

Commission Decision (EU) 2015/1827 of 23 March 2015 on State aid SA 28876 (12/C) (ex CP 202/09) implemented by Greece for Piraeus Container Terminal SA & Cosco Pacific Limited (notified under document C(2015) 66) (Only the Greek text is authentic) (Text with EEA relevance)

- Article 1 The following State aid measures in favour of Piraeus Container...
- Article 2 The Greek authorities did not grant State aid by exempting...
- Article 3 (1) Greece shall recover the incompatible aid granted referred to...
- Article 4 (1) Recovery of the aid granted referred to in Article...
- Article 5 (1) Within two months following notification of this Decision, Greece...
- Article 6 This Decision is addressed to Greece.

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2015/1827. (See end of Document for details)

- (1) [OJ L 83, 27.3.1999, p. 1.](#)
- (2) Registered by the Commission on 13 May 2009.
- (3) Registered by the Commission the same day.
- (4) Commission decision of 11 July 2012 C(2012) 4217 final, in Case SA. 28876 (C (12/C) (ex CP 202/09) — Greece — Container Terminal Port of Piraeus & Cosco Pacific Limited ([OJ C 301, 5.10.2012, p. 55](#)).
- (5) See footnote 4.
- (6) See Article 1.1 of the concession agreement concerning its scope, and Section 3 on the right of use and exploitation.
- (7) See Article 3.1(iii) of the concession agreement.
- (8) Published in the Official Journal. Reference 2008/S 20-026332 from 30 January 2008, amended with Reference 2008/S 54-072476 from 18 March 2008, extending the deadline for submission of tenders until 19 May 2008.
- (9) See footnote 4.
- (10) (i) Exemption from corporate income tax for goods, works and services provided to PCT outside Greece by companies or joint ventures installed outside Greece, on the condition that there is a bilateral fiscal agreement of avoidance of double taxation between Greece and the countries of registration; (ii) refund of VAT within a period of 60 days from the period of the submission of the relevant application and interest rate applicable for computation of interests in case the State does not refund VAT credit within 60 days from the submission of the relevant application.
- (11) Article 2(1) of the Law.
- (12) Article 2(3) and (4) of the Law.
- (13) Article 2(5) of the Law.
- (14) Article 2(6) of the Law.
- (15) Article 2(8) of the Law.
- (16) Article 2(9) of the Law.
- (17) Article 2(10) of the Law.
- (18) Article 3 of the Law.
- (19) Case T-157/01, *Danske Busvogmaend v Commission* [2004] ECR I-917.
- (20) (i) Long-term nature of the contracts; (ii) need for very significant upfront investment, which practice means reduced or no revenue during the initial period; (iii) need to secure external funding; (iv) uncertain nature of financial returns; (v) general public interest in the creation of new public infrastructure; (vi) strong and public interest in the successful and profitable completion of the project.
- (21) Regulation (EU) No 670/2012 of the European Parliament and of the Council of 11 July 2012 amending both Decision No 1639/2006/EC establishing a Competitiveness and Innovation Framework Programme (2007-2013) and Regulation (EC) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks ([OJ L 204, 31.7.2012, p. 1](#)) and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 ([OJ L 315, 3.12.2007, p. 1](#)).
- (22) In particular they mention that the PSO Regulation (EC) No 1370/2007 recognises that were justified by the need to ensure the tax benefit or full capital amortisation in relation to exceptional infrastructure, rolling stock or vehicular investment, a public service contract may have a longer duration than is normally allowed.
- (23) Joined cases C-106/09 P and C-107/09 P, *Commission (C-106/09) and Kingdom of Spain (C-107/09 P) v Government of Gibraltar and United Kingdom of Great Britain and Northern Ireland* [2011] ECLI:EU:C:2011:732, paragraphs 90-92.

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- (24) Recital 115 of the opening Commission decision.
- (25) Case C-88/03, *Portugal v Commission*, [2006] ECR I-7115, paragraph 81.
- (26) Case C-143/99, *Adria-Wien Pipeline*, [2001] ECR I-8384.
- (27) Case C-169/08, *Presidente del Consiglio del Ministri v Regione Sardegna*, [2009] ECR I-10821.
- (28) Case T-210/02 RENV, *British Aggregates Association v European Commission*, [2012].
- (29) See for example the General Court's analysis in this respect in Case T-210/02 RENV, *British Aggregates Association v European Commission*, [2012], paragraphs 83-91.
- (30) Joined cases T-304/04 and T-316/04, *Italy and WAM SpA v Commission*, [2006] ECR II-64.
