



28.9.2012

## NOTICE TO MEMBERS

Subject: **Petition 0354/2009 by P. K. (Greek), on behalf of the ‘Maïstrali’ shipping line, on the Piraeus Port Authority (OLP) and its status under Greek Law 2688/1999**

### 1. Summary of petition

The petitioner points out that the Piraeus Port Authority (OLP), which was previously a state organisation, was converted under Greek Law 2688/1999 into a limited company (OLP AE.) ‘designed for general interest purposes and in the service of the public interest’. The petitioner complains that this limited company continues to benefit from the privileges it had as a state organisation, including the possibility of recovering debts under the Code for the Collection of Public Revenue (KEDE). The petitioner refers in that connection to a legal case concerning the impounding of a fishing vessel which, in his opinion, clearly demonstrates that the company enjoys a monopoly position which is contrary to EU principles and he therefore calls on the European Parliament to take the matter up.

### 2. Admissibility

Declared admissible on 18 June 2009. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 25 September 2009.

The Piraeus Port Authority was founded in 1950 as a public body operating in the public interest under the terms of the "Emergency Law" No 1559/1950. As such, it was entitled to the same privileges as a State organisation.

In 1999 the Piraeus Port Authority was converted into a company governed by commercial law, while at the same time, it was designated by Law No 2688/1999 as a limited company operating for the public benefit and in the public interest. On this basis, under that Law, it was

still entitled to the benefits provided for in the above mentioned "Emergency Law" of 1950, such as being only liable to income tax, and other privileges of State bodies, including exceptional treatment for debt recovery.

The petitioner considers that these privileges should not be granted to a commercial entity, since they alter competition and are detrimental to tax-payers.

The petitioner submits this case to the European Parliament requesting that the matter should be taken up by the appropriate EU institution.

The Commission initiated a formal investigation procedure on 14 July 2009 as regards State aid for infrastructure development in favour of the Piraeus Port Authority<sup>1</sup>. The petitioner is evidently an "interested party" in this context and as such his comments would be taken into account.

This being said, to the extent that the issues raised by the petitioner are not covered by the current investigation procedure, the Commission will also request information from the Greek authorities and decide on the line to take on the basis of their answer. The Commission will inform the Parliament accordingly.

For the sake of completeness, it should be pointed out that the granting of privileges to a given undertaking is not as such incompatible with Article 86 of the Treaty. The petition does not contain any indication of a conduct incompatible with Article 82 of the Treaty, which prohibits abuses of dominant position.

#### **4. Commission reply, received on 10 November 2010.**

The matter has been addressed within the State aid monitoring ensured by the Commission. In this respect, the Commission invited the petitioner to provide comments as an interested third party within the framework of the formal investigation procedure initiated by the Commission on 14 July 2009, as regards State aid for infrastructure development in favour of the Piraeus Port Authority<sup>2</sup>. However, the petitioner did not send his comments on this case.

To the extent that the issues raised by the petitioner are not covered by the current investigation procedure, the Commission has requested information from the Greek authorities concerning the possibility for OLP to recover debts under KEDE which was provided in the first half of 2010.

On the basis of the information provided by the Greek authorities concerning the possibility for OLP to recover debts under KEDE, the Commission fails to establish at this stage the

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<sup>1</sup> See the press release on the following website:  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1132&type=HTML&aged=0&language=EN&guiLanguage=en> – pending publication of the decision in the OJ.

<sup>2</sup> See the press release on the following website:  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1132&type=HTML&aged=0&language=EN&guiLanguage=en> – OJ C 245, 13.10.2009, p. 21. The Commission partially closed the investigation (see Commission decision C 21/2009 adopted on 18.12.2009 available at:  
[http://ec.europa.eu/competition/state\\_aid/register/ii/doc/C-21-2009-WLAL-el-18.12.2009.pdf](http://ec.europa.eu/competition/state_aid/register/ii/doc/C-21-2009-WLAL-el-18.12.2009.pdf) (in Greek),  
[http://ec.europa.eu/competition/state\\_aid/register/ii/doc/C-21-2009-WLWL-en-18.12.2009.pdf](http://ec.europa.eu/competition/state_aid/register/ii/doc/C-21-2009-WLWL-en-18.12.2009.pdf) (in English)).

existence of selective advantage to PPA financed with State resources, which distorts or threatens to distort competition and affects trade between Member States. In particular, the Commission has not established any transfer of State resources. Therefore, it has no reasons to believe that the measures referred to by the petitioner grant any State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

After careful examination of the petition and on the basis of the information provided by the Greek authorities, the Commission considers that the possibility for OLP to recover debts under KEDE does not constitute State aid within the meaning of Article 107(1) TFEU. However, the Commission will further examine whether OLP benefits from fiscal advantages which may constitute State aid.

#### **5. Further Commission reply (REV. II), received on 28 September 2012.**

In its previous reply dated 10 November 2010, the Commission concluded that it had no reasons to believe that the measures referred to by the petitioner, i.e. the possibility for OLP to collect debts under the code for the collection of public revenue (KEDE) and thus apply the corresponding coercive debt recovery procedures- amounted to state aid, within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), granted to OLP. Specifically, the Commission noted that on, the basis of the information provided at the time by the Greek authorities concerning the possibility for OLP to recover debts under KEDE, it was not possible to establish the existence of a selective advantage to OLP financed with State resources, which distorted or threatened to distort competition and affected trade between Member States. In particular, the Commission did not find that a transfer of State resources could be established. However, the Commission also noted that it would further examine whether OLP benefitted from fiscal advantages which might constitute State aid.

As regards the measures referred to by the petitioner, the Commission maintains the above assessment, in the absence of any new elements. Furthermore, on the basis of the information available to the Commission, it has no reason to believe that the possibility of OLP to collect debts under KEDE would infringe any other EU competition rules.

On the issue of whether OLP benefits from fiscal advantages which may constitute state aid, the Commission at this stage has no conclusive elements. The Commission will continue to monitor any incompatible aid to OLP and will take any actions if appropriate in conformity with Council Regulation (EC) N° 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>1</sup>. The Commission further notes that, in any event, any potential fiscal advantages to OLP are unrelated to the issue raised by the petitioner.

The Commission has no conclusive information that fiscal advantages constituting State aid were granted to OLP, however, the Commission will continue to monitor the issue and if necessary will take appropriate actions. The Commission also notes that any potential fiscal advantages to OLP are, in any event, unrelated to the issue raised by the petitioner.

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<sup>1</sup> OJ L 83 of 27.3.1999, p. 1.