

Piraeus Port Expansion (2017-0773)

Complaint SG/E/2019/16

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# Conclusions Report

10 March 2021

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Prepared by

Complaints Mechanism

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## **THE EIB COMPLAINTS MECHANISM**

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal — the Complaints Mechanism Division (EIB-CM) — and one external — the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group’s activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures, but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/en/about/accountability/complaints/index.htm>

**TABLE OF CONTENTS**

|  |    |
|--|----|
| THE EIB COMPLAINTS MECHANISM.....  | 3  |
| TABLE OF Contents .....  | 4  |
| GLOSSARY OF TERMS AND LIST OF ACRONYMs .....   | 5  |
| EXECUTIVE SUMMARY .....  | 6  |
| 1. COMPLAINT: ALLEGATIONS AND CLAIMS.....  | 7  |
| 2. BACKGROUND INFORMATION .....  | 8  |
| Project location and technical description.....                                      | 8  |
| Project stakeholders.....  | 9  |
| Project permits .....  | 10 |
| 3. REGULATORY FRAMEWORK.....   | 13 |
| Complaints Mechanism.....  | 13 |
| Applicable Environmental and Social Standards .....                                  | 13 |
| Role of the EIB .....  | 15 |
| 4. WORK PERFORMED BY THE EIB-CM .....  | 16 |
| 5. FINDINGS.....   | 17 |
| 5.1 Allegation I .....   | 17 |
| Environmental decision impinging on Greek and the EU law .....                       | 17 |
| Findings on the compliance of the project with the applicable standards.....         | 17 |
| Findings on the role of the EIB.....   | 18 |
| Conclusions.....   | 19 |
| 5.2 Allegation II.....   | 20 |
| Assessment of certain significant negative environmental impacts of the project..... | 20 |
| Findings on the compliance of the project with the applicable standards.....         | 20 |
| Findings on the role of the EIB.....   | 24 |
| Conclusions.....   | 25 |
| 6. SUMMARY OF CONCLUSIONS AND OUTCOMES.....  | 25 |

**GLOSSARY OF TERMS AND LIST OF ACRONYMS**

|                      |   |
|----------------------|---|
| AEPO                 | Approval of Environmental Terms (EIA Decision)                          |
| COSCO Shipping       | China COSCO Shipping Corporation Limited                                |
| Developer / promoter | Piraeus Port Authority S.A., alternatively 'OLP AE'                     |
| EC                   | European Commission   |
| EIA                  | Environmental Impact Assessment (see also AEPO)                         |
| EIB                  | European Investment Bank  |
| EIB-CM               | EIB Complaints Mechanism Division                                       |
| EIS                  | Environmental impact study  |
| EU                   | European Union  |
| EO                   | European Ombudsman  |
| ERDF                 | European Regional Development Fund                                      |
| ESAL                 | National Committee for Ports Design and Development                     |
| ESDS                 | Environmental and Social Data Sheet                                     |
| JASPERS              | Joint Assistance to Support Projects in European Regions                |
| JMD                  | Joint Ministerial Decision  |
| OJ                   | Official Governmental Journal   |
| ROP                  | Regional Operational Programme  |
| SEA                  | Strategic Environmental Assessment                                      |
| T&E                  | International non-governmental organisation "Transport and Environment" |
| TEPEM                | Technical Environmental Study   |

## **EXECUTIVE SUMMARY**

In September 2019, the European Investment Bank (EIB) received a complaint from a civil society organisation (the complainant) in Greece concerning the Piraeus port investment programme (hereinafter the overall project). The EIB-financed project includes several but not all components of the overall project implemented in the Piraeus port. The complaint focuses on the expansion of basic port infrastructure for the reception and service of cruise ships (hereinafter the disputed overall project components), which are to be funded by the European Union's European Regional Development Fund (ERDF) programme.

The disputed overall project components and the EIB-financed project component concerning the construction of a new cruise passenger handling facility are auxiliary activities and will be located on reclaimed land in the same geographic area: the southern Piraeus passenger port.

The letter of complaint, enclosing a petition and other evidence, alleged the following:

- i. Deficient environmental decision not compliant with Greek and EU law; in particular, the Approval of Environmental Terms (AEPO)<sup>1</sup> had a limited scope, had expired and did not cover the additional berths for cruise liners. The complainant alleges that the Piraeus Port Master Plan (hereinafter Master Plan) does not cover the disputed overall project components and was not subject to a Strategic Environmental Assessment (SEA).
- ii. Unassessed and unaddressed significant negative environmental impacts caused by the project in the southern Piraeus passenger port area, especially in terms of potential flooding, air pollution caused by cruise ships and surface transport, unaccounted-for health effects stemming from hazardous waste treatment and the use of caissons to dispose of hazardous dredged material.
- iii. State aid linked to the allocation of public funding (ERDF) to the developer.
- iv. A waiver provided by Council of State Ruling No 1076/2019 in breach of Greek and EU law on procurement.

After examining the complaint and the evidence provided with it (annexes), information provided by the EIB services and the developer, and other relevant publicly available documents obtained during the investigation, the EIB-CM decided to investigate allegations (i) and (ii). In line with paragraph 4.3 of the EIB Complaints Mechanism Policy (EIB-CM Policy), the EIB-CM cannot handle project complaints falling outside its mandate. Therefore, the EIB-CM dismissed the allegations on state aid (iii) and procurement (iv) before investigation.

The EIB-CM closed the case with two allegations dismissed after investigation with one suggestion for improvement and two allegations dismissed before the investigation without any recommendation or suggestions for improvement to the EIB services (paragraph 6). The suggestion for improvement concerns the reflection of the up-to-date project environmental procedure in the Environmental and Social Completion Sheet (ESCS).

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<sup>1</sup> This is an equivalent of an EIA decision in Greece.

## 1. COMPLAINT: ALLEGATIONS AND CLAIMS

1.1 On 27 September 2019, the EIB received a complaint concerning a part of the Piraeus port investment programme (hereinafter, the overall project), which is linked to an EIB-financed project (2017-0773)<sup>2</sup>. The disputed overall project components are the new cruise berths and basic port infrastructure for the reception and service of cruise ships funded by the European Union ERDF programme. These components and the construction of a new cruise passenger handling facility – a project component financed by the EIB – are auxiliary activities implemented in the southern Piraeus passenger port area.