- (31) Cases COMP/M.5398 — Hutchinson/Evergreen, COMP/M.5450 — Kuhne/HGV/TIU/Hapag-Lloyd, COMP/JV.55 — Hutchinson/RCPM/ECT, COMP/JV.56 — Hutchinson/ECT, COMP/M.3863 — TUI/CP Ships, COMP/M.5398 — Hutchinson/Evergreen, COMP/M.3576 — ECT/PONL/Euromax, COMP/M.3973 — CMA CGM/Delmas, COMP/M.3829 Maersk/PONL, COMP/M.1674 — Maersk/ECT, IV/M.831 — P&O/Royal Nedlloyd.
- (32) Case 409/V/2009, Decision of 23 January 2009, p. 22.
- (33) Port of Thessaloniki, port of Constanza in Romania, port of Koper in Slovenia and a number of ports in Italy (cf. footnote 173 of the opening decision).
- (34) Commission decision of 18 December 2009 on Case C 21/09 (ex N 105/08, N 168/08 and N 169/08) — Greece — Public financing of infrastructure and equipment at the Port of Piraeus ([OJ C 402, 29.12.2012, p. 25](#)).
- (35) Due to: the distance of Piraeus from these areas; the lack of modern railway link and services; the additional significant cost which would be involved; and the arrangements of the major deep-sea container shipping lines which serve the central Mediterranean area through container port terminals in Malta (e.g. Maersk), Taranto (e.g. Evergreen), Venice (e.g. MSC) and Gioia Tauro (e.g. MSC)
- (36) For example Koper offers a sea depth of approximately 9 metres as opposed to 15-19 metres offered by Piraeus (which normally requires well above 12 metres for the ships it services). 13 500 TEU container ships call on Piraeus container port every week which could not be serviced by any of these ports.
- (37) The additional journey and significant cost involved in carrying transshipment traffic to any of the other ports would make these ports unattractive for this type of traffic.
- (38) The two-way distance of Piraeus from this shipping line is for a normal deep-sea vessel only approximately 16 hours' sailing time, as opposed to 44 for Thessaloniki, 120 hours for Koper and several days for Constanza (due to the need to travel through the Dardanelles and Bosphorus and the traffic congestion problems there).
- (39) According to paragraph 117 of the Commission decision: 'The only EU ports which form part of the Eastern Mediterranean Sea market are the ones situated on the Black Sea (such as Constanza in Romania, Varna in Bulgaria). However, due to the special situation of the straits connecting the Black Sea with the Aegean Sea, the Black Sea ports are not the main competitors of the Port of Piraeus. Similarly, even though it cannot be fully excluded that other EU ports, such as the Adriatic ports of Italy and Slovenia, may also be in competition with the Port of Piraeus, the competition between them and the Port of Piraeus is insignificant'.
- (40) Paragraphs 114 and 115 of Commission decision in Case C 21/09 mentioned in footnote 4.
- (41) (i) Its location amidst Greece's biggest urban area of more than 5 million people, the biggest industrial/commercial area with the best rail and road links available in the country; (ii) extensive berthing space, storage facilities, and a large anchorage; (iii) the biggest sea depth; (iv) the closest distance to the Suez/Gibraltar axis; (v) one of the most competitive bunker oil markets worldwide; (vi) extensive ship repair facilities and the broad range of services required by ship operators.
- (42) Commission decisions in Cases N 508/07 Ionia Odos, N 45/08 — Motorway Elefsina-Korinthos-Patras-Pirgos-Tsakona, N 566/07 Korinthos-Tripoli-Kalamata Motorway and Lefktro-Sparti Branch, N 565/07 Central Greece Motorway, N 633/07 Maliakos-Kleidi section of Patras-Athens-Thessaloniki-Evzona Motorway concession contract, N 134/07 Thessaloniki Submerged Tunnel concession contract, N 462/99 Attiki Odos, NN 143/97 Rio Antirrio Motorway Bridge, NN 27/96 Spata International Airport.

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- (43) Commission decision in Case NN 27/96 Spata International Airport.
- (44) Commission decisions in Cases N 462/99 Attiki Odos and NN 143/97 Rio Antirrio Motorway Bridge.
- (45) Joined Cases T-427/04 *France v Commission* and T-17/05 *France Telecom v Commission*, ECR [2009] II-0435, paragraphs 264-266, C-474-09 P to C-476/09 P, Territorio Historico de Vizcaya, ECLI:EU:C:2011:522, paragraph 70.
- (46) See recital 221 of the opening decision.
- (47) In the same line of reasoning, the Commission also approved a scheme on broadband infrastructure in rural areas (SA. 32866 (11/N) that had as legal basis Law 3389/2005 concerning PPPs that contains fiscal provisions similar to those of Law 3755/2009.
- (48) See recitals 225 and 226 of the opening decision.
