



EUROPEAN COMMISSION

Brussels, 06.11.2013  
C (2013) 7038 final

PUBLIC VERSION

This document is made available for  
information purposes only.

**Subject: State aid SA.36581 (2013/NN) – Greece**  
**Construction of Archeological Museum Messara Crete**

Sir,

**1. PROCEDURE**

- (1) On 26 April 2013, the Greek authorities notified to the Commission the above mentioned measure.
- (2) The Commission requested additional information on 4 June 2013, which was provided by the Greek authorities on 9 July 2013.
- (3) Following a telephone conference between the Commission services and the Greek authorities on 10 July 2013, the notification was suspended by letter of 11 July 2013 until 30 September 2013.
- (4) At the request of the Greek authorities, a meeting was held on 1 October 2013, in order to clarify the remaining issues.
- (5) Greece exceptionally accepts that the decision be adopted in the English language.

Κύριο Ευάγγελος Βενιζέλος  
Υπουργό Εξωτερικών  
Βασιλίσσης Σοφίας 5  
Grèce - 10671 Αθήνα

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Background and objective**

- (6) The notified measure concerns the construction of the new Archaeological Museum of Messara, Crete, with the main purpose of relieving the overburdened Heraklion Archaeological Museum. The project also concerns the better safeguarding, storage and exhibition of artefacts currently exhibited in the Archaeological Museum of Heraklion and of others that are kept in warehouses, in the responsibility of the relevant Regional Services of the Ministry of Culture.
- (7) The provision of such services in Greece falls within the prerogatives of the State, as stipulated in the Greek Constitution.
- (8) Indeed, according to Article 24 (1) of the Greek Constitution, "*the protection of the natural and cultural environment constitutes a duty of the State*", while Article 24 (5) provides that "*monuments and historic areas and elements shall be under the protection of the State*". Consequently, the Greek State, through the competent Archaeological Authority, is obliged to protect, collect, conserve, safeguard and promote the monuments of the Greek cultural heritage, whether they are movable (such as museum exhibits) or immovable.
- (9) In particular, Article 21 of Law 3028/2002 "On the protection of Antiquities and Cultural Heritage in general"<sup>1</sup> provides that ancient movable monuments which date from up to 1453 or which are findings of an archaeological excavation or other archaeological investigation, irrespective of their age, belong to the State in title and in possession, are impervious to usucaption and are excluded from transactions in the meaning of Article 966 of the Civil Code.

### **2.2. Project description**

- (10) The new Archaeological Museum of Messara, Crete is located in the 'heart' of the declared archaeological site of Gortyna which has an area of approximately 30,000 m<sup>2</sup>. It comprises two subprojects:
  1. the construction of the building with an area of 2,907 m<sup>2</sup> and a height of 7.5 m overall, and
  2. the connection of the complex with public utilities.

#### *2.2.1. Museum building and facilities*

- (11) According to the approved Building Programme, the building is divided into three Functional Zones, laid out from South to North.

---

<sup>1</sup> Government Gazette No153/Series I /28.06.2002

1. The first zone will comprise the reception, service areas for the public (such as a ticket issue area, a canteen, a shop), education programme areas, an area for periodic exhibitions, a lecture room, security areas, a medical room and sanitary areas for the public.

The canteen will be leased to a private operator that will undertake its operation, following an open tender procedure. The lease will be awarded to the highest economic bidder. Afterwards, the lessee will sign a contract based on which a rate of the net profits gained from the operation of the canteen, as stated in its bid, will be remitted to the Archaeological Receipts Fund<sup>2</sup>.

The shop will be managed by the Archaeological Receipts Fund. It will sell only items related to culture, such as duplicates of museum exhibits and souvenirs, relevant books and publications, etc.

