



14.11.2022

## NOTICE TO MEMBERS

**Subject: Petition No 0298/2022 by Konstantinos Papadakis (Greek) and one cosignatory on the privatisation of the LARKO mining company in Greece**

**Petition No 0349/2022 by Panagiotis Politis (Greek), on behalf of LARKO's labour unions, on the privatisation of the Greek mining company LARKO**

### 1. Summary of petition 0298/2022

The petitioners submit an open letter from LARKO union leaders regarding a number of matters, including the consequences of a heavy EU fine and the need to halt immediately the planned redundancy of 300 workers aged over 55. The petitioners also point to the high level of unemployment and the commodity market surge in the prices of nickel and cobalt, which are of immense strategic importance for the EU, particularly in the wake of the recent conflict. Finally, it is requested that all possible options be considered to deal with the level of debt accumulated by the company.

### Summary of petition 0349/2022

The petitioner encloses an open letter by the administrative councils of LARKO's labour unions regarding a number of matters, including the consequences of a large EU fine and the need to immediately stop the planned redundancy of 300 workers over the age of 55. The petitioner also emphasises the high unemployment rate and the surge on the commodity markets in the price of nickel and cobalt, which are of huge strategic importance for the EU, particularly in the wake of the recent conflict in Ukraine. Finally, he asks that all possible options be examined to deal with the debt accumulated by the company.

### 2. Admissibility

Petition 0298/2022: Declared admissible on 24 June 2022.

Petition 0349/2022: Declared admissible on 06 July 2022.

Information requested from Commission under Rule 227(6).

### **3. Commission reply**, received on 14 November 2022

#### Petitions 0298/2022 and 0349/2022

The Commission takes good note of the information provided by the petitioners, which mainly concern the current and future operation of LARCO.

The Commission refers to its decision adopted on 27 March 2014 in which it ordered Greece to recover unlawful and incompatible aid of EUR 135 million (plus interest) granted to LARCO in the form of State guarantees and capital injections in the period 2008-2010 in State aid case SA.34572.

The Commission recalls that recovery of State aid is not a penalty but rather the mere consequence of the finding that unlawfully granted State aid is incompatible. The distortion of competition in the internal market caused by a State aid measure has to be removed by repayment of the incompatible aid or, if the company cannot repay, by it exiting the market. The aim of recovery is thus not to maximise the Member States' return but to restore the situation that existed in the internal market before the unlawful and incompatible aid was granted.

Following a negative Commission decision ordering recovery, the Member State concerned must implement recovery effectively and immediately, in accordance with Article 16(2) and Article 16(3) of the Procedural Regulation<sup>1</sup>. To this effect, the Member State is required to take all necessary steps, which are available in their respective legal systems, including provisional measures, without prejudice to EU law<sup>2</sup>.

The Commission services work constructively with Member States to make sure that State aid decisions involving recovery of unlawful aid are enforced. If they are not, the Commission takes the necessary steps towards bringing the failure to comply with Union law to the Court of Justice of the European Union in accordance with established rules.

The Commission has sent several requests for information to the Greek authorities on the measures taken to implement the Commission decision effectively. The Commission recalls that State aid procedures (including recovery procedures) are essentially bilateral, thus implying exchanges between the Member State concerned and the Commission.

On 29 January 2020, the Commission filed legal action against Greece under Article 260(2) of the Treaty on the Functioning of the EU in view of the considerable delay in complying with the Court's judgment of 9 November 2017, condemning Greece for failure to recover the

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<sup>1</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9–29.

<sup>2</sup> Judgment of 14 November 2018, Commission v Greece, C 93/17, EU:C:2018:903, paragraph 69.

unlawful and incompatible aid from LARCO<sup>3</sup>.

On 20 January 2022, the Court of Justice of the European Union ordered Greece to make a lump sum and periodic penalty payments until full implementation of recovery<sup>4</sup>. In particular, the Court noted that the Greek authorities adopted the following measures for the recovery of the aid only after the Commission brought the legal action before the Court: (a) Law No 4664/2020 establishing the special administration of LARCO was adopted on 14 February 2020, (b) LARCO was put under special administration on 28 February 2020, (c) the request for the payment of the amount of aid was sent to LARCO on 13 March 2020 and (d) the Greek authorities sent the Greek tax authorities a letter in which they requested that the aid in question be recovered in full from LARCO on 14 May 2020<sup>5</sup>.

To date, Greece is still under the obligation to recover the unlawful and incompatible State aid. The Commission has reminded Greece of its obligation to enforce the recovery of the unlawful aid in order to implement the Commission decision. The Greek authorities are required to consider any actions available in their respective legal systems and take all necessary steps to recover the unlawful aid. Therefore, it is not for the Commission but rather for the Greek authorities to consider the specific measures required to be taken to comply with the Court's judgment and to inform the Commission of such measures.

The Commission also notes the importance of raw materials such as nickel and cobalt for the EU, as also argued by the petitioners. In the present case, LARCO remains under special administration, and one of the goals of the special administrator of LARCO is to sell its assets. The two tender procedures for the sale of LARCO's assets have not been completed yet. It is likely though that the assets will be sold to a company that is active in metals mining and/or processing. After the completion of the sale, the new owner(s) of the assets could potentially mine laterite and produce ferronickel in the facilities of LARCO, if the sale is organised in a manner that excludes economic continuity between LARCO and the new owner(s). Therefore, the use of the metal resources may also sustain the economic viability of the activities operated by the new owner(s).

As regards the specific issue of the employment of LARCO's employees, it is for national authorities and courts to assess this specific issue in the context of the special administration and after the possible sale of the assets of LARCO in light of the relevant EU and national law provisions, while avoiding any kind of economic continuity between LARCO and the buyers of its assets.

## Conclusion

The Commission will remain in close contact with the Greek authorities and will continue to follow closely the implementation of the Commission decision ordering recovery. Against this background, the Commission considers that no specific action is necessary.

As regards the employees of LARCO, no specific actions by the Commission are possible; this issue is to be examined further by the competent national authorities or courts, while avoiding any kind of economic continuity between LARCO and the buyers of its assets.

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<sup>3</sup> Judgment of 9 November 2017, *Commission v Greece*, C-481/16, EU:C:2017:845.

<sup>4</sup> Judgment of 20 January 2022, *Commission v Greece*, Case C-51/20, EU:C:2022:36.

<sup>5</sup> Judgment of 20 January 2022, *Commission v Greece*, Case C-51/20, EU:C:2022:36, paragraph 64.