- (49) In 2012: (a) the traffic in the Pier II has increased by 76,5 % as compared to 2011 (2,108 million TEU in 2012 as compared to 1,188 million TEU in 2011); (b) the capacity was 700 000 TEU higher than what was foreseen in the concession contract; (c) the revenues increased by 43 % as compared to 2011 (from EUR 72,87 million to EUR 104,3 million). In 2012 PCT, Trainose and Hewlett Packard signed an agreement due to which Hewlett Packard would channel its products through Greece to other neighbouring countries.
- (50) Covered by the obligation of professional secrecy.
- (51) Commission decisions in Cases C 39/09 — Latvia — Ventspils Free Port Authority (50 % aid intensity), SA. 30742 Construction of Infrastructure for the Ferry Terminal in Klaipeda (65 % aid intensity), SA 34940 (2012/N) Port of Augusta (68,87 % aid intensity), N 649/01 Freight facilities grant (94 % aid intensity), C 21/09 Public financing of infrastructure and equipment at the port of Piraeus.
- (52) See footnote 34.
- (53) Regulation (EU) No 670/2012.
- (54) For this they refer to the fact that the China Development Bank, one of PCT's creditors, waited for the adoption of the ratification law in order to sign its loan to PCT. Furthermore, they refer to an e-mail the [...] sent to PCT in January 2009 expressing its main concerns about the funding of the said concession agreement. According to this email the concession agreement did not provide protection against general or discriminatory change in law and they argue that this concerned the fiscal framework of the concession agreement.
- (55) The estimates provided were based on a study produced by PricewaterhouseCoopers Business Solutions SA These estimates consisted in a comparison of the assumptions of Cosco's business plan at the time of the publication of the ratification law (March 2009) and the generally applicable provisions. From the result of this comparison they deducted the amount corresponding to the additional funding needs PCT would have in the absence of the fiscal measures. The amount deriving from these calculations was in the end calculated in discounted values (with the use of an annual discount rate of 9,0 %, i.e. the discount rate used by PPA in discounting the minimum guaranteed concession fees offered by PCT during the tender, but also an annual discount rate of 4,47 % of March 2009, i.e. reference rate provided in the Commission communication). Finally these calculations do not include the measures in Articles 2.3, 2.5, 2.9, 2.10 and Article 3 of the Law.
- (56) In the worst case scenario.
- (57) For example, Case C-143/99 *Adria-Wien Pipeline GmbH and Wieterdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten* [2001] ECR I-8365, paragraph 41; Case T-335/08 *BNP Paribas and Banca Nazionale del Lavoro SpA (BNL) v Commission* [2010] ECR II-3323, paragraph 204; and Cases T-425/04, T-444/04, T-450/04 and T-456/04, *France, France Télécom, Bouygues SA, Bouygues Télécom SA and AFORS Télécom v Commission* [2010] ECR II-2009, paragraph 216.
- (58) Commission Decision in Case SA.21918 — France — Regulated electricity tariffs in France ([OJ C 398, 22.12.2012, p. 10](#)), Commission Decision 98/353/EC of 16 September 1997 on State aid for Gemeinnützige Abfallverwertung GmbH ([OJ L 159, 3.6.1998, p. 58](#)), Commission Decision C(2007) 134 of 24 January 2007 in State aid Case NN 67/05 — Lithuania — reduction of a profit tax rate for UAB 'Bite GSM', Commission Decision 2003/227/EC of 2 August 2002 on various measures and the State aid invested by Spain in Terra Mítica SA, a theme park near Benidorm

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- (Alicante) (OJ L 91, 8.4.2003, p. 23), Commission Decision of 14 April 2010 in State aid Case NN 30/09 — Ireland — Hotel capital allowances for the Ritz-Carlton Hotel, Powerscourt, Co. Wicklow, Commission Decision 2003/590/EC of 5 March 2003 on the State aid which the United Kingdom is planning to grant to CDC Group plc (OJ L 199, 7.8.2003, p. 28), Commission Decision 2009/476/EC of 28 January 2009 on State aid implemented by Luxembourg in the form of the creation of a compensation fund for the organisation of the electricity market (C 43/02 (ex NN 75/01)) (OJ L 159, 20.6.2009, p. 11), Commission Decision 98/212/EC of 16 April 1997 on the aid granted by Italy to Enirisorse SpA (OJ L 80, 18.3.1998, p. 32), Commission Decision of 1 March 2007 in State aid NN4/07 — ‘Delitissue Sp. z o.o.’ under document C(2007) 769.