1.2 The complaint included a petition dated 20 September 2019 providing details of the issues, together with annexes in support of the claims. The complainant alleges the following:

1.2.1 Shortcomings of environmental decision making:

- The Piraeus Port Master Plan (hereinafter Master Plan) – the document describing Piraeus port development programme – does not include the disputed overall project components.
- The Master Plan was not subject to an SEA.
- The project's Approval of Environmental Terms of 2006 (hereinafter AEPO, which is the EIA decision, as required by the EU EIA Directive)<sup>3</sup> does not cover the new cruise berths. This major component was allegedly added without an Environmental Impact Study (hereinafter EIS).
- The AEPO had allegedly expired at the time of the complaint submission, therefore rendering the project illegal. According to the complaint, the AEPO also was neither published in the Official Journal (OJ) nor could it be found by the complainant.

1.2.2 Significant negative environmental impacts of the disputed overall project components:

- The disputed overall project components were not properly studied with respect to flooding endangering the densely populated south-western coast and the harm it may cause.
- The “project will lead to an increase of traffic congestion on all main roads of Piraeus, ranging from 5% and up to 45% on average each day (whereas in some main roads this burden will reach 115.48% during certain periods of time, daily),” however “no substantive solution is proposed to address the traffic congestion problem that will be caused in the city.”
- Air pollution caused by cruise ships will further increase, which will further exacerbate the situation in Piraeus. The complaint refers to the figures of Transport & Environment organisation (T&E) for sulphur dioxide in particular, which was “120 times higher than that emitted by vehicles.”
- The complaint alleges that 400 000 tonnes of heavily contaminated material (containing carcinogenic substances) from the seabed of the port are unlikely to be removed due to high costs. The complainant took the view that there are health risks of “hazardous waste [being treated] next to houses and schools”.

1.3 The complaint alleges that the allocation of public funding from the European Regional Development Fund (ERDF)<sup>4</sup> to the developer through a subsidy from ROP Attica 2014-2020 (ROP)<sup>5</sup> of nearly €114 million was in breach of Greek and EU law. It also claims that the developer failed to apply the public procurement requirements and received a waiver by State Council Decision Ref.1076/2019 regarding the application of the Greek/EU public procurement legislation.

1.4 The complainant requests a “[re-examination of] the extent to which the above project, and the financing it receives, complies with Greek and European legislation, as well as with the

<sup>2</sup> The EIB project description on the public [portal](#).

<sup>3</sup> AEPO Ref.104050/17.5.06 which is the first environmental decision issued for the investment programme in the port of Piraeus”.

<sup>4</sup> European Regional Development Fund (ERDF): [https://ec.europa.eu/regional\\_policy/en/funding/erdf/](https://ec.europa.eu/regional_policy/en/funding/erdf/)

<sup>5</sup> Regional Operational Programme for the Region of Attica for the programming period 2014-2020: [https://www.euro-access.eu/calls/rop\\_attica\\_2014-2020](https://www.euro-access.eu/calls/rop_attica_2014-2020)

operation/financing rules of the EU and the ERDF in particular,” which is understood as an appeal to re-consider the decision making leading to the financing of the project in question and/or to stop financing for the project.

## 2. BACKGROUND INFORMATION

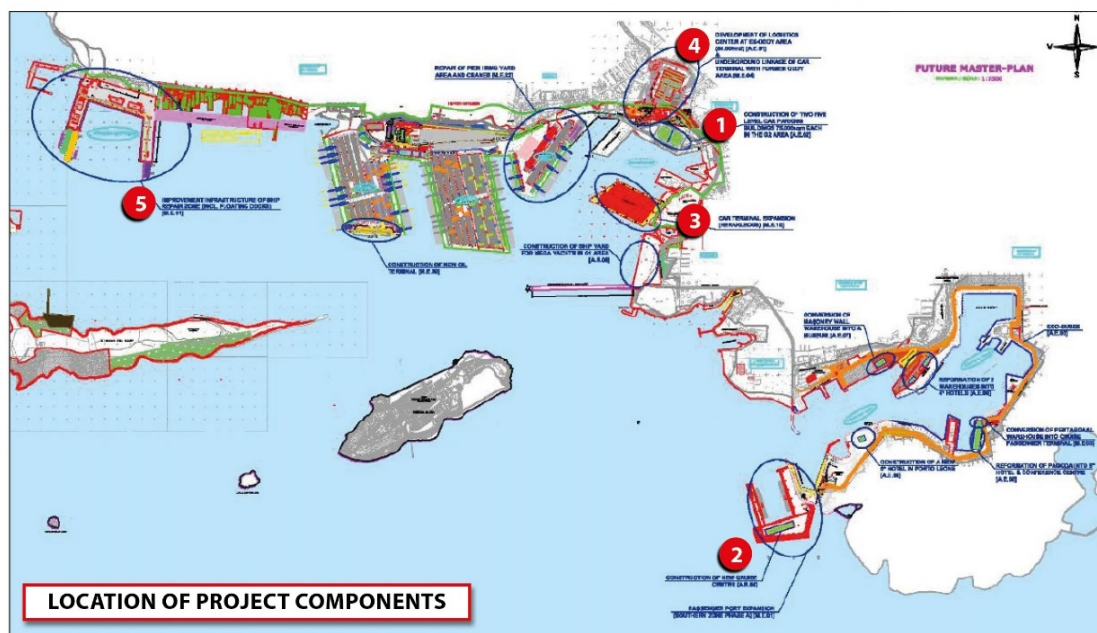
### *Project location and technical description*

2.1 The port of Piraeus is located in Attica region of Greece within the Athens-Piraeus urban area, 12 km south-west of Athens.

2.2 The developer is expanding and upgrading several areas of the port of Piraeus, which forms the development programme and is presented in the Master Plan. The Piraeus port investment programme underwent a single EIA (AEPO) permit procedure, therefore for the purposes of this report is called an overall project.

2.3 The overall project components financed by the EIB include the following (Figure 1): (1) the development of a new port logistics centre including car parking buildings; (2) the construction of a new cruise passenger handling facility; (3) the expansion of the car terminal; (4) the underground linkage to the logistics centre; (5) the improvement of infrastructure in the ship repair zone, and the upgrade of the container terminal equipment. It also includes the renovation and upgrade of other miscellaneous port and electromechanical (E/M) equipment, installations to achieve the required service levels for port operations and a number of components related to the improvement of the environmental performance of the port. The EIB-financed project component in question (2) is located in the southern Piraeus passenger port. The development of this area includes dredging, the construction of an artificial pier and related infrastructure.

