



**Παρατηρητήριο Διαφάνειας  
Λιμενικού Συστήματος**



**Τετάρτη, 25 Νοεμβρίου 2020**

**Προς: 1. Γραφείο κ. Πρωθυπουργού  
2. Γραφείο κ. Υπουργού Ναυτιλίας και  
Νησιωτικής Πολιτικής**

**3. Επιτροπή Κεφαλαιαγοράς  
4. Ρ.Α.Λ.**

**Κοιν: 1. Βουλευτές  
2. ΜΜΕ**

**ΑΠ.ΕΞ. 15/2020**

**ΘΕΜΑ: Το Παρατηρητήριο Διαφάνειας Λιμενικού Συστήματος καταγγέλλει  
σκάνδαλο σε εξέλιξη:**

**Η COSCO ΖΗΤΑ ΤΗ ΜΕΤΑΒΙΒΑΣΗ ΤΟΥ 16% ΤΩΝ ΜΕΤΟΧΩΝ ΤΟΥ ΟΛΠ  
ΧΩΡΙΣ ΝΑ ΕΧΕΙ ΥΛΟΠΟΙΗΣΕΙ ΤΙΣ ΥΠΟΧΡΕΩΤΙΚΕΣ ΕΠΕΝΔΥΣΕΙΣ**

**ΑΕ Πρωθυπουργέ της Ελλάδας**

**Αξιότιμε κ. Υπουργέ Ναυτιλίας και Νησιωτικής Πολιτικής**

**Αξιότιμοι κκ Βουλευτές**

**Αξιότιμη κ. Πρόεδρε Επιτροπής Κεφαλαιαγοράς**

**Αξιότιμε κ. Πρόεδρε Ρ.Α.Λ.**

Το Παρατηρητήριο Διαφάνειας Λιμενικού Συστήματος είναι –προς το παρόν- ένωση προσώπων χωρίς νομική προσωπικότητα, με σκοπούς μεταξύ άλλων την άσκηση δημόσιου, δημοκρατικού, κοινωνικού ελέγχου στο ελληνικό λιμενικό σύστημα και την προστασία του περιβάλλοντος.

Με την ιδιότητα του νομίμου εκπροσώπου του Παρατηρητηρίου Διαφάνειας Λιμενικού Συστήματος, τίθενται υπόψιν Σας τα εξής, αναφορικά με ένα σκάνδαλο σε εξέλιξη, το οποίο έχετε ιδιαίτερη νομική υποχρέωση να αποτρέψετε:

Το Παρατηρητήριο Διαφάνειας Λιμενικού Συστήματος αποκαλύπτει, συνημμένα στην παρούσα καταγγελία του, την με ημερομηνία 23-11-2020 επιστολή της COSCO SHIPPING HONG KONG, με την οποία επιρρίπτει βαριές ευθύνες στο Ελληνικό Δημόσιο για την μέχρι σήμερα αποτυχία υλοποίησης των Υποχρεωτικών Επενδύσεων, τις οποίες η εν λόγω κινέζικη εταιρεία είναι υποχρεωμένη να ολοκληρώσει το αργότερο μέχρι τον Αύγουστο 2021.

Συγκεκριμένα:

Η αιτιολογική έκθεση του ν. 4404/2016, με τον οποίο κυρώθηκε με υπερκομματική πλειοψηφία η νέα σύμβαση παραχώρησης ανάμεσα στο Ελληνικό Δημόσιο και την ιδιωτικοποιημένη ΟΛΠ ΑΕ, κατέστησε σαφές ότι η μεταβίβαση ποσοστού 67% των μετοχών της ΟΛΠ ΑΕ στην αγοράστρια COSCO SHIPPING θα γίνει σε δυο (2) στάδια. Αρχικά, μεταβιβάστηκε από το ΤΑΙΠΕΔ ποσοστό 51% των μετοχών και ΜΕΤΑ την υλοποίηση των Υποχρεωτικών Επενδύσεων θα γινόταν και η μεταβίβαση του απολειπόμενου 16%. Η αγοράστρια COSCO SHIPPING είχε στη διάθεσή της πέντε (5) έτη από τη μεταβίβαση των μετοχών, ήτοι μια χρονική περίοδο με σημείο εκκίνησης τον Αύγουστο 2016 και λήξης τον Αύγουστο 2021, προκειμένου να ολοκληρώσει τις Υποχρεωτικές Επενδύσεις, με θεσμικές διευκολύνσεις, που άγγιζαν τα όρια της αντισυνταγματικότητας, όπως ο Ανεξάρτητος Μηχανικός και η εκτέλεση λιμενικών έργων με πλήρη υποκατάσταση ιδιωτών στο ρόλο των πολεοδομικών Αρχών της χώρας.

Η μεθοδολογία, με την οποία η COSCO SHIPPING επέλεξε να διαχειριστεί την προθεσμία υλοποίησης των Υποχρεωτικών Επενδύσεων, με είχε απασχολήσει και ως Διοικητή της Δημόσιας Αρχής Λιμένων. Χαρακτηριστικά αναφέρεται ότι εταιρεία, στην οποία ανατέθηκε η σύνταξη των μελετών υλοποίησης των Υποχρεωτικών Επενδύσεων, ελέγχεται από εξ αγχιστείας συγγενείς και συγκεκριμένα γαμβρούς εργολάβου, που ανέλαβε να υλοποιήσει την μεγαλύτερη από αυτές.