- (59) According to PCT's calculations, the impact of the adoption of the fiscal provisions on the real internal rate of return ('IRR') taken into account in PCT's Model Business Plan of March 2009 has been estimated at [...] basis points (i.e. [...] %) reflecting an increase in this IRR calculated in the absence of the fiscal provisions concerned of approximately [...] % (i.e. from [...] % to [...] %).
- (60) Joined Cases C-180/98 to C-184/98, Pavlov and others, [2000] ECR I-6451.
- (61) Cases 118/85 *Commission v Italy* [1987] ECR 2599, paragraph 7, C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 36, Joined Cases C-180/98 to C-184/98, Rec. 2000, p. I 6451.
- (62) Decisions of the Commission in the following State aid Cases: N 44/10 — Public financing of port infrastructure in Krievu Sala (OJ C 215, 21.7.2011, p. 21, paragraphs 60-68); C 39/09 — Public financing of port infrastructure in Ventspils Port (OJ C 62, 20.3.2010, p. 7, paragraphs 53-58), N 60/06 — Port of Rotterdam (OJ C 196, 24.8.2007, p. 1, paragraphs 42-52); N 520/03 Flemish ports (OJ C 176, 16.7.2005, p. 12, paragraphs 34-54).
- (63) See, inter alia, judgment of 24 October 2002, Case C-82/01P *Aéroport de Paris*, ECR 2002, I-9297, as well as judgment of 24 March 2011 in Joined Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/Commission* and Case T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*, [2011] II-1311.
- (64) Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 60; Case C-342/96 *Spain v Commission* [1999] ECR I-2459, paragraph 41.
- (65) Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13.
- (66) Cases C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, paragraph 38; C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 13; and Case C-200/97 *Ecotrade* [1998] ECR I-7907, paragraph 34.
- (67) Case C-222/04 *Cassa di Risparmio di Firenze and others*, [2006] ECR I-289, paragraph 132.
- (68) Case C-280/00 *Altmark Trans* [2003] ECR I-7747.
- (69) Case C-39/94 *SFEI and others* [1996] ECR I-3547, paragraphs 60-61.
- (70) See Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere', Hotel Cipriani Srl and Società Italiana per il gas SpA (Italgas) v Commission*, [2011] I-4727, paragraphs 92 and 94 to 96, and Order of the President of the General Court in Case T-172/14 *R Stahlwerk Bous v Commission*, paragraphs 59 and 60.
- (71) Article 2(9) of the Law.
- (72) Cases C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, paragraph 41; C-308/01 *GIL Insurance and Others* [2004] ECR I-4777, paragraph 68; C-172/03 *Heiser* [2005] ECR I-1627, paragraph 40.
- (73) See, Cases C-143/99 *Adria-Wien*, paragraph 41, Case C-308/01 *GIL Insurance* [2004] ECR I-4777, paragraph 68, C-172/03, *Heiser* [2005] ECR I-1627, paragraph 40, C-88/03, *Portugal v Commission* [2006] ECR I-7115, paragraph 54, T-233/04, *Netherlands v Commission*, paragraph 86.
- (74) See, for instance, Case C-279/08P, *Commission v Netherlands (NOx)* [2011] ECR I-7671, paragraph 62.
- (75) Joined Cases C-106/09 P and C-107/09 P *Commission and Spain v Government of Gibraltar and United Kingdom* [2011] ECR I-11113.
- (76) See Joined Cases T-92/00 and T-103/00, *Territorio Histórico de Álava — Diputación Foral de Álava, Ramondín, SA and Ramondín Cápsulas v Commission*, [2002] II-1385, paragraph 51.
- (77) See Case C-279/08 P, *Commission v Kingdom of the Netherlands*, [2011], I-7671, paragraph 50.

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- (78) Cases C-75/97 *Belgium v Commission* [1999] ECR I 3671, paragraph 32; Case C-143/99 *Adria Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2011] ECR I 8365, paragraph 48; Case C- 409/00 *Spain v Commission* [2003] ECR I 1487, paragraph 48.
- (79) Joined Cases T-92/00 and T-103/00 *Ramondin SA and Ramondin Cápsulas SA v Commission* [2002] ECR II-1385, paragraph 39: in this judgment the Court ruled that applying a tax measure only to investments exceeding a certain threshold meant that the measure was de facto reserved for undertakings with significant financial resources.
- (80) See for example Joined Cases C-78/08 to C-80/08 *Paint Graphos and others* [2011] ECR I-7611, paragraph 69.
- (81) See Joined Cases C-78/08 to C-80/08 *Paint Graphos and others* [2011] ECR I-7611, paragraphs 69 and 70; Case C-88/03 *Portugal v Commission* [2006] ECR I-7115, paragraph 81; Case C-279/08 P, *Commission v Netherlands (NOx)* [2011] ECR I-7671; Case C-487/06 P *British Aggregates v Commission* [2008] ECR I-10515.