2. The second zone will comprise the rooms of the permanent and periodic exhibitions<sup>3</sup>, which are:
  - the Asterousia Room, with artefacts from the Neolithic and Prepalatial era of southern and central Crete;
  - the Phaistos Room, with exhibits of the Minoan and Protogeometric period;
  - the Gortyna Room, with findings from the area; through the construction of a footpath, this room will connect the museum with the semi-outdoor and outdoor exhibition areas of the archaeological site of Gortyna, which is currently open for visits.<sup>4</sup>
3. The third zone will contain the support functions of the museum, i.e. the administrative offices, the conservation laboratories, offices for the conservationists and researchers<sup>5</sup> and storage areas for findings and periodic exhibitions.

### 2.2.2. *Location*

- (12) The project is located in south-central Crete, in the region of Messara, at a distance of 45 kilometres from the city of Heraklion. Messara is an under-populated rural area,

---

<sup>2</sup> The Archaeological Receipts Fund is a legal person governed by public law, under the supervision of the Ministry of Culture.

<sup>3</sup> Periodic exhibitions shall be organised exclusively by the services of the Ministry of Culture and not by any third party in exchange for remuneration.

<sup>4</sup> As the distance between the two sites is short (approximately 2 km), this footpath shall be intended for the safe and pleasant transition of visitors from one place to the other, without necessarily using vehicles or buses, which may cause problems because of the narrow road.

<sup>5</sup> The conservationists and researchers shall be employees of the relevant Regional Services of the Ministry of Culture, i.e. civil servants, who shall utilise the offices within the context of their work. The facilities and equipment of the new museum will not be leased to external partners.

with semi-urban elements and without any particular tourist infrastructure.<sup>6</sup> The access to the area is difficult, as it is accessible only by regional road, and the time it takes to get there from the nearest port/airport is about one hour.

- (13) The location was selected due to its proximity to the archaeological sites of Phaistos and Gortyna, since the museum will host the exhibits of these two sites. The plot of land on which the museum is being built extends to approximately 30,000 m<sup>2</sup> and is inside the designated archaeological site of Gortyna, Crete. The land belongs to the Greek State and will be exclusively used for housing the museum and supporting its operation. The surrounding area will be shaped to cover basic operating needs of the museum, e.g. construction of parking area for cars and buses, access roads for disabled persons. No other works are to be developed in the area close to the Museum, apart from the conservation of a church located inside the archaeological site.<sup>7</sup>

### 2.2.3. *Tourist flows and information*

- (14) The basic attraction for tourists in Crete is Knossos, a monument of the ancient Minoan civilization which is located in the northern part of the prefecture of Heraklion. According to available traffic data, from an annual average of circa 600,000 visitors to Knossos, only a small fraction (i.e. circa 55,000) also visits the archaeological sites of Phaistos and Gortyna.
- (15) Given the fact that these sites are not poles of attraction for the average tourist (contrary to Knossos), the difficult and time-consuming access to the area and the lack of any particular tourist infrastructure<sup>8</sup>, the construction of the Messara museum is not expected to increase the influx of tourists to the area.
- (16) Furthermore, the project does not include the creation of websites in foreign languages for attracting new tourists or any special promotion campaigns in mass media abroad. Proper publicity will be given to the fact that the project is co-financed by the EU Structural Funds under the National Strategic Reference Framework (NSRF).<sup>9</sup>
- (17) Finally, according to the current data, it is not planned to include the archaeological sites of Gortyna and Phaistos in the list of UNESCO's Cultural World Heritage Monuments.

---

<sup>6</sup> The local economy is mainly based on the primary sector, since the majority of the economically active population engages in agriculture and livestock farming and no significant increase in the percentage rate of the tertiary sector of services (culture, tourism, etc.) on the local produce is expected.

<sup>7</sup> Pursuant to the provisions of Law 3028/2002, specific restrictions apply to the development and exploitation of the archaeological site, which renders any commercial exploitation of the area around the museum highly difficult. In any case, any public or private investments would be of limited scale, also given the rural character of the area, which is among the areas of high agricultural production.