**FIGURE 1: PROJECT LOCATION OF THE COMPONENTS FINANCED BY THE EIB**



Source: Project file, EIB.



- 2.4 The complaint specifically targets the impacts arising from the development of the southern Piraeus passenger port, which includes the new cruise passenger handling facility as an auxiliary activity to the disputed overall project components (see paragraph above). The permitting process for all development programme components is the same, namely covered by a Master Plan with an SEA. The overall project (the investment programme) is covered by a single AEPO. The construction of the new cruise passenger handling facility financed by the EIB is directly linked to the new cruise ship berths to be constructed side by side on the reclaimed land.
- 2.5 Preliminary works including project design and tender preparation have already commenced for some Piraeus port investment programme components. The developer has scheduled the start of project implementation for Q4 of 2018 and project completion is expected in the second half of 2022.
- 2.6 To date there has been no disbursement requested or executed by the EIB for the project it is financing.

**FIGURE 2: VISUALISATION OF THE NEW CRUISE TERMINAL AT THE PIRAEUS PORT**



Source: <https://cyprusshippingnews.com/2020/05/12/piraeus-cruise-terminal-expansion-project-southern-zone-phase-a/>

*Project stakeholders*

- 2.7 The promoter, developer and operator of the investment programme is Piraeus Port Authority (PPA).
- 2.8 For all components of the Piraeus port investment programme, the Environmental Impact Assessment (EIA) procedure was carried out in a joint decision-making process between the ministries responsible for the environment, transport and maritime affairs. The programme is financed from various sources. The competent authority and environmental decision-making institution both for SEA<sup>6</sup> and EIA<sup>7</sup> for the investment programme is the Ministry of the Environment and Energy (formerly called the Ministry for the Environment, Energy and Climate Change and the Ministry for Productive Reconstruction, the Environment and Energy).
- 2.9 The EIB appraised the project, as defined in paragraph 2.3 (see above) in 2018 issuing the Environmental and Social Data Sheet (hereinafter ESDS)<sup>8</sup>. The EIB signed the finance contract<sup>9</sup> with the borrower in 2019.

<sup>6</sup> Established by Article 4 of [JMD 107017/2006](#) (OJ 1225B) (as amended)

<sup>7</sup> Established by Article 3.1. of [EIA Act](#) Ref. 4014/11 (as amended, the most recent amendment by Law Ref. 4685/2020)

<sup>8</sup> ESDS is available on the EIB website [here](#).

<sup>9</sup> The EIB's project cycle is presented here: <https://www.eib.org/en/projects/cycle/index.htm>, accessed on 11 November 2019.

2.10 JASPERS, a technical assistance partnership between the EIB and the European Commission<sup>10</sup>, appraised the Piraeus port investment programme components aiming for EU funding between 2017 and 2018. Besides technical, economic and financial advice, JASPERS provided advice on the EIA procedure, especially regarding the modifications of some components of the investment programme, and recommended that the developer analyse relevant negative environmental impacts, cumulative effects (especially of the construction), and the requirements stemming from the amended EIA Directive (2014).

#### *Project permits*

### ***SEA of Piraeus Port Master Plan and of other plans and programmes relevant to the disputed overall project components***

2.11 The National Committee for Ports Design and Development (ESAL) approved the former version of Master Plan in 2011<sup>11</sup>. A procedure for renewal of the Master Plan was launched in 2017 with several versions (drafts) of the Master Plan prepared for consideration during the procedure, which involves stakeholder consultations. The Master Plan is an integral part of the Concession Agreement between COSCO Shipping<sup>12</sup> and the Greek State.

2.12 The disputed overall project components together with the plans for further expansion of the southern Piraeus passenger port with an additional four cruise ship berths (Phase 2) appear in a map dated 2017 enclosed with the draft Master Plan.

2.13 The first known version of the draft Master Plan is dated 2018, and was submitted to the competent authorities together with the draft SEA. On 19 February 2019, ESAL issued a decision partially endorsing the Master Plan with conditions. In October 2019, ESAL requested again to amend the scope of the Master Plan. The procedure of adoption of the Master Plan was ongoing in January 2021.

2.14 The first SEA report was dated March 2018. There have been two new versions of the SEA report issued in February 2019 and May 2020<sup>13</sup> and submitted to the competent authority with the request to start the proceedings. The SEA consultation procedure with the public, according to national law, is to be organised by the developer (paragraphs 5.1.2 – 5.2.4).

2.15 Other plans and programmes relevant to the disputed overall project components and their SEAs:

- ROP Attica 2014-2020<sup>14</sup>, which included the disputed overall project components in the southern Piraeus passenger port (Phase A). The ROP was approved by the Greek Government, after public consultations within the SEA procedure, and was endorsed by the European Commission (2014, as amended in 2018)<sup>15</sup>.
- National Strategic Framework for Investment in Transport (SFIT, November 2014), which included the creation of the new cruise ships berths in Piraeus port. The SFIT was analysed by an SEA.
- National Transport Plan for Greece (2019<sup>16</sup>), which was accompanied by an SEA<sup>17</sup>.

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<sup>10</sup> The JASPERS website can be found here: <https://jaspers.eib.org/follow-the-action/index.htm>

<sup>11</sup> Decision of the National Committee for Ports Design and Development Ref. 02/18-04-2011.

<sup>12</sup> China COSCO Shipping Corporation Limited, abbreviated as COSCO Shipping, is a Chinese multinational transportation service and real estate conglomerate.

<sup>13</sup> The SEA report has been provided to the EIB-CM

<sup>14</sup> Operational Programme for Attica Region 2014GR16M2OP012 ([in Greek](#)).

<sup>15</sup> [EC Implementing Decision](#) Ref. C(2014)10170 of December 2014 (in Greek), as amended by Implementing decision C(2018) 8869.

<sup>16</sup> [http://www.nationaltransportplan.gr/wp-content/uploads/2019/06/Final\\_NTPG\\_en\\_20190624.pdf](http://www.nationaltransportplan.gr/wp-content/uploads/2019/06/Final_NTPG_en_20190624.pdf) (EN) and [https://www.espa.gr/el/Documents/2127/National\\_Transport\\_Strategic\\_Frame\\_Jun2019.pdf](https://www.espa.gr/el/Documents/2127/National_Transport_Strategic_Frame_Jun2019.pdf) (EL).