- (82) See, inter alia, Cases C-279/08P *Commission v Kingdom of Netherlands* [2011] I-07671, paragraph 75, C-487/06 P, *British Aggregates v Commission* [2008] I-10505, paragraph 92; C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 21; C-342/96 *Spain v Commission* [1999] ECR I-2459, paragraph 23; C-75/97 *Belgium v Commission*, paragraph 25.
- (83) See in this respect Joined Cases T-92/00 and T-103/00 *Ramondin SA and Ramondin Cápsulas SA v Commission* [2002] ECR II-1385, paragraph 62.
- (84) Or until 31 October 2015 at the latest.
- (85) Article 2, paragraph 1 of Law 3755/2009.
- (86) Articles 99(1)(a) first indent in combination with Articles 12(1), 105(1)(b) and 109(1) of the Greek income tax code; this corporate income tax amounted to 25 % in financial year 2010, 24 % in financial year 2011, 20 % in financial year 2012, 22 % in financial year 2013, 26 % in financial year 2014 onwards.
- (87) A withholding tax is applicable at that time, according to Article 99(1)(a) of the GITC.
- (88) According to the Greek authorities, the term ‘accrued interest’ is used to describe the accounting method used to calculate the accumulation of interest, whereby interest accrues depending on cash flow dates and the amounts involved. In other words, ‘accrued interest’ is the interest on a specific amount over a specific period of time (irrespective of whether the said interest is owing or due). According to the Greek authorities PCT normally expects to collect such interest in cash deposits with credit institutions.
- (89) The tax exemption on accrued interests will apply for a period of time that may vary, depending on early or later completion of the works, but that has a definite end. According to Article 12 of the concession contract, the commencement of the operation of Pier III should be effected 48 months after the date of commencement of the construction and in any case not later than 31 October 2015.
- (90) In case no treaty on avoidance of double taxation is applicable.
- (91) See recitals 95 to 97.
- (92) i.e. Article 103(1)(m).
- (93) Case C-241/94, *France v Commission (Kimberly Clark)* [1996], ECR I-4451. See also recital 21 of the Fiscal Notice.
- (94) Article 2, paragraphs 2 and 3 of Law 3755/2009.
- (95) Article 30(1) of the VAT Code.
- (96) Article 32(3) of the VAT Code.
- (97) As there is a 3-year time limit for carrying forward a VAT credit balance.
- (98) Article 33(4) of the VAT Code.
- (99) As this Decision stood at the time the ratification law was adopted.
- (100) Including the case when an investment good is concerned.
- (101) Article 2(7) of Ministerial Decision 1073/2004/EC.

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- (102) Article 33(3) of the VAT Code. This 5-year restriction is not applicable to public utility companies.
- (103) Article 38(2) of Law 1473/1984.
- (104) Judgments 1948/1992, 3035/1992, 1274/2002, 1207/2012, 1501/2012 of the Conseil d'Etat, as well as 222/2009, 223/2009 and 2141/2009 of the Administrative Court of Athens and 4793/2013 of the Administrative Court of Thessaloniki. This interpretation was based on the Article 21 of Regulatory Decree 26-6/10-7/1944 (code of the state court's proceedings) according to which 'the legally normal interest and the interest on late payments ... starts from the moment the legal action is notified to the state'.
- (105) According to the Code of fiscal legal procedure the taxable person may file an appeal within 20 days following the day the act is notified to it.
- (106) As per the definition provided in Article 33(4) of the VAT Code.
- (107) Case C-110/94, *Intercommunale voor Zeewaterontziltling (INZO)*, [1997] ECR — I 870.
- (108) Paragraph 15 of judgment in Case C-110/94.
- (109) See Article 29(3) of Law 3389/2005 as it was amended by Article 18(2) of Law 4013/2011.
- (110) It also entails the legal certainty that all type of PCT's expenditure will be treated in the same way, although this would not be the case under the generally applicable rules.
- (111) This letter is dated 31 October 2008 and was submitted by the Greek authorities in the course of the procedure before the opening of the formal investigation procedure as Annex 2 of the submission dated 1 February 2011. It was registered by the Commission on 8 February 2011 with number 2011/013591.
- (112) In particular they requested 90 % VAT credit refund within 1 month from the application date and the remaining 10 % within a year. This refund corresponds in essence to the refund applicable to investment goods.
- (113) Cases T-68/03, *Olympic Airways v Commission*, [2007] ECT II-2911, paragraph 361, C-25/07 *Alicja Sosnowska v Dyrektor Izby Skarbowej* [2008] ECR I-5129.