<sup>8</sup> The area around the museum of Messara features minimum tourist accommodation facilities – 38 hotels with total capacity of 1,758 beds operate at a greater distance (10-30 km from the museum).

<sup>9</sup> See more details in sections 2.3 and 2.4

#### 2.2.4. *Expected revenues and expenditure*

- (18) The cost of the tickets for admission into the museum will be relatively low and the limited revenues from the ticket sales will be used solely to meet the operating expenses of the museum itself. In addition to the sale of tickets, which is the main source of income, other sources are the lease charges for the canteen and the income from the sale of souvenirs and other items from the store.
- (19) Based on a financial analysis, the operating revenues over a 15-year period are estimated at €2,152,618, while the respective operating expenses are estimated at €3,792,708 (discounted values). Consequently, the operation of the Museum is not expected to result in profits. In any case, any potential profits would be channelled to purely cultural purposes, without benefiting any commercial activity.

### 2.3. **Legal basis**

- (20) The project is among the priority projects of the NSRF and was incorporated with the Decision No. 1072 of 7 April 2011 for the Inclusion of Operation “Construction of the Archaeological Museum of Messara, Crete”<sup>10</sup> in Priority Axis 7 – “Sustainable Development and Quality of Life in the Crete Region” of the Operational Programme “Crete and the Aegean Islands 2007-2013”.
- (21) The Operational Programme “Crete and the Aegean Islands 2007-2013” was approved by the Commission Decision C (2007) 5439 of 5 November 2007.

### 2.4. **Budget and duration**

- (22) The project budget is €6,011,254.25<sup>11</sup> and it is co-financed at a rate of 85% by the European Regional Development Fund under the Operation Programme for “Crete and the Aegean Islands 2007-2013” and at a rate of 15 % from National Funds (the Public Investment Programme).
- (23) According to the Decision of Inclusion No. 1072 of 7 April 2011, the duration of the construction is 45.55 months, starting on 15 September 2011. However, the actual implementation of the project began on 18 January 2012, when the construction contract was signed with the contractor. The project will be completed by 30 June 2015 and will be fully operational by early 2016.

### 2.5. **Granting authority**

- (24) The granting authority is the Government of Greece, through the Ministry of Culture and Sports, the Directorate for Execution of Museum and Cultural Building Works.

---

<sup>10</sup> Internet posting no. 4ΑΓΞΟΡ1Θ-ΛΧ

<sup>11</sup> According to the Decision of Inclusion of the Operation in the OP “Crete and the Aegean Islands 2007-2013”, the initial budget of the project was €11,304,056.97. However, after the signing of the contract, it was adjusted based on the financial proposal of the contractor to the amount of €6,011,254.25.

## **2.6. Project financing and disbursements**

- (25) The grant aims to cover 100% of the costs for the construction of the Archaeological Museum of Messara<sup>12</sup> (i.e. €5,861,254.25 including VAT) and the connection of the building with utilities (i.e. €150,000 including VAT).
- (26) Project financing shall be performed according to the progress of the construction works and following certification thereof by the granting authority.
- (27) The expected payments per year based on the implementation schedule were initially established as follows: 2012 €1.95 million, 2013 €2.70 million, 2014 approx. €1.21 million and 2015 €0.15 million.
- (28) The actual project financing by the granting authority started in 2012, with a first payment of €1,190,646.62.

## **2.7. Owner, operator and contractor**

### ***2.7.1. Owner***

- (29) The museum is owned by the Greek Government and more specifically by the *Hellenic Ministry of Culture and Sports – Directorate of Museum Studies and Cultural Buildings*.
- (30) The Ministry of Culture and Sports is the Government Body which is responsible for the protection, safeguarding, promotion and exhibition of the cultural heritage of Greece from early antiquity until the present day and for the management and protection of the archaeological assets.
- (31) The Directorate of Museum Studies and Cultural Buildings is responsible for the bidding, execution/supervision, audit, acceptance and maintenance of projects which concern constructions, extensions and repairs of museums, archaeological repositories and cultural buildings, as well as for any new construction inside archaeological sites.