<sup>17</sup> Decision Ref.19273/1264 of 24 September 2019:

[http://www.sate.gr/data\\_source/2019%CE%A5%CE%A0%CE%95%CE%9A%CE%91-33935.pdf](http://www.sate.gr/data_source/2019%CE%A5%CE%A0%CE%95%CE%9A%CE%91-33935.pdf) (EL).

## Environmental decision making

2.16 In 2006, the developer received AEPO<sup>18</sup> approval of the environmental terms for the construction and operation of the Piraeus port investment programme. The scope of the AEPO, as per paragraph A “Activity size and type,” did not include the component of the southern Piraeus passenger port extension (berths and the terminal). The scope of the AEPO was as follows:

- Sub-programme I & II of container terminal: expansion and equipment of Pier I, Pier II and Pier III.
- Sub-programme III: Infrastructure projects in the commercial conventional cargo handling port, Drapetsona breakwater shielding, creation of land areas in the Keratsini Karvoynoskala area (coal loading area) and completion of the Irakleous port, relocation of SILO cereal storage.
- Sub-programme IV: Construction of small port projects (piers), renovation - landscaping of buildings in the Central Port, dredging of the Central Port, guided transport system, construction of a heliport at the “Palataki” area, connection of Piraeus passenger port with ISAP station and underground car park in the area of M. Merkouri - Agios Nikolaos Square with 750 spaces.
- Sub-programme V: Landscaping projects of PPA shipbuilding repair port.
- Sub-programme VI: Regional Piraeus Ave. - Schisto Ave. In the Lipasmata - Drapetsona Dock area, a 275 m long bridge will be constructed, which will pass over Kontopoulou, Botsari and Porfyra Streets.

2.17 The evolution of the EIA decision making for the Piraeus port investment programme with a focus on the disputed overall project components is presented in the table below.

**Table 1: Evolution of the EIA decision making for the disputed overall project components**<sup>19</sup>

| Amendments to the scope of the AEPO (direct applicability to the disputed overall project components)  | Extension of validity of the AEPO  | Notes   |
|--|--|---|
| The decision approving the environmental conditions (AEPO) Ref.104050/17-05-2006   |  | The first validity period was ten years   |
| Decision amending the decision approving the environmental conditions Ref. 170400/11.09.2013 (included cruise ship berths)   |  | EIS prepared in 2012, public information/consultation   |
|  | Decision of renewal of AEPO Ref.:32907/30-06-2016  | First extension of validity for additional two years  |
| Decision amending the decision approving the Technical Environmental Study (TEPEM) for the temporary yard for the construction of caissons Ref. 5393/7-03-2018 <sup>20</sup>   |  |   |
| Decision amending the decision approving the environmental conditions Ref. 11021/30-07-2018 <sup>21</sup> (the geometric characteristics and the construction works of the expansion of a passenger port to the south) |  | EIS prepared, public information/consultation   |
| Decision for the renewal and amendment of the AEPO Ref. 94701/5991 <sup>22</sup> of 11 December 2020 (not analysed in this report)   | During the investigation, the process of renewal of the AEPO was ongoing. Nevertheless, the developer was in the possession of Certificate Ref.: 10917/10-07-2018 issued by the Ministry of Environment stating that the procedure of extension has not yet finished, though the AEPO is valid, as the developer applied for its extension on time | During the preparation of the conclusions report, the process of the second extension of validity was ongoing. It was initiated by the developer in September 2017 with the second submission of updated EIA file in March 2018 |

<sup>18</sup> JMD Ref. 104050/17-05-2006 (AEPO).

<sup>19</sup> This is not an exhaustive list of amendments to the AEPO, but rather those that are relevant to the case in question.

<sup>20</sup> Decision of the Ministry of Environment and Energy Ref. 5393 of 7 March 2018.

<sup>21</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>22</sup> Decision of the Ministry of Environment and Energy Ref. 94701/5991.

Note: Other amendments<sup>23</sup> to the AEPO to date: Decision Ref.125092/04-01-2007, Decision Ref.101540/03-11-2008, Decision Ref. 145184/02-10-2009, Decision Ref.170400/11-09-2013, Decision Ref. 166713/04-11-2013, Decision Ref. 175090/25-09-2014, Decision Ref. 151149/03-08-2015 and Decision Ref. 9654/29-02-2016

- 2.18 The developer initiated the first amendment of the AEPO regarding the south passenger port expansion in 2012. On 7 March 2012, by letter Ref.196670, the Ministry of Environment, Energy and Climate Change transmitted the EIS submitted by the developer to the parties to the proceedings and for public consultation<sup>24</sup>.
- 2.19 In 2013, and based on the EIS, as provided in the previous paragraph, the Ministry of Environment, Energy and Climate Change issued a decision amending the AEPO<sup>25</sup> by adding to paragraph A. Type and size of activity: "it is also the construction and operation of a south extension of the Piraeus passenger port, for the service of cruise ships, which includes the following projects: external port works, internal port operations, land areas, passenger station building, car park, extension of the line of average fixed track from Palataki to the proposed extension, construction of a road access network and the networks.<sup>26</sup>" The 2013 decision amending the AEPO also contained a number of conditions for these added elements.
- 2.20 In 2018, a decision amending the AEPO<sup>27</sup> was issued approving the installation and operation of a site for the pre-construction of reinforced-concrete carriers (cellular boxes and poles), the preparation of concrete for flooring, other concrete reinforcing operations for the construction needs of the south expansion of the Piraeus passenger port.
- 2.21 In April 2018, the developer submitted an EIS seeking an authorisation for all final design modifications of the disputed overall project components focusing on the construction of berths, management of dredged materials and other components, which form part of the south expansion of the Piraeus passenger port. The public was informed via notifications published by the municipal/local authorities (on notice boards, in newspapers and web portal: <http://aepo.ypeka.gr/>).
- 2.22 The Ministry of Environment issued a decision<sup>28</sup> amending the AEPO modifying "the technical details of the geometric characteristics and the construction works of the south expansion of a passenger port".
- 2.23 The validity of the AEPO is periodically extended under the procedure, which checks the environmental impacts of overall project components that have been implemented, are under construction or to be authorised. The original validity of the AEPO (ten years) was extended by two years until 17 May 2016<sup>29</sup>, and by two years until 30 June 2018<sup>30</sup>.
- 2.24 The developer applied for the extension of validity on time with the EIS prepared in 2017. An extension to the validity of the AEPO was requested in 2018 on time, before its expiration, as required by national legislation; therefore the permit was valid at the time of the issue of the EIB's appraisal report and the finance contract. A certificate of validity of the AEPO was issued on 10 July 2018<sup>31</sup> stating that the developer applied for the extension according to the requirements (paragraph 2.17). A new extension and modification of the AEPO was issued on 11 December 2020 with a validity period of 15 years, if the conditions do not change. In other circumstances, the validity will be shorter<sup>32</sup>.

