 and 3

(52) For measures 2 and 3, that stem from State resources, are imputable to the State and confer a selective advantage to the Concessionaire, the Commission has to consider whether the measures taken by the Greek authorities in favour of the Concessionaire are likely to distort competition and affect trade between Member States, by providing this undertaking with an advantage over its competitors not receiving the same public support.

[20] It is noted that the duration of this mechanism can be extended by 3 years (extension of the overall concession period), in the event that the anticipated IRR of the whole concession period is below the "Effective IRR", equal currently to 11.8% (see paragraph 32 above).

(53) According to 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 trade between Member States and on competition.[21]

(54) As regards the distortion of competition, the measures in question enable the Concessionaire to continue operating (finalise the construction of the motorway and eventually exploit it) so that it does not have to face the consequences normally deriving from shortage of financing or increased costs. Therefore the Concessionaire competitive position is strengthened vis-à-vis that of other operators. As a result the measure is capable of distorting competition, notably in the market for the construction and operation of highways.

(55) The Concessionaire is entrusted with the construction and management of a motorway infrastructure project. Such projects are constructed and managed in all Member States and usually the concessionaires of such activities come from more than one Member State, as confirmed by the fact that the shareholders of *Aegean Motorway S.A.* in the present case are both Greek and international firms. In any case, the market in concessions for the construction and operation of highways or motorways has an international character.

(56) The Commission therefore considers that measures 2 and 3 are capable of affecting trade between Member States and distorting competition.

#### 4.1.1.6. Conclusion on the existence of state aid

(57) On account of the arguments above, the Commission considers that measures 2 and 3 constitute state aid within the meaning of Article 107(1) TFEU.

(58)

### 4.2. Compatibility of the state aid

(59) Insofar as measures 2 and 3 constitute state aid within the meaning of Article 107(1) TFEU, their 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 invoked two alternative compatibility bases: a) Article 107(3)(b) TFEU; and b) Article 107(3)(c) TFEU.

(61) The Commission observes that, according to established practice, the appropriate legal basis for assessing compatibility of state aid to infrastructure is 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.

(62) It should therefore be examined if measures 2 and 3 meet a clearly-defined objective of common interest, are necessary and proportionate to this objective, and

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

do not affect competition and intra-EU trade to an extent contrary to the common interest.

(63) The Commission observes that the measures are part of an overall package of actions necessary for the Reset and will thus assess compatibility for all measures together.

### 4.2.1. Objective of common interest

(64) The measures under assessment aim to allow the Reset of the construction and operation of the Aegean motorway, which is part of the TEN-T network, a project of European interest. Indeed, according to Decision 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network Member States were encouraged to carry out the projects of the TEN-T network, in order to ensure the cohesion, interconnection and interoperability of the trans-European transport network (see also paragraph 6 above).

(65) The Greek authorities have also provided evidence that the construction and operation of the Aegean motorway will be beneficial for the connectivity of the regions of Central Macedonia and Thessaly, the rest of the motorway network in the country and also the connectivity of Greece with the rest of the EU. In addition, the Commission notes that the economic, social and territorial cohesion are EU objectives recognised by Articles 174-178 TFEU and the motorway concerns regions which are assisted regions under Article 107(3)(a) TFEU.

(66) Finally, according to the arguments and the study provided by the Greek authorities (see paragraph 7 above), the construction and operation of the Aegean motorway, together with the other three motorways which are subject to a reset of their concessions (i.e. the Ionia motorway, the Olympia motorway and the Central motorway, see paragraph 20 above), will contribute to the creation of approximately 3,600 direct jobs and up to 18,000 indirect jobs. It may also increase the Greek Gross Domestic Product (GDP) by an overall 2.07% from 2013 to 2020, by enhancing the economic output of many sectors, as it will materially improve transport capacity and speed in many regions. Finally, the construction and operation of all four motorways has the potential to improve the competitiveness of the Greek economy.

(67) The above elements demonstrate that the project contributes to objectives of common EU interest and in particular the EU transport policy and the economic convergence and cohesion of the regions concerned by the Aegean motorways.