Είχε καταστεί σαφές σε εμένα με την ιδιότητα του Διοικητή της Δημόσιας Αρχής Λιμένων ότι οι Υποχρεωτικές Επενδύσεις καθυστερούσαν σημαντικά, διότι ουσιώδη στάδια της διαδικασίας υλοποίησής τους έπρεπε οπωσδήποτε να ανατεθούν σε συγκεκριμένα πρόσωπα, τα οποία ουδείς από την πλευρά του ΟΛΠ αντικατέστησε, παρά το γεγονός ότι οι κατά περίπτωση αρμόδιες Αρχές αδυνατούσαν να εγκρίνουν ως νόμιμα τα πεπραγμένα τους.

Όταν πλέον διαπίστωνα ότι διαφημιστική εταιρεία με πενιχρό μετοχικό κεφάλαιο έφτασε στο σημείο να πιστοποιείται από στελέχη της ΟΛΠ ΑΕ ως έχουσα υλοποιήσει κατασκευή λιμενικού έργου αξίας 550.000 ΕΥΡΩ, ήτοι έργου για το οποίο δε διέθετε κεφάλαια αγοράς ούτε του ... τσιμέντου, έστειλα τα στοιχεία με ονόματα και διευθύνσεις στις αρμόδιες εισαγγελικές Αρχές.

Η συνημμένη στο παρόν επιστολή θέτει στο Ελληνικό Δημόσιο προθεσμία, για να συμφωνήσει, ότι, εντός μόλις δυο (2) μηνών, οι απολειπόμενες μετοχές θα μεταβιβαστούν, ωσάν οι Υποχρεωτικές Επενδύσεις να είχαν υλοποιηθεί, παρά το γεγονός ότι και η ίδια η COSCO SHIPPING συνομολογεί ότι πράγματι ΔΕΝ ΕΧΟΥΝ ΥΛΟΠΟΙΗΘΕΙ !!!!!

Αποπειρώμενη να αιτιολογήσει το αίτημά της, η νέα ιδιοκτήτρια της ΟΛΠ ΑΕ επιρρίπτει πλήρως τις ευθύνες στο Ελληνικό Δημόσιο.

Δε φταίνε οι μελετητές, που συνέγραψαν την ΜΠΕ (πρόκειται για τους εξ αγχιστείας συγγενείς του εργολάβου, που υλοποιεί έργο περιλαμβανόμενο σε αυτήν!), φταίει το Υπουργείο Περιβάλλοντος και Ενέργειας, που έκρινε το περιεχόμενό της ανεπαρκές και δεν την

ενέκρινε. Ο μελετητής, όμως, δεν αντικαταστάθηκε από την ΟΛΠ ΑΕ. Παρέμεινε ίδιος...και τώρα φταίνε τα Υπουργεία...

Δε φταίνε οι μελετητές του έργου του Προβλήτα Κρουαζιέρας (πρόκειται για τους εξ αγχιστείας συγγενείς του εργολάβου, που το υλοποιεί), αλλά ο Δήμος Πειραιά που δεν εγκρίνει την κυκλοφοριακή μελέτη. Ο μελετητής, όμως, δεν αντικαταστάθηκε από την ΟΛΠ ΑΕ. Παρέμεινε ίδιος...και τώρα φταίνε οι Δήμαρχοι...

Δε φταίνε σε τίποτα οι εργολάβοι και οι διευθυντές τεχνικών έργων, που ξεκίνησαν βυθοκορήσεις σε ένα μολυσμένο πυθμένα...φταίει για όλα το Συμβούλιο της Επικρατείας. Οι εργολάβοι, όμως, και οι διευθυντές δεν άλλαξαν...και τώρα φταίνε τα Δικαστήρια...

Ωστόσο, όταν η COSCO SHIPPING συμμετείχε στο διαγωνισμό αγοράς της ΟΛΠ ΑΕ, ουδείς της υποσχέθηκε ότι θα επενδύσει σε μια χώρα, στην οποία γίνεται όχι αυτό, που υποδεικνύουν οι κρατικές αρχές, αλλά αυτό που υποδεικνύουν οι γαμβροί του εργολάβου, όπως ακριβώς το υποδεικνύουν και όποτε το υποδεικνύουν. Ούτε και της υποσχέθηκε κανείς ότι προσήλθε στη χώρα του εργολάβου και των γαμπρών του και όχι σε μια ευνομούμενη πολιτεία με διοικητικές και δικαστικές αρχές.

Σε μείζονος σημασίας ιδιωτικοποιήσεις, όπως του λιμένα Πειραιά, ήτοι του μεγαλύτερου λιμένα της Μεσογείου, είναι πιθανό να προκύψουν καθυστερήσεις. Για τις καθυστερήσεις αυτές, στη σύμβαση παραχώρησης, που κυρώθηκε με το ν. 4404/2016, έχει διαμορφωθεί ένα αποτελεσματικό πλαίσιο, το οποίο παρέχει ελαστικά χρονικά περιθώρια συμμόρφωσης του επενδυτή, επιβάλλει ήπιας κλιμάκωσης ποινικές ρήτρες, όταν αυτά εξαντληθούν, και μόνο σε ακραίες περιπτώσεις οδηγεί στην έκπτωσή του. Ακόμα και τότε υπάρχει πάντοτε διαθέσιμη η απλούστατη λύση της παράτασης των συμβατικών προθεσμιών: εάν η COSCO SHIPPING, ο εργολάβος και οι ... γαμβροί του ΔΕΝ προλαβαίνουν να υλοποιήσουν Υποχρεωτική Επένδυση εντός της ταχθείσας συμβατικής προθεσμίας, χωρίς δική τους υπαιτιότητα, η τελευταία δύναται υπό προϋποθέσεις να παραταθεί με ταυτόχρονη

παράταση και της προθεσμίας μεταβίβασης του απολειπόμενου 16% των μετοχών.