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<sup>23</sup> The SEA report of the Master Plan, paragraph 7.6.

<sup>24</sup> The letter made the reference to the Joint Ministerial Decision 37111/2021/26.9.2003 (Gov. Gaz. B' 1391) "Method of public information and consultation during approval of environmental terms for projects and activities, pursuant to Article 5(2) of Law Ref. 1650/96, as replaced by Paragraphs 2 and 3 of Article 3 of Law Ref. 3010/2002".

<sup>25</sup> Decision Ref. 170400/11-09-2013.

<sup>26</sup> Decision amending AEPO of 2013 refers to the EIS submitted by the Developer with the document Ref.39133/13.12.11.

<sup>27</sup> Decision of the Ministry of Environment and Energy Ref. 5393 of 7 March 2018.

<sup>28</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>29</sup> Decision of the Ministry of Environment, Energy and Climate Change Ref. 21423/2.6.2014.

<sup>30</sup> Decision of the Ministry of Environment and Energy Ref.32907/30.06.2016.

<sup>31</sup> Certificate of Validity Ref.10917/10.07.2018.

<sup>32</sup> Point 6, the Decision of the Ministry of Environment and Energy Ref.94701/5991.

### 3. REGULATORY FRAMEWORK

#### *Complaints Mechanism*<sup>33</sup>

3.1 The EIB Complaints Mechanism Policy (EIB-CM Policy) tasks the EIB-CM with addressing complaints concerning alleged maladministration by the EIB<sup>34</sup>. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures<sup>35</sup>. Maladministration may also relate to the environmental or social impacts of the EIB's activities<sup>36</sup>.

3.2 The EIB-CM Policy specifies the role of the EIB-CM, such as gathering and reviewing existing information on the subject under complaint, conducting appropriate inquiries with a view to assessing whether the EIB's policies and procedures have been followed and promoting adherence to the EIB's policies<sup>37</sup>.

#### *Applicable Environmental and Social Standards*

3.3 Environmental law (e.g. on SEA, EIA, etc.):

3.3.1 In terms of the EU legislation, the project must comply at least with:

- SEA Directive 2001/42/EC 38 on the assessment of the effects of certain plans and programmes on the environment (pre-project planning phase);
- EIA Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (as amended)<sup>39</sup>;
- Waste Framework Directive 2008/98/EC, as amended (if dredged material is used outside a water body)<sup>40</sup>;
- Water Framework Directive 2000/60/EC, as amended (if dredged material is disposed in a designated place in a water body)<sup>41</sup>.

3.3.2 In terms of the national legislation, the project must comply at least with:

- Joint Ministerial Decision (JMD) transposing the EU Directive 2001/42/EC<sup>42</sup>;
- EIA Act<sup>43</sup> on Environmental Licensing of Projects and Activities (as amended), Act on Investments<sup>44</sup> and JMD on Specialisation of the procedures of opinions and public information and participation during the environmental licensing of projects and activities of Category A<sup>45</sup>;
- Legislation authorising the use of construction, demolition and excavation material<sup>46</sup>;
- Legislation on sulphur content in fuels: JMD Ref. 128/2016, which transposes Directive (EU)

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<sup>33</sup> In this case, the EIB-CM applied the [EIB-CM Policy \(2018\)](#) and the EIB-CM Procedures ([2018](#)), which were applicable when the complaint was lodged and registered.

<sup>34</sup> Section 1, Paragraph 1.1 of the EIB-CM Policy (2018).

<sup>35</sup> Section 3, Paragraph 3.1 of the EIB-CM Policy (2018).

<sup>36</sup> Section 3, Paragraph 3.3 of the EIB-CM Policy (2018).

<sup>37</sup> Section 6, Paragraph 6.1.1 of the EIB-CM Policy (2018).

<sup>38</sup> Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ([SEA Directive](#)).

<sup>39</sup> Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment ([EIA Directive](#)), as amended.

<sup>40</sup> Waste Framework Directive 2008/98/EC as [amended](#).

<sup>41</sup> Water Framework Directive [2000/60/EC as amended](#).

<sup>42</sup> JMD Ref. [107017/2006](#) (as amended).

<sup>43</sup> Law Ref. 4014/11 (as amended) can be accessed [here](#).

<sup>44</sup> Law Ref. 4608/19 on Strategic Investments (as amended) can be accessed [here](#).

<sup>45</sup> JMD Ref. 1649/45/2014 on Specialisation of the procedures of opinions and public information and participation during the environmental licensing of projects and activities of Category A can be found [here](#).

<sup>46</sup> Decision Ref. 36259/1757/E103/2010 on the use of construction, demolition and excavation material.

2016/80247 on a reduction in the sulphur content of certain liquid fuels and takes into account EU Implementing Decision (2015/253/EU) laying down the rules concerning the sampling and reporting as regards the sulphur content of marine fuels. From 1 January 2020, EU Member States have to ensure that ships in all EU waters use fuels with sulphur content not exceeding 0.5% by mass.