- (114) The obligation to refund VAT arises at the moment input VAT is paid and that the right to deduct VAT '... is exercisable immediately ... while the Member States have a certain freedom of manoeuvre in determining the conditions for the refund of excess VAT, those conditions cannot undermine the principle of neutrality of the VAT tax system by making the taxable person bear the burden of the VAT in whole or in part'. This implies that the refund is made within a reasonable period of time. Case C-25/07 *Alicja Sosnowska*, [2008] ECR I-5129, paragraphs 15-16.
- (115) Article 105(11) in combination with Article 4(3) GITC.
- (116) Case T-55/99, *Confederación Española de Transporte de Mercancías (CETM) v Commission*, [2000] II-03207, paragraph 53.
- (117) With the fixed straight line method, depreciation is calculated on the basis of a fixed rate on the initial acquisition value or of the readjusted acquisition value plus the value of improvements or additional parts.
- (118) At the time the provision under examination was adopted, Article 31.1(f) of the GITC foresaw an exception to this rule, relevant to the depreciation of new machinery and mechanical or technical equipment of industrial, mining, quarry and mixed enterprises of this kind. In these cases the companies could also use the declining balance depreciation method. This provision has been modified and now it only foresees the general fixed straight line method for all cases.
- (119) Presidential Decree 299/2003 relevant to the 'Definition of highest and lowest depreciation rates'. This decree sets out the range between the highest and the lowest depreciation rate per category of fixed assets. Taxable companies may choose any depreciation rate within this range. Once a company has chosen a depreciation rate within this range, it is obliged to complete the depreciation by applying the same rate on all assets of the same category which have been acquired by the company during the same fiscal period. For assets of the same category acquired in different fiscal periods, companies are entitled to use a different depreciation rate, but in any case it is mandatory to complete the depreciation procedure with the initial depreciation rate applied to all assets of the same category acquired in the same fiscal period.
- (120) This kind of 'reserves' does not constitute real asset of the company but depreciations of the fixed assets that will be returned to the state or to third parties.

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- (121) Article 31.1(g) GITC.
- (122) YA 100/2005 (YA 1003821/10037/B0012 (OJ B 80 of 2005): Deductible costs from gross revenues of companies on the basis of administrative solutions and the case-law.
- (123) Article 31.1(l) of the GITC.
- (124) Article 105(12) of the GITC as amended by Law 4013/2011. This method is the one foreseen in paragraph 5 Article 97 of Law 1892/1990 for the construction of parking spaces.
- (125) Method set out by Law 1914/1990 for BOT projects. According to Article 9(8) of Law 2052/1992, works that are executed with total or partial funding provided by thirds, the depreciation of the construction costs and of the interests on loans and credits during the construction period, that are considered as construction costs, is conducted according to the same method.
- (126) Method of depreciation for airport constructing companies set out by Article 26(8) of Law 2093/1992.
- (127) e.g. asset value, profitability, business plan.
- (128) See recital 165 of the opening decision.
- (129) It is even greater than the one foreseen for instance for PPP's (this is without prejudice to the view the Commission may take on fiscal provisions relevant to PPPs).
- (130) The provision under examination helped to eliminate a gap in the general Greek tax system regarding the depreciation of assets used in the operation of a container port terminal, such as those that will be used by PCT for the purposes of the concession agreement. Article 34 of Law 2937/2001 lays down specific depreciation rates that PPA and the Thessaloniki Port shall use under the fixed straight line depreciation method, for the specific types of port asset that they use. The Greek authorities argue that these rates are not applicable to PCT. According to the Greek authorities, if PCT opted to apply the straight line method and was allowed to use these depreciation rates, the period of depreciation would exceed the concession period. On the other hand, if PCT were obliged to apply the straight line method with different depreciation rates than the ones applied for PPA and the Thessaloniki Port, it would be disadvantaged compared to these operators (recital 166 of the opening decision).
- (131) See Case *Portugal v Commission*, paragraph 81 in footnote 80.
- (132) See in this respect the Commission's assessment in recitals 98 to 100 above.
- (133) Presidential decree of 28 July 1931, OJ A 239 1931, as modified especially by Law 2873/2000.
- (134) However, the introduction of the VAT did not affect the stamp duty imposed on loan agreements.
- (135) Under settled case-law, a loan entered into outside of Greece through a private deed is subject to stamp duty in Greece where the loan is executed in Greece. 'Execution in Greece' occurs where the delivery of the loan amount by the foreign lender to the borrower, who is located in Greece, occurs in Greece. 'Delivery of the loan amount in Greece' occurs where the lender effectively puts the loan amount in the account of the borrower in a Greek bank (Opinion 964/1955 of the Legal Council of the Greek state, Court of First Instance of Thessaloniki 2123/1963, Tax Court of First Instance 2163/1967, Administrative Court of First Instance 6043/2001, Council of State 2996/1991 and 984/1992). Further, judgment 3639/2013 of the Conseil d'Etat ruled that '... a loan agreement concluded through a private deed abroad, is subject to stamp duty, so far as it provides for obligations which should be executed in Greece, and such is the obligation of the borrower flowing from the said agreement to transfer in Greece, through his order to the foreign bank, the agreed loan amount which was deposited by the lender abroad on [the borrower's] name.'