Μεταβίβαση των απολειπόμενων μετοχών ΧΩΡΙΣ να έχει ολοκληρωθεί η υλοποίηση των Υποχρεωτικών Επενδύσεων δεν αποτελεί απλά σκάνδαλο και κουκούλωμα συμφερόντων, αποτελεί πλήρη ανατροπή της διαδικασίας επιλογής της COSCO ως αγοραστή, επάγεται απαγορευμένη τροποποίηση των όρων της διαδικασίας αυτής και κατά συνέπεια απαγορευμένη κρατική βοήθεια και τελικά επιφέρει ζημία για τον εξής απλό λόγο, τον οποίο δύναμαι να επιβεβαιώσω ενόρκως με την ιδιότητα του Νομικού Συμβούλου, που συμμετείχε στη διαδικασία ιδιωτικοποίησης του λιμένα Πειραιά: εάν οι επενδυτές γνώριζαν ότι οποτεδήποτε μπορούν να απαλλαγούν από τη σύνδεση των Υποχρεωτικών Επενδύσεων με τη μεταβίβαση των μετοχών, είναι βέβαιο ότι θα υπήρχαν περισσότεροι ενδιαφερόμενοι και θα επιτυγχανόταν μεγαλύτερο τίμημα, διατιθέμενο υπέρ της απομείωσης του ελληνικού χρέους. Επομένως, η απαλλαγή της COSCO SHIPPING από την υποχρέωση υλοποίησης των Υποχρεωτικών Επενδύσεων ΠΡΙΝ τη μεταβίβαση των μετοχών απολήγει σε γιγαντιαία ζημία του Ελληνικού Δημοσίου, διότι της χορηγεί άνευ τιμήματος ένα προνόμιο, το οποίο ουδέποτε αγόρασε.

Το Παρατηρητήριο Διαφάνειας Λιμενικού Συστήματος απευθύνει δημόσια έκκληση αποτροπής αυτού του σκανδάλου.

Το παρόν κοινοποιείται:

α)στην Επιτροπή Κεφαλαιαγοράς, διότι ο υπογράφων τη συνημμένη επιστολή, με την οποία ζητά την απαλλαγή της COSCO SHIPPING από τις Υποχρεωτικές Επενδύσεις, είναι ταυτοχρόνως και Διευθύνων Σύμβουλος της ΟΛΠ ΑΕ, ήτοι της άμεσα ωφελούμενης από τις επενδύσεις αυτές

β)στη Ρ.Α.Λ., προκειμένου να ελέγξει, εάν από το περιεχόμενο της επιστολής αυτής προκύπτουν συμβατικές παραβάσεις της COSCO SHIPPING.

**Διατελών μετά τιμής**

**Για το Παρατηρητήριο Διαφάνειας Λιμενικού Συστήματος**

**Δ Π Μπακόπουλος**

**ΠΑΡΑΡΤΗΜΑ**

中远海运（香港）有限公司  
COSCO SHIPPING (Hong Kong)

**STRICTLY CONFIDENTIAL UNDER THE TERMS OF THE 2016 SPA**

**COSCO SHIPPING (Hong Kong) Co., Limited  
52/F, COSCO Tower  
183 Queen's Road Central  
Hong Kong**

**To:**

The Hellenic Republic Asset Development Fund S.A.  
1 Kolokotroni & Stadiou Street  
7<sup>th</sup> Floor  
105 62 Athens, Greece

**Attn.:**

1. To Mr. Aris Xenofos, Executive Chairman and Chairman of the Board of Directors
2. To Mr. Riccardo Lambiris, Chief Executive Officer and Member of the Board of Directors

**Cc:**

1. The Minister of Finance, Mr Christos Staikouras  
5-7 Nikis Street  
105 63, Athens, Greece
2. The Minister of Maritime Affairs and Insular Policy, Mr Ioannis Plakiotakis  
Akti Vassiliadi, Gate E1 - E2  
185 10, Piraeus, Greece

**November 23<sup>rd</sup> 2020**

**Subject:** Supplementary Notification to the Invitation addressed by the Purchaser to the Seller for the settlement of a contractual dispute under the provisions of Clause 38.4 of the Agreement for the sale and purchase of 16,750,000 shares in Piraeus Port Authority S.A. (hereinafter: "the SPA") effected between the Hellenic Republic Asset Development Fund S.A (hereinafter: "the Fund" or "the Seller") and COSCO SHIPPING HK. Co., Limited (hereinafter: "COSCO SHIPPING" or "the Purchaser) – Waiver of condition under Clause 4.1 (b) of the SPA.



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*Dear Sirs*

We refer to the Invitation for the settlement of a contractual dispute under the provisions of Clause 38.4 of the SPA, which has been delivered to you on the 23<sup>rd</sup> of April 2019 under submission protocol number 40013/23.4.2019 (hereinafter: "the Invitation"). You are hereby invited to the continuation of the amicable process launched with the Invitation.

Unless otherwise specified herein, capitalized terms shall have the meanings ascribed to them pursuant to the SPA.

**I. Background**

On the 23<sup>rd</sup> April 2019 the Purchaser submitted to the Fund an Invitation requesting the extrajudicial amicable settlement for the immediate execution of Closing II on the grounds of the Seller's contractual obligation to waive Purchaser's obligation to complete Capex I in the agreed period, due to the serious delays and implications occurred regarding its implementation for reasons falling outside the responsibility, both of Purchaser and Piraeus Port Authority S.A. (PPA). In addition to that, a discrimination between PPA's majority shareholder and Thessaloniki Port Authority's (ThPA) majority shareholder was highlighted in the invitation, since the agreement between the Fund and the latter for the acquisition of the majority shareholding of the ThPA has not included the same conditions as in the case of PPA. On the contrary, the statutory majority of the shares of ThPA amounting to 67% was transferred in one tranche.