- 3.4 The procedure for the approval of the SEA (paragraph 3.3 above) includes the submission of an application with the draft SEA report to the planning authority. The consultation process with the relevant public authorities is initiated by the competent authority on the SEA (within 20 days from its submission). The information and consultation with the public is initiated by the planning authority.
- 3.5 The competent authority, upon receipt of the opinions from the above-mentioned public authorities or otherwise after the expiry of the 45-day period and regardless of whether or not these opinions have been transmitted, assesses the potential significant environmental impact of the project or programme, and takes into account the SEA dossier, the results of the consultations with the public authorities and the members of the public concerned and proceeds within 20 days to the preparation of a draft decision approving or rejecting the plan or programme.
- 3.6 The AEPO should be valid during the entire time of the project construction and operation. Any modification of the scope of a project should undergo a screening or a full EIA. The extension of validity is also accompanied by an EIS submitted to the competent authority with the application for extension.
- 3.7 According to the EIA Act (before amendments regarding public consultation procedure using the dedicated website), the competent authority initiates the consultations both with the other competent state agencies for their advisory opinion and the public, executed at least via announcements on the announcement boards of public bodies and the press.<sup>48</sup>
- 3.8 Relevant EIB standards are outlined in the EIB Statement of Environmental and Social Principles and Standards<sup>49</sup> (hereinafter ESPS Statement, 2009), the EIB's Environmental and Social practices Handbook<sup>50</sup> (hereinafter the Handbook, 2013), and the EIB Environmental and Social Standards (2018), specifically:
  - Standard 1: Assessment and management of environmental and social impacts and risks.
  - Standard 2: Pollution prevention and abatement.
- 3.9 The Handbook (2013) specifies documentation and information requirements from the promoter and internal due diligence. Table B on Typology of EIB Environmental and Social Standards stipulates that for all projects requiring an EIA, the Non-technical Summary (NTS) will be made public, either on the EIB's projects website or by a link to the website of the promoter<sup>51</sup>. The EIB Environmental and Social Standards<sup>52</sup> define the "project" based on the EU Directive 2011/92/EU, meaning the "execution of construction works or of other installations or schemes, and other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources." The EIB-financed project components refer to the project scope as defined in the appraisal documentation (see paragraph 2.3 above). The disputed overall project components comprise a part of the scope of the overall project, which is funded from the ERDF (see paragraph 1.1).

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<sup>47</sup> [Directive \(EU\) 2016/802](#) of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels.

<sup>48</sup> Law Ref. 4014/11 (as amended) can be accessed [here](#).

<sup>49</sup> Paragraph 12 of the Background section of the ESPS Statement (2009).

<sup>50</sup> E.g. v.9 of the Handbook (2013).

<sup>51</sup> Paragraph 28 and Paragraph 333, Part II, the Handbook (2013).

<sup>52</sup> Page 5, Glossary of EIB's Environmental and Social Standards (2018).

### *Role of the EIB*

- 3.10 As stated in the Handbook (2013)<sup>53</sup>, “According to its own policy requirements, the EIB shall satisfy itself that projects to be financed (including related ancillary/associated infrastructure and facilities and the area of influence) comply with its environmental and social principles, standards and requirements, as framed in the EIB Statement of Environmental and Social Principles and Standards and its 10 E&S Standards.”
- 3.11 The responsibility for compliance with the project-applicable environmental and social standards (see Section III.2 of this report) lies with the developer and the national authorities<sup>54</sup>, in line with the ESPS Statement. However, the EIB will help the developer to fulfil these responsibilities<sup>55</sup> and will not finance projects that do not meet project-applicable standards<sup>56</sup>.
- 3.12 The developer must obtain and comply with project-applicable environmental and social standards at the time of the appraisal<sup>57</sup>. Whether the project meets the project-applicable standards is established as part of the EIB’s project appraisal and monitoring procedures.
- 3.13 The EIB’s project appraisal takes place prior to signature of the finance contract<sup>58</sup> and it aims at, inter alia, assessing: (i) whether the project complies with the project applicable standards (paragraph 3.2) and (ii) the project’s impact. For example, the EIB’s Environmental Standard 2 (Pollution Prevention and Abatement) requires that “in all operations, the developer will prevent waste generation and will reduce its hazardousness to human health and the environment, by strictly applying the waste hierarchy and the requirements defined for specific waste streams [...] ensuring [...] that the recycled waste is used as a major, reliable source of raw materials”<sup>59</sup>.
- 3.14 The EIB’s project appraisal procedure is detailed in the Handbook (2013)<sup>60</sup>. For the EIB to finance the project, the outcome of the due diligence must be satisfactory<sup>61</sup>.
- 3.15 The EIB is required to satisfy itself that the project complies with EU environmental law<sup>62</sup>.
- 3.16 The EIB’s aim is to minimise any negative environmental impacts of the projects it finances<sup>63</sup>. The EIB considers the need for applying the precautionary principle when there is a risk that a project may cause significant and irreversible damage to the environment<sup>64</sup>. In such cases, measures should be taken by the developer to avoid in the first place and if a feasible alternative is not available to reduce that risk to an acceptable degree<sup>65</sup>.
- 3.17 Sometimes, the appraisal results in conditions for disbursement. The conditions are included in the finance contract<sup>66</sup> and the developer must complete the conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing<sup>67</sup>. For those projects meeting the requirements, the EIB may still condition disbursement of an approved loan on the developer performing certain additional tasks<sup>68</sup>. Projects with significant environmental or social impacts will be subject to additional monitoring and reporting obligations, including where necessary independent oversight of such activities<sup>69</sup>.

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<sup>53</sup> Paragraph 27, Part II, the Handbook (2013).

<sup>54</sup> Paragraphs 2 and 3 of the Preamble of the ESPS Statement and Paragraph 12 of the Background of the ESPS Statement.

<sup>55</sup> Paragraph 2 of the ESPS Statement.

<sup>56</sup> Paragraph 6 of the ESPS Statement.

<sup>57</sup> Handbook (2013).

<sup>58</sup> <https://www.eib.org/en/projects/cycle/index.htm>, accessed on 11 November 2019.

<sup>59</sup> Paragraph 20, Page 27 of the Handbook (2013).

<sup>60</sup> Paragraph 9 of the Background section of the Handbook (2013) (Volume II).

<sup>61</sup> Paragraph 28 of the [EIB Transport Lending Policy](#).

<sup>62</sup> Paragraph 26 of the Handbook (2013) (Volume II).

<sup>63</sup> Paragraph 26 of the ESPS Statement.

<sup>64</sup> Paragraph 26 of the ESPS Statement.

<sup>65</sup> Paragraph 26 of the ESPS Statement.

<sup>66</sup> Paragraph 7 of the ESPS Statement.

<sup>67</sup> Paragraph 256, page 146 of the Handbook (2013).

<sup>68</sup> Paragraph 32, the [EIB Transport Lending Policy](#).

<sup>69</sup> Paragraph 32 of the [EIB Transport Lending Policy](#).