- (136) At the rate of 2,4 %.
- (137) Again at the rate of 2,4 %.
- (138) The Commission's assessment in this case is without prejudice to the position it may take outside this procedure on the exemptions.
- (139) As described in footnote 134 above.
- (140) The Greek authorities and PCT refer to two loans of EUR 54,8 million and EUR [...] million that PCT concluded with its parent company, Cosco, in order to start its investments in the port of Piraeus.

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- (141) Decision 617/2006 on the interpretation of Article 8 of the Stamp Duty Code.
- (142) Article 8 of the Stamp Duty Code. See case-law on this in footnote 134 above.
- (143) In accordance with Article 3.1 of the concession contract.
- (144) Interpretative circular 1027/1990.
- (145) See footnote 134.
- (146) Again at the rate of 2,4 %.
- (147) Article 3 of Ministerial circular 44/1987: Implementation of the provisions of imposition of stamp duties to various contracts and acts.
- (148) Under Article 57(1)(b) of Law 1642/1986, transactions that are subject to VAT under Article 2 of the same Law, as well as their ancillary agreements, are exempt from stamp duty. Under Article 2 of the Greek VAT Code (Law 2859/2000 replacing Law 1642/1986 that introduced VAT in the Greek legal order), VAT applies to the supply of goods and services where such supply is effected for the payment of consideration. According to the prevailing interpretation of these provisions, the payment of compensation does not fall within the meaning of the provision of services against remuneration and thus falls outside the scope of VAT and instead is subject to stamp duty.
- (149) Pursuant to Article 2 of Law 2688/1999, in conjunction with Article 362 of Law 1559/1950. The Commission's position in this Decision is without prejudice to any position it may take in the future regarding this provision.
- (150) See recitals 188 and 203 of the opening decision.
- (151) This specific regime may only be modified in case the company, to which it is allowed, agrees.
- (152) Articles 8 and 11 of the Legislative Decree.
- (153) An adjustment may also be foreseen in case of reduction of the normally applicable limitations.
- (154) This measure is not foreseen in the presidential decree, but the Greek authorities mentioned it in the list of measures that have been provided in the past through this special regime.
- (155) According to Article 9 paragraph 2 of the presidential decree, this increase is meant as exceeding half of the amount corresponding to the total assets of those companies or above 1 million US dollars.
- (156) Unless requisition is aimed at covering the needs of the armed forces in times of war and only for as long as the conflict lasts and subject to fair compensation.
- (157) The Decree also foresees other privileges/conditions for the companies covered: (i) specific conditions for the repatriation of loans or share capital (up to 10 % of the imported capital annually); a cumulative remittance of profits (up to 12 %, net of tax, on the imported and non-repatriated capital annually); and a remittance of interest (up to 10 % annually) and permission for the transfer out of Greece of foreign exchange needed for lease payments concerning machinery or other forms of capital leased from abroad); (ii) the recruitment of foreign nationals as technical and administrative personnel and permission for exporting the amount of their remuneration in foreign exchange; and permission to keep company accounts with entries in a foreign currency.
- (158) See recital 213 of the opening decision.
- (159) The Commission's assessment in this case is without prejudice of any action it may take as regards this presidential decree.
- (160) Article 3(2) of the Decree refers indicatively to some of the privileges and exemptions that can be granted through its use. Article 5(3) of Legislative Decree 4256/1962, which interprets the decree of 1953, establishes that the administration has the full discretion to regulate any other issue that is related to the investment in any way it sees fit for the accomplishment of the purpose of the presidential decree, i.e. the attraction of foreign capital, as long as these issues do not run counter its provisions. Therefore, it can be concluded that the administration has full discretion in the establishment of new conditions, as well as a 'facilities' that may render such investments more attractive for companies.
- (161) See recitals 209 to 216 of the opening decision.
- (162) See recitals 92 to 97 of this Decision.

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- (163) Case C-487/06 P, *British Aggregates* [2008] ECR I-10515, paragraph 92.
- (164) This Decision is without prejudice to the position the Commission may take as regards this Legislative Decree.
- (165) See recitals 21 and 22 of the Commission notice on fiscal aid.
- (166) Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3).
- (167) See recitals 24 and 27 of the Commission Fiscal Notice.