As you are aware, following the submission of our Invitation for amicable settlement addressed to you, the following meetings and extension agreements between us took place:

<b>Date</b>	<b>Event</b>	<b>Participants</b>
23 <sup>rd</sup> May 2019	1 <sup>st</sup> Amicable Meeting between COSCO SHIPPING HK's representatives and Fund's representatives	<b>Fund's Representatives:</b> Chairman of the Fund Mr. Aris Xenofos, CEO of the Fund Mr. Rihardos Lambiris, Mr Athanasios Liagkos Head of the Strategic and Coordination





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Date	Event	Participants
		<p>of Port Projects, Mr. Kiriakos Savvides Head of the Contract Monitoring Department, Mr. Dimitris Kokalis Legal Advisor of the Funds management, Mrs. Nikoleta Lioni Secretary.</p> <p><b>COSCO SHIPPING HK's Representatives:</b> Mr. Angelos Karakostas Deputy CEO of PPA S.A., Mrs. Ifigenia Vourdouni Legal Advisor of PPA S.A. (S.N. Segas and Partners Law Firm)</p>
18 <sup>th</sup> June 2019	2 <sup>nd</sup> Amicable Meeting between COSCO SHIPPING HK's representatives and Fund's representatives	<p><b>Fund's Representatives:</b> Mr. Athanasios Lingkos Head of the Strategic and Coordination of Port Projects, Mr. Kiriakos Savvides Head of the Contract</p>
		<p>Monitoring Department, Mr. Dimitris Kokalis Legal Advisor of the Funds management, Mr. Giorgos Papahristou in house Legal Counsel, Mrs. Lilian Dantsa responsible for the project.</p> <p><b>COSCO SHIPPING HK's representatives:</b> Mr. Angelos Karakostas Deputy CEO of PPA S.A., Mrs. Ifigenia Vourdouni Legal Advisor of PPA S.A. (S.N. Segas and Partners Law Firm)</p>



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Date	Event	Participants
6 August 2019	Agreement of the Fund and COSCO SHIPPING HK to extend the amicable period until the 9 <sup>th</sup> of September 2019	The extension agreement was signed between Mr. Lambiris and Mr. Karakostas
6 <sup>th</sup> September 2019	Agreement of the Fund and COSCO SHIPPING HK to extend the amicable period until the 11 <sup>th</sup> of October 2019	The extension agreement was signed between Mr. Lambiris and Mr. Karakostas
11 <sup>th</sup> October 2019	Agreement of the Fund and COSCO SHIPPING HK to extend the amicable period for until the 9 <sup>th</sup> of November 2019	The extension agreement was signed between Mr. Lambiris and Mr. Karakostas

**2. Further delays of the implementation of CAPEX I for reasons falling beyond PPA's control**

Nevertheless, since our last agreement for extension, further delays of the implementation of our investment program occurred. The said delays lie completely outside our control and fall within the full responsibility of the competent authorities of PPA's counterparty in the HR Concession Amendment, namely the Hellenic Republic (HR) the obligations of which under the latest have not been fulfilled. Consequently, non fulfilment of Conditions II 4.1(b), which was set as a condition for Closing II in favor of the HR on behalf of which you have been assigned to execute the transfer of the majority shareholding of PPA, **is due to the actions and omissions (described in the Invitation as well as hereinafter) of the HR itself and hence fall within your responsibility.**

More specifically, the actions and omissions of the HR oppose Clause 19 of the HR Concession Amendment, pursuant to which:

*19.4 The Hellenic Republic shall cooperate with PPA and assist PPA in good faith in obtaining approvals, permits and/or licences required for the operation of the Concession Assets, in each case in compliance with applicable laws.*

*19.5 The Hellenic Republic undertakes not to do, and to ensure that no HR Governmental Body does, anything to knowingly frustrate PPA's performance of this Agreement and/or with the primary objective of materially preventing or adversely affecting:*

- (a) PPA's ability to perform its obligations under this Agreement;



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- (b) PPA's ability to operate, use or exploit the Port of Piraeus in accordance with this Agreement (including, but not limited to the right to levy and collect Port Tariffs in accordance from users of the Port Area); and/or
- (c) unobstructed access for users to the Port Area.

19.6 When fulfilling its public obligations and its obligations under this Agreement, the Hellenic Republic shall (and shall procure that each HR Governmental Body shall) consider the Right granted to PPA under this Agreement and undertake reasonable measures to minimise any effects on PPA's ability to exploit and exercise the Right".

The aforementioned additional delays that occurred in the implementation of our investment are mainly identified in the following:

**2.1 Serious delays by the competent Authorities in the approval of the Environmental Impact Assessment Study**

In the frame of the obligations arising from the HR Concession Amendment (Law 4404/2016) and common environmental Law 4014/2011 referring to environmental licensing process, PPA SA on 8.9.2017 drafted and timely submitted to the Environment and Energy Ministry (EEM) / Directorate of Environmental Licensing (DIPA), a file of Environmental Impact Assessment Study (EIAS in Greek "MITE") of Renewal - Modification of the Environmental Terms Approval Decision (ETAD in Greek "AETIO") for the projects and activities of PPA's investment program, whereby all Mandatory Enhancements projects were included. ~~Subsequently, working meetings were held between PPA S.A.~~ and DIPA, and on 23.4.2018 following the first level review, additional data and specialized supplementary studies were requested by the latter (letter of DIPA/EEM with ref. no 8341/23.4.2018), in order for the evaluation, to be continued, as it was explained to us.