### 4.2.2. Necessity and proportionality of the measures

#### 4.2.2.1. Measure 2: Additional SFC

(68) The Commission notes that the financing gap of EUR 401 million established for the construction of the motorway is the result of the increase of construction expenditure, combined with fewer revenues from the operation of the motorway, than originally estimated. This financing gap could not be covered by the Concessionaire the financial institutions (which reduced the loan amounts) or any other private investor.

(69) In addition, the Commission notes the argument of the Greek authorities that re-tendering the concession or letting the concession collapse would likely have adverse effects on the Greek economy and were therefore not viable options.

(70) Finally, the Commission notes that measure 2 is limited to the gap of costs which cannot be covered by any other source. Indeed, the Greek authorities have provided evidence that measure 2 only provides what is strictly necessary to cover the above financing gap of EUR 401 million, following the Reset negotiations, whereby the Concessionaire increases its equity (by EUR 70 million, see Table 1 above) and the financial institutions provide the maximum debt that the motorway can sustain.

4.2.2.2. Measure 3: Recycling of T2 State revenue

(71) In the same vein as for measure 2 above, the Concessionaire's own revenue is inadequate to cover its operating costs, service the debt and obtain a reasonable return in the absence of the State support. Therefore the recycling of T2 State revenue is necessary in order to ensure sustainability of the project throughout the concession period.

(72) Likewise, the potential Concession term extension is only permitted where the Concessionaire's projected IRR has fallen below the agreed target IRR.

(73) In addition, the Commission notes that measure 3 will allow the Concessionaire to have a return which has been revised downwards (the originally expected IRR was 14.1%, compared to current 11.8%) that appears to be comparable to the rate of return of similar projects[22]. It is also noted that the measure includes a cap of eligible costs to be covered, which set a cap to the public funding in T2 (see paragraph 28 above). Finally, the project is subject to a principle of "self-sufficiency", which means that the State will not commit any further amounts to T2 other than the revenues from the project to which it was contractually entitled under the original concession agreement.

(74) In addition, measures 2 and 3 have an incentive effect, insofar as they enable the Concessionaire to conclude the construction of the motorway, whereas in the absence of the additional public support, neither the Concessionaire nor any other market investor or financial institution would have finalised the construction of the motorway.

(75) In the light of the above, the Commission concludes that the aid to the Concessionaire is necessary and proportionate.

### 4.2.3. Distortion of competition and affectation of intra-EU trade

(76) With this project, Greece acquires an infrastructure which allows it to improve its road connections. However, as submitted by the Greek authorities, the new infrastructure resulting from the project will be located at the periphery of the EU and will represent only a small proportion of the overall EU capacity. Thus its effect on trade between Member State and on competition will be limited.

[22] The notification includes a benchmark analysis of market practices related to infrastructure concessions in Greece and in other countries for projects realised between 1996-2010, which shows that concessionaires of similar projects usually expect an IRR between 11-13% in nominal terms.

(77) Given that the positive effects of the construction of the motorway outweighs its potential distortion of competition and trade, the Commission concludes 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.

#### 4.2.4. Conclusion

(78) On the basis of the foregoing findings, the Commission concludes that the aid in question is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to the Concessionaire is necessary and proportionate, and the aid does not affect 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. CONCLUSION

The Commission has accordingly decided that measure 1 in the context of the Reset of the Aegean motorway does not constitute state aid within the meaning of Article 107(1) of the TFEU.

The Commission has also decided that the public financing involved in measures 2 and 3 in the context of the Reset of the Aegean motorway constitute state aid within the meaning of Article 107(1) of the TFEU. The aid is however compatible with the Treaty under Article 107(3)(c) of the TFEU. The Commission underlines that Greece has respected the stand still obligation provided by Article 108 TFEU by not granting that aid before the adoption of the present decision.

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/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
B-1049 Brussels

Fax No: +32 (0)2 2961242

Yours faithfully,

For the Commission

*Joaquín ALMUNIA*

Vice-president

**Annex I**: The Aegean motorway project


**Annex II:** Overview of the main motorways under concession in Greece.

**Concession Motorways in Greece**