- (168) See for instance Judgement of the General Court in Case T-445/05, *Assogestioni et Fineco Asset Management/Commission*, para 145, and quoted case-law.
- (169) See Commission decision in Case NN 27/96 Spata International Airport.
- (170) See Commission decisions in cases N 508/07 Ionia Odos, N 45/08 — Motorway Elefsina-Korinthos-Patras-Pirgos-Tsakona, N 566/07 Korinthos-Tripoli-Kalamata Motorway and Lefktro-Sparti Branch, N 565/07 Central Greece Motorway, N 633/07 Maliakos-Kleidi section of Patras-Athens-Thessaloniki-Evzonia Motorway concession contract, N 134/07 Thessaloniki Submerged Tunnel concession contract.
- (171) Joined Cases T-427/04 *France v Commission* and T-17/05 *France Telecom v Commission*, ECR [2009] II-0435, paragraphs 264-266, C-474-09 P to C-476/09 P, *Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Alava — Diputación Foral de Alava, and Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa v European Commission*, [2011] I-113, paragraph 70.
- (172) SA. 32866 (11/N) — Greece — Broadband development in Greek rural areas.
- (173) See Commission decision in Case N 134/07 Thessaloniki Submerged Tunnel concession contract.
- (174) See Decision C(2013) 9253 final — State aid SA.36894 concerning the reset of the Ionia Odos S.A. project; Decision C(2013) 9275 final — State aid SA.36877 concerning the reset of the Aegean Motorway S.A. project; Decision C(2013) 9253 final — State aid SA.36878 concerning the Olympia Odos S.A. project; and Decision C(2013) 9274 final — State aid SA.36893 concerning the Central Motorway (E65) project.
- (175) In any case, the Commission further understands that the tax exemptions in favour of PCT were only introduced in the law that ratified the concession agreement and not in the concession agreement itself, because PPA has no competence to grant tax exemptions. Contrary to the cases invoked by the Greek authorities and PCT, the concessioner in this case was supposed to undertake exclusively and solely the investment project, without any state or public support of any kind.
- (176) Case 730/79 Philip Morris [1980], ECR 267, paragraph 11, Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, *Alzetta Mauro and others v Commission*, [2000] ECR II-2325, paragraph 80.
- (177) Joined Cases T-298/97, T-312/97, etc. *Alzetta* [2000] ECR II-2325, paragraphs 141 to 147, Case C-280/00, *Altmark Trans* [2003] ECR I-7747.
- (178) See Commission decision of 18 December 2009 on Case C 21/09 (ex N 105/08, N 168/08 and N 169/08 — Greece — Public financing of infrastructure and equipment at the Port of Piraeus (OJ C 402, 29.12.2012, p. 25, paragraphs 90 and 91).
- (179) See Joined Cases T-298/97, T-312/97, etc. *Alzetta* [2000] ECR II-2325 paragraph 95, and Case 730/97 Philip Morris [1980] ECR 267, paragraphs 9 to 12.
- (180) See among others Joined Cases *Alzetta*, paragraph 95.
- (181) See Case C-372/97, *Italy v Commission* [2004] ECR I-3679, paragraph 67 and the case-law mentioned therein.
- (182) Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).
- (183) See Article 8 of Law 3755/2009 that determines the start of validity of this Law.
- (184) See Chapter 5 of the RAG 2007-2013 and Commission decision of 13 February 2008 in Case C 7/08 (ex N 655/07) — Germany — Guarantee scheme of the Land of Saxony for working capital loans.

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- (185) See Commission decision of 31 August 2006 in Case N 408/06 — Greece — Regional aid map 2007-2013 ([OJ C 286, 23.11.2006, p. 5](#)).
- (186) For example replacement investment, transport costs or labour costs.
- (187) See footnote 184.
- (188) COM(2009) 279/4, paragraph 46.
- (189) COM(2009), 8.
- (190) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU ([OJ L 348, 20.12.2013, p. 1](#)).
- (191) Furthermore, the economic viability and profitability of the investment project has already been confirmed by the fact that PCT's investments in the port of Piraeus have already very positive financial results.
- (192) See for instance Case C-348/93, *Commission v Italy*, [1995] I-00673, paragraph 26, and the case-law mentioned therein.
- (193) See for instance Joined Cases T-239/04 and T-323/04, *Italy and Brandt Italia SpA v Commission*, [2007] II-3265, paragraphs 153-154 and the case-law mentioned therein.
- (194) Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid ([OJ L 352, 24.12.2013, p. 1](#)).
- (195) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([OJ L 140, 30.4.2004, p. 1](#)).
- (196) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([OJ L 82, 25.3.2008, p. 1](#)).

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