In these working meetings PPA had been suggested by DIPA, on the grounds of the very strict implementation time frame of CAPEX I and in order to avoid the delays from the approval of the overall EIAS, which would affect the implementation of the Mandatory Investments, to prepare and submit EIASs for each one of the Mandatory Investments aiming to receive faster the individual environmental permission per each project.

In this frame, PPA following the instructions provided by the competent environmental authority (DIPA), prepared and submitted the separate EIAS's for the following Mandatory Enhancements:

- i. ME01 – Passenger Terminal Expansion (South Zone – Phase A') (Prot. Number PPA SA – 11239/11.3.2018)



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- ii. ME11 – Upgrade of infrastructure of the Ship Repair Zone area (including floating docks) (Prot. Number PPA SA – Prot. Number PPA SA 24952/19.07.2017).
- iii. ME 03 – Conversion of Pentagonal warehouse to a Passenger Terminal for exception of environmental permission (Prot. Number PPA SA – 46783/29-12-2017 & 41671/17.10.2018).
- iv. ME04 – Underground linkage of Car Terminal with the ex-ODDY area \_for amendment of the environmental approval (Prot. Number PPA SA – 24452/13.6.2018).
- v. ME10 – Expansion of Car Terminal (Herakleous Pier) for amendment of the environmental approval (Prot. Number PPA SA – 44052/30.10.2018, Ref No of Ministry of Environment: 77102/2944/2.11.18).

Approval of the individual studies for the projects of ME01 (Decision Number 11021/30.7.2018) and ME11 (Decision Number 32887/19.12.2017) was indeed provided from DIPA. Nevertheless, **the approvals of the relevant EIAS's studies of ME03, ME04 and ME10 were never provided.**

Although all three studies had been checked and forwarded for approval by the relevant Department of DIPA, the relevant EIASs approval decisions have not been issued by the Directorate (DIPA), due to the instructions of the General Secretary and the Deputy Minister of EEM. More specifically, in a meeting held in the EEM on the 28<sup>th</sup> November 2018, with the presence of representatives from the EEM including the Ministry General Secretary, Mrs Baritaki and Mrs Panagiotou acting, at that time, as a superior consultant of the Vice Minister of Environment, Mr Enselos and the Fund Director, Mr Athanassios Liagkos, it has been announced to PPA **that the Ministry had changed their opinion once again and would not proceed to the approval of the submitted, by PPA, EIASs of the projects ME03, ME04 and ME10.** According to the latest instructions, PPA should consolidate them in the overall ELAS, which was already, as described above, under evaluation. Namely, PPA was instructed to submit again the overall EIAS containing also these three projects' evaluation and the integration had been requested **as precondition for the continuation of the approval process of the overall EIAS, with the commitment of the Ministry's representatives that it would be approved within the following six (6) months, which never happened.**

Without any other alternative or any relevant responsibility on the back and forth process instructed by the competent Ministry, PPA prepared again the integrated – overall ELAS including the above three projects and resubmitted it accordingly on 20.2.2019 (PPA Prot. Number 7442/20.2.2019). On 8.5.2019 an additional submission took place containing the Annexes in full.

A series of working meetings took place between PPA and DIPA for the review of the study completeness





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in order to proceed to the consultation stage. New changes and remarks on the part of DIPA emerged, the integration of which was timely completed and the file was finally resubmitted by PPA on 9.9.2019 and following an update of the data a new submission took place on 17.10.2019.

Finally, the study was forwarded to public consultation on 4.11.2019 (Ministry prot. number 100878/6307). The consultation for the public closed on 10.1.2020 and only the consultation among the involved authorities, i.e. mainly the Attica Prefecture Council, the Ministry of Naval Affairs and the Ministry of Environment and Energy/Department of Solid Waste was still pending. The Attica Prefecture Council convened a meeting on 21.5.2020 and issued a consultation decision on 27.5.2020. The Ministry of Maritime Affairs and Insular Policy provided their consultation opinion on 11.6.2020. The Department of Solid Waste from the Ministry of Environment and Energy provided their comments on 1.7.2020 and the opinion of ELKETHE (Hellenic Centre of Underwater Investigations) was uploaded to the Ministry electronic system on 16/07/2020. It must pointed out that the public consultation procedure resulted to the opinions of eleven (11) Public Authorities and six (6) individual unions and persons.

The Ministry of Environment transmitted to PPA the results of the consultation on 3.6.2020 and PPA's response was submitted on 5.10.2020.

**Until today, namely more the three (3) years after the initial submission of the ELIAS by PPA to the competent Ministry of Environment, the Decision for the approval of ELIAS has not been issued yet. The impact of this serious delay, which lies completely outside PPA's responsibility inevitably resulted in PPA not being able to tender, award and execute ME03, ME04 and ME10 until today.**

**2.2 Unjustified obstruction - reaching the limits of denial - of the consent of the Municipality of Piraeus for the land transportation of aggregates within the frame of the construction of the most important project of the investment program of PPA SA, - the Cruise Terminal South Expansion of PPA SA (ME01)**

With document under prot. no. 11210/29.5.2020, PPA notified to the Municipality of Piraeus the study of traffic adjustments concerning the land transport of aggregates for the execution of ME01, in accordance with environmental terms No 66 and No 72 of the Decision 104050/17.5.2006 JMC for the Approval of Environmental Terms.