### ***2.7.2. Operator***

- (32) The operator of the museum is *the 23rd Ephorate of Prehistoric and Classical Antiquities*, a Regional Service of the Ministry of Culture at the Directorate level, based in Heraklion, whose competences extend throughout the prefecture of Heraklion. The 23<sup>rd</sup> Ephorate's authority extends over all matters concerning the maintenance, protection and safeguarding of antiquities, the scientific study, discovery, preservation, conservation and promotion of antiquities as well as their exhibition in museums. The 23<sup>rd</sup> Ephorate is also the competent authority for the scheduling, management and execution of any archaeological project for the conservation, repair, restoration, reconstruction, exposure and layout of the monuments and archaeological sites, as well

---

<sup>12</sup> Building and construction works also include contingencies, as defined by Article 57 of Law 3669/08, revision work and financial review work.

as of their natural or non-natural surroundings, and the execution of all the aforementioned projects in accordance with in-house method and accountability. It is also responsible for the scientific study of antiquities, scientific papers relating to antiquities, the management of the monuments of the archaeological sites, the museums and the collections within its area of responsibility that belong to the State, as well as the general oversight for the enforcement of the applicable legislation on the protection of antiquities.

- (33) The operation of the museum also falls within the scope of responsibility of *the 13th Ephorate of Byzantine Antiquities*, a Regional Service of the Ministry of Culture, at Directorate level, based in Heraklion, with competences extending over the Regional Units of Heraklion and Lasithi. The 13<sup>th</sup> Ephorate has relevant competences for antiquities dating from the 4th century A.D. to 1830 and, with regard to religious monuments, those older than one hundred years.
- (34) As specified in the project description, the operation of the canteen will be granted to a private operator, following an open, transparent, non-discriminatory and unconditional tender procedure organised in line with EU Directive 2004/18/EC<sup>13</sup>.

### **2.7.3. Contractor**

- (35) The selection of the contractor responsible for the actual construction works was made following an open, transparent, non-discriminatory and unconditional tender procedure, ensuring the minimum cost for the construction of the project (i.e. the most economically advantageous tender).
- (36) The awarding procedure was based on EU Directive 2004/18/EC and national legislation, in particular Law 3669/2008 “Ratifying the Codification of Legislation on Public Works Construction”. The project was awarded to the winning tenderer of the procedure, P.C. DEVELOPMENT S.A., with Class 5 diploma in building works and Class 4 diploma in electromechanical works.

## **3. ASSESSMENT OF THE MEASURE**

### **State aid within the meaning of Article 107(1) TFEU**

- (37) According to Article 107(1) TFEU, *"save as otherwise provided in the Treaty, 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 it affects trade between Member States, be incompatible with the internal market."*

---

<sup>13</sup> OJ L 134, 30.04.2004, p. 114-156

- (38) In this case, the owner and the operator(s) of the museum will be the State, while the operator of the canteen and the contractor for the actual construction works are external providers.
- (39) The Greek authorities have argued that the measure does not constitute State aid within the meaning of Article 107(1) TFEU, first because the activity of the museum is non-economic, and second because it does not affect trade between Member States.