- 3.18 The ESPS Statement maintains that the EIB monitors the environmental and social performance of the projects it finances, especially the fulfilment of any specific obligations described in the finance contract<sup>70</sup>.
- 3.19 Once the developer and the EIB sign the finance contract, the EIB is required to monitor the project. The monitoring aims to ensure that the project complies with the EIB's approval conditions<sup>71</sup>. In particular, the physical monitoring aims at verifying the actual implementation and initial operation of the project itself<sup>72</sup>. The EIB monitors projects on the basis of reports provided by the developer, as well as EIB visits, information provided by the local community, etc.<sup>73</sup> Projects with significant environmental or social impacts will be subject to additional monitoring and reporting obligations, including where necessary independent oversight of such activities<sup>74</sup>. Close follow-up of environmental and social actions that are required as part of the finance contract (in particular those related to disbursement conditions) is essential<sup>75</sup>.
- 3.20 If a project includes the implementation of mitigation measures, then it should not normally be considered complete until these measures are implemented, even if the remainder of the project is complete<sup>76</sup>. The EIB's monitoring should continue until all mitigation and compensation measures are implemented, i.e. may continue after the developer provides the "project Completion Report"<sup>77</sup>. When appropriate, the reports should refer to evidence of compliance with post completion decommissioning/rehabilitation requirements<sup>78</sup>. Other environmental and social requirements include evidence on fulfilment of appropriate environmental and social legislation, respect of contract conditions and undertakings related to the environment and social matters, if any; and, implementation of agreed mitigation and compensation measures, if any<sup>79</sup>.

#### **4. WORK PERFORMED BY THE EIB-CM**

- 4.1. The disputed overall project component is called "Expansion of basic port infrastructure for the reception and service of cruise ships at the port of Piraeus." It is located in the southern Piraeus passenger port and belongs to the Piraeus port investment programme. The relevant EIB-financed project component of the construction of a new cruise passenger handling facility and the EU-funded component of basic port infrastructure for the reception and service of cruise ships in the southern Piraeus passenger port will be located side by side on reclaimed land built on caissons (see component 2, circled in Figure 1).
- 4.2. According to EIB-CM Policy, the complaint concerns the disputed overall project components located in the same geographic area as the EIB-financed project component (2), both of which are auxiliary activities in the same "area of influence" linked by their cumulative impacts<sup>80</sup>; therefore, the complaint was found to be admissible.
- 4.3. Following the admissibility of the complaint, in line with paragraph 2.2 of the EIB-CM Procedures, the EIB-CM carried out an initial assessment of the allegations raised by the complainant. The objective of the initial assessment is to clarify the concerns raised, understand the complainant's position, assess the validity of the allegations raised and to determine if further work by the EIB-CM is necessary and/or possible (compliance review and/or mediation between the parties) to address the allegation or resolve the issues raised by the complainant.

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<sup>70</sup> Paragraph 8 of the Statement section of the ESPS Statement.

<sup>71</sup> Paragraph 258, page 146 of the Handbook (2013).

<sup>72</sup> Paragraph 258, page 146 of the Handbook (2013).

<sup>73</sup> Paragraph 8 of the ESPS Statement.

<sup>74</sup> Paragraph 32 of the [EIB Transport Lending Policy](#).

<sup>75</sup> Paragraph 272, page 149 of the Handbook (2013).

<sup>76</sup> Paragraph 275, page 149 of the Handbook (2013).

<sup>77</sup> Paragraph 275, page 149 of the Handbook (2013).

<sup>78</sup> Paragraph 275, page 149 of the Handbook (2013).

<sup>79</sup> Paragraph 271, page 148 of the Handbook (2013).

<sup>80</sup> Last paragraph of Page 3 of the EIB-CM Policy (2018) and Paragraphs 27 and 30, Standard 1, EIB's Environmental and Social Standards (2018), Page 16, Paragraph 27 of the Handbook (2013).



- 4.4. In line with paragraph 2.2.4 of the EIB-CM Procedures, the EIB-CM also reviewed EIB Group policies, procedures and standards that may be relevant in this case (Section III.2 Applicable Environmental and Social Standards above).
- 4.5. The EIB-CM reviewed information provided by the complainant in the annexes to the complaint letter.
- 4.6. The EIB-CM reviewed EIB documents such as the ESDS<sup>81</sup>, which summarises the EIB's environmental and social appraisal, other relevant project information provided by EIB services and JASPERS as well as documents submitted by the developer following the initial assessment.
- 4.7. The EIB-CM two meetings with the EIB services in order to bring together the interpretations of the allegations concerning the project on 27 May and 16 September 2020, obtained clarifications by email on 17 July 2020, and received additional documents sourced from the developer with details of the southern Piraeus passenger port development components and the EIB's due diligence from the EIB services concerned.
- 4.8. During the initial assessment, the EIB-CM established that the scope of the allegation on state aid (paragraph 1.3) pertains to the disputed overall project components which will be funded from EU resources. The EIB's financing is not considered state aid.
- 4.9. The allegation on procurement (paragraph 1.3) concerned a decision of Regional Governor of Attica Ref. 4286 that dates back to 31 December 2018<sup>82</sup>. The 2018 decision concerns the inclusion of the "Expansion of basic port infrastructure for the reception and service of cruise ships at the port of Piraeus" into the ROP Attica within the framework of the EU Partnership Agreement 2014-2020. The 2018 decision states that procurement law should apply. The complaint also refers to Decision Ref. 1076/2019 by the Regional Council of Attica. The 2019 decision clarifies the EU law on procurement applicable to the promoter, but does not release the promoter from compliance with the applicable EU law.
- 4.10 The allegations as described in paragraphs 4.8 and 4.9 were dismissed without further investigation, as they fall outside of the EIB-CM's mandate. Should the complainant wish to pursue the matter further, the complainant may consider addressing it to the European Commission.

## 5. FINDINGS

### 5.1 Allegation I

#### Environmental decision impinging on Greek and the EU law

- 5.1.1 Shortcomings of the Piraeus port investment programme's environmental decision making: SEA of the Master Plan and the EIA (paragraph 1.2.1 of this report).

#### Findings on the compliance of the project with the applicable standards

#### **Strategic Environmental Assessment of the Master Plan**

- 5.1.2 In 2017, an update of the Master Plan was initiated together with the SEA. Several drafts of the Master Plan together with draft SEA reports were submitted for decision making with ESAL as well as with the Ministry of Environment and Energy. The first known draft version was submitted to ESAL in February 2018. According to information received from the developer, public consultation took place on 22 January 2019<sup>83</sup>.

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<sup>81</sup> ESDS is available on the EIB website [here](#).