The Municipality of Piraeus with document no. 34193/2580 /15.7.2020 (Pr. No. PPA 15353/22.7.2020), notified to PPA an extract from the minutes of the 3rd/29.1.2020 meeting of the Municipal Council of Piraeus. According to the said minutes, the report of the ELIAS Control Committee on behalf of the Municipality, dated 28.1.2020, despite the fact that it proposed the execution of the ME01 project, unjustifiably prohibited the land transport of aggregates for the completion of the execution of the



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above project. The Municipal Council approved the above report of the Committee stating that they do not consent to the land transport of the aggregates for the execution of the work of the Southern Expansion.

Nevertheless, the environmental licensing of the subject project (Dec. 170400/11.9.2013) grants no such authority to the Municipality of Piraeus to prohibit the passage of trucks transporting materials completely from its road network. On the contrary, the land crossing is foreseen as possible and permitted in, both, the environmental condition 66 and condition 72 with specific and explicitly mentioned restrictions, e.g. in terms of the composition of the transported materials (condition 66: "free of foreign matter, e.g. demolition materials and toxic substances"), in terms of network load and noise emissions (condition 72: "During the day emphasis will be given on the traffic design of the heavy load vehicles in such a way as not to create peaks with very high traffic loads and high noise levels and... the construction site service routes must be clearly defined in order to utilize the roads of the main road traffic network and minimizing the burden of other traffic and with the aim of avoiding crossings through residential areas and other sensitive uses during quiet hours."), in terms of permitted traffic hours (condition 72: "Avoid the movement of heavy vehicles out of the construction site during peak hours, ie 08:00 - 10:00 am and 14:00 - 17:00 pm if this is possible.") and, finally, as to the duration of the movements of (condition 72: "distribution of movements in such a way as to achieve the optimization of routes in terms of duration using main roads as much as possible".)

From the above it is absolutely clear that the environmental approval of the project explicitly allows the passage of heavy vehicles of the project with specific and very targeted restrictions in order to minimize the burden on the road network of Piraeus. However, the arbitrary obstruction of the transport of materials by land results in the obvious inability of progress of the project based on the approved studies as the legally approved technical solution includes the land transportation.

Hence, the Chairman of PPA's BoD, Mr Yu Zhenggang, by his letter dated 30.7.2020 (prot. no. 15946/31.7.2020) in order to resolve the important implication, referred to the Mayor of Piraeus, Mr Ioannis Moralis and simultaneously notified to the Ministers of Maritime Affairs, Finance as well as the President of Regulatory Port Authority (RPA), under their capacity as representatives of the Greek State according to the HR Concession Amendment), requesting the implementation of the approved environmental terms and the immediate approval of the submitted traffic study.

In addition to that, with the letter of 31.7.2020 of the Independent Engineer ("IE") for the First Mandatory Enhancements addressed to RPA (Pr. No. PPA 16099/3.8.2020), IE informed RPA of the prohibition by the Municipality of Piraeus of the land transfer of aggregates in the frame of the construction of MED1, in order for RPA to act and resolve the issue within the framework of their





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responsibilities as a representative of the Greek State.

RPA with the 1409/3.8.2020 (prot. No. PPA 16184/14.8.2020) letter to the Independent Engineer, informed both PPA and the IE that the issue is under consideration.

The CEO of PPA SA with letter with prot. no. 16646/14.8.2020 referred to the Mayor of Piraeus, Mr. Moralis, seeking for a solution to the problem.

With letter with prot. no. 121/24.8.2020 (no. Prot. PPA 17283/27.8.2020), the Mayor of Piraeus addressed to the Chairman of PPA SA., requesting a meeting of the involved parties in order to discuss the issue. The meeting between the representatives of the Municipality and PPA took place on 4.9.2020 in Piraeus Town Hall and on 7.9.2020 a second meeting took place at the construction site of the project in Drapetsona with the presence of the construction contractor of the project too.

Despite our rigorous efforts through continuous communication with the Municipality of Piraeus for many months (by means of the above letters as well as in person) and despite the repetitive promises from the representatives of the Municipality of Piraeus that the issue would be resolved, **the issue is still pending from May 2020 until today without any progress at all.** The project is fully licensed both concerning the environmental conditions (see Decision no. 170400/11.9.2013 amending no 104050/17.5.2006 JMD of Approval of Environmental Terms) but also regarding its technical Design Study by the competent (under the HR Concession Amendment) Directorate of Technical Studies of the Attica Prefecture (Decision no. 145631/17.10.2018), which explicitly provides for the transfer of aggregates by land under the conditions specifically mentioned therein.

In addition, we wish to repeat once again that PPA S.A. has been treated by the Greek Authorities, in reference to the provision of the environmental terms necessary for the execution of the CAPEX, in a discriminatory way, since the approval of ThPA's ELAS has not even included a relevant term, namely the previous approval of the corresponding traffic design by the competent Municipality of Thessaloniki. Even in this issue the port of Thessaloniki has been provided with an additional facilitation, whilst at the same time the same issue has evolved for PPA S.A. not only to an impediment for the implementation of CAPEX I but rather to an unresolvable problem.

**The above unjustified and illegal refusal of the Municipality of Piraeus to implement the environmental terms of the said project and approve the traffic in connection to the discriminatory behavior against PPA by the Greek Authorities, has created an irreversible and serious impact on the progress of the works of ME01 (the most important project of CAPEX I) that has resulted, until today, in a delay of, at least, 6 months).**

*2.3 Temporary Interruption of the works of the Project "Passenger Port Expansion (Southern Zone*



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*Phase A)*

*2.3.1 Petitions for annulment and requests for suspension*

On 29.5.2020 PPA S.A., unofficially received the information that the "Labor Union of Piraeus" and a group of citizens have filed two applications for annulment before the 5th Department of the Council of State against the Minister of Maritime Affairs and Insular Policy, the Minister of Environment and the Minister of Finance claiming that almost all permits and licenses for the execution of the project "Passenger Port Expansion (Southern Zone Phase A)" (ME01) are illegal. The said applications have not been officially notified to PPA, due to the fact that PPA S.A. was technically not part of the dispute since the applications have been directed against actions of the three Ministers.