### **3.1. Economic activity**

- (40) In relation to the nature of the activity of the future archaeological museum in Messara, Crete, the Greek authorities consider that this is non-economic on the basis of the following arguments:
1. Since the safeguarding and exhibition to the public of the unique archaeological monuments of Greece is provided exclusively by the State according to the Greek Constitution and there are consequently no private bodies that are allowed to offer such services, the Greek authorities argue that there is no relevant market for the museums that contain such monuments.
  2. The main aim of the project is to protect antiquities and improve exhibit protection, safeguarding, conservation and showcasing conditions in line with the provisions of the Greek Constitution, and not to promote tourism or any other inherently commercial activity.
  3. As shown in section 2.2.4, the operation of the museum is not expected to result in profits and, in any case, any eventual profits would be channelled to purely cultural purposes, without benefiting any commercial activity. In fact, any profitable exploitation of archaeological monuments protected under the Greek Constitution is illegal and prosecuted as a criminal offence.
- (41) Consequently, the Greek authorities consider that the notified measure cannot be deemed to constitute State aid since it does not constitute an economic activity.
- (42) However, the Commission is of the opinion that it cannot be excluded that the activity of the museum is of an economic nature, since it provides a service against remuneration.
- (43) Furthermore, the fact that an authority does not allow third parties to provide a certain service does not rule out the existence of an economic activity, and neither does the absence of profit.<sup>14</sup> Finally, only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the State intervention.<sup>15</sup>

---

<sup>14</sup> Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck* [1980] ECR 3125 paragraph 88; Case C-244/94 *FFSA and Others* [1995] ECR I-4013, paragraph 21; Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraphs 27 and 28.

<sup>15</sup> Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13.



- (44) As far as the operator of the canteen and the contractor for the construction of the project are concerned, they sell services and carry out an economic activity.

### **3.2. Advantage**

- (45) The contract for the construction of the project was awarded to the contractor following an open, transparent, non-discriminatory and unconditional tender procedure in compliance with the principles of EU Directive 2004/18/EC and it appears that the State has paid a market price for this construction, so that there is no advantage for the contractor.

### **3.3. Effect on intra-EU trade**

- (46) Trade between Member States is only affected if the measure is at least potentially suitable to affect such trade. In this respect, as regards the specific nature of the subsidised activity, it should first be emphasized that the activities of the new Messara museum will focus on the safeguarding and protection of unique archaeological monuments of Greece. The potential of this local archaeological museum to affect intra-EU trade seems very low.
- (47) The notified measure must be distinguished from aid measures promoting the development of big national museums and attractions which are able to attract an international audience, are widely promoted outside of the region in which they are located and are clearly of a different scale and nature than the local project supported by the present measure.
- (48) Crete is already a tourist destination with a large number of archaeological sites open to visitors. The main pole of attraction of visitors with regard to the archaeological cultural heritage is Knossos, as reflected by the tourist data in section 2.2.3. From the same data, it results that the new museum in Messara will not constitute either a final destination or a new pole of attraction for tourists. In all likelihood, any visitors to the museum coming from other Member States will have made a decision to visit Crete irrespective of the existence of the Messara museum, which only serves in a complementary manner to provide more effective conservation and presentation of the archaeological monuments of the region.
- (49) Although the museum will be open to both local and foreign visitors, it will be located in Messara, a sparsely populated rural area which is difficult and time-consuming to access and lacks any noteworthy or adequate tourist infrastructure (as described in more detail in section 2.2.2).
- (50) Moreover, the project does not include EU-wide publicity for attracting new tourists and it is not foreseen at the moment that the archaeological sites where the museum is being built will be included in the list of UNESCO's Cultural World Heritage Monuments.

- (51) Therefore, the construction of the Messara museum is unlikely to result in any additional deviation of tourist flows from other EU Member States to Crete specifically to visit the museum.
- (52) Accordingly, in light of the above arguments, it can be concluded that the notified measure will not have an effect on trade between Member States. Therefore, the existence of State aid within the meaning of Article 107(1) TFEU can be excluded at the level of the owner and the operator of the museum.
- (53) For the same reasons, it can be presumed that the measure will neither have an effect on trade at the level of the operator of the canteen.

#### **4. CONCLUSION**

On the basis of the foregoing assessment, the Commission has found that the measure in question does not constitute State aid in the sense of Article 107(1) TFEU and decided not to raise objections to this measure.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

European Commission  
Directorate-General for Competition  
Directorate for State Aid  
State Aid Greffe  
1049 Brussels  
Belgium  
Fax No: +32 2 296 12 42

Yours faithfully,  
For the Commission

Joaquin ALMUNIA  
Vice-president