On 1.6.2020 PPA's legal counsels upon a request to the Council of State at their own initiative were informed that three (3) applications for annulment and two (2) applications for interim measures requesting the temporary suspension of the effects of the contested decisions were pending before the Council of State. More specifically:

**A. The first application for annulment** has been filed by 95 citizens of Piraeus Municipality that requested the cancellation of the contested decisions and the suspension of the execution of the following projects:

- (i) Passenger Port Expansion (Southern Zone Phase A), i.e. ME01; and
- (ii) the operational depth restoration project in the area of C2 Car Terminal.

~~The hearing of the above request had been set for the 7<sup>th</sup> October 2020 before the 5th Chamber of the Council of State, composed of the following Judges: Mr. P. Efstratiou (Chairman), Mrs. M. Sotiropoulou (Rapporteur) and Mr. K. Christopoulos (Assistant Rapporteur).~~

Moreover, the aforementioned 95 citizens filed an application requesting, as an interim measure, the immediate suspension of works of the above project until the final decision of the Court is issued.

In response to the said applications, PPA has intervened to the case having obviously a legitimate interest to oppose to the annulment of the contested decisions and to the cancellation of the said projects.

Unfortunately, **the Chairman of the 5<sup>th</sup> Chamber on 11.6.2020 issued a temporary order for the suspension of dredging and discarding dredging works** in the designated sea area only for the ME01 project, without any reference to the project at C2 Pier. The said temporary order shall be effective until a final decision on the application for annulment will be issued. Let it be noted that the hearing date for the application for annulment has not been set yet.

In addition, the wording of the temporary order of the Chairman of the 5<sup>th</sup> Chamber has triggered





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conflicting interpretations and both Ministries (Maritime Affairs and Environment) have informed PPA S.A. that a clarification on the part of the Council of State is imperative before any further works are conducted in order to avoid misinterpretation by the competent criminal authorities in case they are recipients of possible complaints for violation of the Court's order.

Upon the issuance of the State Council Decision on 11/06/2020 the entire project was suspended and finally, the Council of State by a supplementary order issued on 29.6.2020 clarified that the suspension referred merely to the execution of the dredging works as well as the deposition of the dredging materials on the designated area and not to any works related to the project whatsoever.

**B. The second application for annulment** has been brought by 20 citizens of Piraeus municipality, requesting the cancellation and suspension of the execution of two (2) decisions of the Ministry of Maritime Affairs and Insular Policy Committee, i.e. ESAL (Government Gazette dated 29.1.2020 and 3.7.2019), with regards to PPA's Master Plan projects and against the HR Concession Amendment, as ratified by Greek State's Law 4404/2016 (Government Gazette A' 126/8.7.2016).

The hearing of the said application for annulment had also been set for the 7<sup>th</sup> October 2020, before the same composition of the 5th Chamber of the Council of State.

Moreover, the 20 citizens filed an application for the suspension of the effects of the abovementioned ministerial decisions until the final court decision, requesting in addition, as an interim measure, an immediate suspension of the execution of the related works.

In this case the Court has issued no decision, rejecting the request for a provisional order.

In response to the said applications, PPA has also intervened having obviously a legitimate interest to oppose to the annulment of the contested decisions and to the cancellation of the said projects.

**C. The third application for annulment** filed by the Municipality of Keratsini-Drapetsona seeks for the cancellation of the approved projects geographically located in the city of Keratsini-Drapetsona.

This third application has been addressed to the 5th Chamber of the Council of State, but so far it has not been assigned to a Judge-Rapporteur nor has it been set for hearing.

**2.3.2 The impact of the provisional decision suspending the progress of dredging and discarding dredging operations dated 11.6.2020 on the progress of the works**

Having said the above, a summary of the impact of the suspension of dredging works on both the time schedule and the cost of the ME01 is presented below.

At the outset, it is necessary to note that in a marine project, excavation / dredging works are always implemented first and precede all other works. The sequence of works for the current project is the



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following:

1. Excavation of the seabed of category A & C material
2. Foundation rockfill
3. Construction of underwater levelling layer from gravel
4. Construction and placing of caissons Type C & K
5. Construction of connecting cell concrete blocks
6. Construction and installation of flexible cement layers
7. Filling of caissons and cell concrete blocks
8. Construction of internal prism
9. Construction of underwater and above water fillings
10. Construction of above water structures

**It is evident from the above that it is not possible for a marine project, and in particular in this one, to continue its construction unobstructed, without the initial works of the seabed excavations and foundation layer construction of the future quay-wall.**

The completed excavation works by the Contractor company according to the approved design up until the date of the dredging works suspension (12/06/2020), concern the southern area of the project and **more specifically the area of installation where only 7 caissons (caisson CI20 – CI26) can be installed**.

It is therefore clear that only the construction and installation of those seven (7) caissons can continue in the project until the issuance of the decision of the Council of State regarding the petitions of annulment. It is also noted that the completion of this particular section (caisson CI20 – CI26) is estimated to take place in a three-month period (October, November and December 2020) after which no other work can be executed and the project will, inevitably, be completely stopped.

The temporary order of the Council of State for the suspension of dredging works has **a direct impact not only on the works that cannot be performed but also another direct impact on the performance of the work site operations and staff, which consequently leads to deceleration of the working force and equipment mobility**. More specifically, according to the approved design of the project, three different types of caissons CI, CII & CIII and one type K must be constructed. According to the methodology and construction time-schedule of the Project, all three types of caissons of type C should be manufactured simultaneously commencing from August, taking into account the approved time-schedule. The caissons that can actually be constructed are only the seven CI type caissons. The



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equipment (floating dock, floating cranes, tug boats, construction cranes, sliding formworks, other equipment) and the personnel intended for the construction of the CI type cellular boxes, cannot be used from January to April, despite the fact that have been installed and established at the construction site. The above equipment and the personnel foreseen for the construction of the caissons type CII & CIII, cannot be used until April.

It needs to be noted that the floating dock according to the construction methodology and the project time-schedule can accommodate the construction of one caisson from each type (CI, CII & CIII) simultaneously, whereas currently due to the impossibility of placing the caissons of type CII and CIII, only one type of caisson will be constructed, thus affecting both the efficiency of the floating dock and the cost per caisson.

Also, all the floating equipment that were foreseen according to the methodology and the construction time-schedule of the works, cannot perform works.

**2.3.3 Judicial delays falling outside PPA's control**

Despite the fact that PPA is not directly procedurally involved in the said case, PPA has exercised all legal remedies for the rejection of the citizens' applications, by filing four (4) interventions in the aforementioned cases. Nevertheless, since the 1<sup>st</sup> of June 2020, i.e. when PPA S.A. officially received the relevant petitions for annulment, **no progress has been achieved for reasons that lie, completely, outside PPA's control. More specifically:**

1. The provisional order suspending the progress of dredging and discarding dredging operations has not examined the overdue submission of the applications for annulment.
2. In September 2020 we were informed that the Mr. K. Christopoulos Assistant Rapporteur has been replaced, hence, additional time would be needed for the new Assistant Rapporteur to be informed of the case.
3. In early October 2020 we were informed that Mr. P. Efstratiou, Chairman of the 5<sup>th</sup> Chamber has been replaced by the new Chairman, Mrs Christofilopoulou
4. In late October 2020 we were also informed that Mrs. M. Sotiropoulou, who has been appointed as Rapporteur in both cases, would not be able to participate in the ordinary formation of the Court earlier than October 2021. In consequence, Mrs Sotiropoulou should also be replaced in order for the hearing of the two cases to take place.
5. The hearing of the application for annulment, which initially had been scheduled for the 7<sup>th</sup> October 2020, was postponed by the Chairman of the 5<sup>th</sup> Chamber, without PPA S.A. being able to express their rejections and opposition to that decision.





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6. The new hearing of the application for annulment, which was rescheduled for the 4<sup>th</sup> November 2020, was postponed once again for the 2<sup>nd</sup> December 2020 by the Chairman of the 5<sup>th</sup> Chamber, without PPA S.A. being able to express their rejections and opposition to that decision.
7. The replacement of the Rapporteur in both cases has not taken place so far and therefore it is most unlikely that the hearing will take place within year 2020;
8. The adjudication of the suspension request has not yet been set and, hence, the project is still suspended by virtue of a preliminary decision for almost 6 months now.

At this point, we wish to remind you that the said project has already suffered a significant delay of almost 1,5 year due to Decisions No 382/2018 and 383/2018 of the Suspension Committee of the 4<sup>th</sup> Chamber of the Council of State (as already explained in the Invitation, para. C.3 hereof), which were finally annulled by virtue of Decision No 1076/2019 of the Plenary Session of the Council of State in April 2019.

Therefore, our argument that the project of Passenger Port Expansion (Southern Zone Phase A) – ME01, which is the most important project of CAPEX I has already delayed for almost two (2) years, whilst at the same time, the additional delay until the issuance of final decision to the petitions of annulment by the Council of State is impossible to be predicted.

**3. Request for immediate resuming of the negotiations for the settlement of a contractual dispute under the provisions of Clause 38.4**

The present Supplementary Notification constitutes an integral part of the Invitation addressed by the Purchaser to the Seller for the settlement of the contractual dispute under the provisions of Clause 38.4. Hence, for all the reasons described in detail herein and explicitly mentioned in the Invitation, **whereas it is undoubtedly proven that the Enhancement Completion Default shall have been caused due to circumstances beyond any control of PPA S.A. or the control of its majority shareholder**, such as (among other) a material delay in the issuance of necessary licenses or permits and serious delays due to just implications,:

**WE REQUEST**

1. the immediate resuming of the amicable negotiations between the Seller and the Purchaser in the frame of Clause 38.4 of the SPA, aiming at the conclusion of Closing II in a two-month period, starting from the servicing of the present Supplementary Notification to you; and
2. following the completion of Closing II, your immediate actions and cooperation with the Greek (competent for each issue) Authorities in order for them (a) to quit setting obstacles to the execution of



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PPA's investment plan and adversely affect the daily operation of the company, (b) to accelerate any pending approval procedure for the implementation of CAPEX I, (c) to abstain from causing any distortions of competition between the two biggest ports of Greece and (d) to fully respect the contractual obligations of the HR as PPA S.A.'s counterparty in the frame of the HR Concession Amendment.

**WITHOUT PREJUDICE TO ANY OF OUR RIGHTS**

We remain at your disposal.

Yours Faithfully,

On behalf of COSCO HK

A handwritten signature in black ink, appearing to read 'Zhang Anming', written over a dotted line.

ZHANG Anming