<sup>82</sup> Decision of Regional Governor of Attica Decision Ref. 4286/31.12.2018 (ΑΔΑ: 6Ε637Λ7-ΩΧΔ).

<sup>83</sup> File submitted by the promoter with list of consultation meetings and press release with public consultation event 22 January 2019 on the Master Plan.

- 5.1.3 On 19 February 2019, ESAL issued a decision partially endorsing the Master Plan with conditions, but also requested modifications of the scope of the Plan. In October 2019, ESAL requested again to amend the scope of the Master Plan. The last known version of the SEA for Master Plan was submitted on 14 May 2020.
- 5.1.4 The EIB-CM established that the first version of the SEA was issued in March 2018, and a public consultation has taken place (paragraph 5.1.2). On 15 May 2020, a new version of the SEA report (dossier)<sup>84</sup> was submitted to the competent authority with a request to start the proceedings. The SEA procedure and the approval of the Master Plan was still ongoing as of January 2021 (see also: paragraphs 2.13-2.14).

### ***Environmental Impact Assessment procedure***

- 5.1.5 The AEPO<sup>85</sup> for the investment programme of the Piraeus port was issued in 2006. The developer applied for an extension of the validity of the AEPO twice, and did so on time.
- 5.1.6 The 2006 AEPO was made available to the public based on the requirements set in the JMD<sup>86</sup> on how to inform and engage the public in the process of approving the environmental terms of the investment programme and its components. AEPOs are not required to be published in the Official Journal. The AEPO contained a requirement for the developer to inform the public via a press release<sup>87</sup>.
- 5.1.7 The scope of the AEPO, as per paragraph A “Activity size and type,” did not include the component of southern extension of the passenger port (berths and the terminal) (paragraphs 2.17-2.19).
- 5.1.8 The developer applied for modifications of the scope of the AEPO several times (paragraphs 2.18-2.24) and decisions modifying the AEPO with modifications relevant to the south Piraeus passenger port were issued in 2013 and 2018: the 2013 decision on the new cruise terminal in the south port extension<sup>88</sup> and the 2018 decision focusing on the newest modifications in relation to the dredging, construction of new berths and the passenger terminal in the south port area<sup>89</sup>.
- 5.1.9 The developer applied for AEPO modifications with EIA studies. According to national law, the competent authority for the EIA procedure was responsible for the public consultation and information procedures<sup>90</sup>. The developer has a certificate from the competent authority stating that the AEPO is valid (paragraph 2.24).
- 5.1.10 For the extension of validity of the AEPO (due in 2018), the developer prepared an EIS. It also contains the disputed overall project components and analyses their impacts. This procedure to extend and modify the AEPO was completed in December 2020 (paragraph 2.24).

### ***Findings on the role of the EIB***

- 5.1.11 Information on the Piraeus port investment programme and its relevant components was independently scrutinised by the EIB services and JASPERS. The information analysed covered the SEA and EIA procedures carried out and their compliance with European and national regulations.

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<sup>84</sup> SEA report has been provided to the EIB-CM.

<sup>85</sup> AEPO Ref. 104050/17.5.06.

<sup>86</sup> JMD Ref. 37111/2021/26.9.2003 (OJ, Series II, No 1391/B/29.9.2003).

<sup>87</sup> Page 13, paragraph (α) of AEPO Ref. 104050/17.5.06.

<sup>88</sup> Decision of the Ministry of Environment, Energy and Climate Change Ref. 170400/11-09-2013, made public on aepo.ypeka.gr.

<sup>89</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018, made public on aepo.ypeka.gr.

<sup>90</sup> Dedicated website aepo.ypeka.gr, as referred to in Article 19a of Law 4014/2011 and JMD Ref. 21398/2.5.2012 / OJ, Series II, No 1470B/2012.

### ***Strategic Environmental Assessment of the Master Plan***

- 5.1.12 The developer provided the timeline of stakeholder consultation with the involved authorities and public bodies on the draft Master Plan, which started in 2017. The timeline does not cover the consultations with the public.
- 5.1.13 According to the information in the ESDS<sup>91</sup>, the draft new Master Plan was opened for public consultation beginning in January 2018. The ESDS does not elaborate on the public consultation of the SEA.
- 5.1.14 The finance contract contains a requirement to have the final Master Plan approved and evidence of this provided to the EIB.

### ***Environmental Impact Assessment***

- 5.1.15 The finance contract includes a condition for disbursement of having a valid AEPO, which has been verified and evidenced. The developer had a valid AEPO (at the time of drafting this report it was evidenced by a certificate, which is provided by law) in a decision issued under the procedure completed in December 2020 (paragraphs 5.1.5-5.1.10). The EIB is monitoring the EIA procedure according to its standards.
- 5.1.16 Regarding the 2013 procedure leading to AEPO modification, JASPERS noted in its Action Completion Note (ACN) that the developer prepared a Non-technical Summary (NTS), which does not fully cover the requirements of the EIA Directive; however, the entire EIS prepared for the procedure was made available to the public for comments. JASPERS ACN noted that no comments were submitted by members of the public.
- 5.1.17 The EIB holds evidence that the AEPO includes the EIB-financed project components and that they have been analysed in the EIA procedure according to national law (paragraphs 5.1.8 and 5.1.10).
- 5.1.18 The ESDS contains information on the project until 2018, which was included in the finance contract dated 2019, and was correct at the time the ESDS was issued.

### **Conclusions**

- 5.1.19 The EIB-CM reviewed the evidence of the decision-making process for the update of the Master Plan including the SEA.
- 5.1.20 Based on the reviewed evidence and information, the EIB-CM concluded that the disputed overall project components and the EIB's finance project component (2) are included in the renewed Master Plan, which is undergoing approval and has a draft SEA report. The newly planned cruise ship berths are indicated on the map (Phases A and B) and the new terminal building design is attached to the Master Plan (paragraph 2.12).
- 5.1.21 By initiating the SEA for the Master Plan, the developer is in the process of implementing Standard 1 Assessment and management of environmental and social impacts and risks as far as the SEA procedure<sup>92</sup> is concerned (paragraphs 2.13 and 2.14). The EIB-CM did not find evidence of a breach of the applicable project standards in relation to the drafting of the Master Plan.

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<sup>91</sup> ESDS is available on the EIB website [here](#).

<sup>92</sup> ESPS, Standard 1, paragraph 10, page 10 (EIB, 2018).

- 5.1.22 The EIB made disbursement for the project conditional as defined in paragraph 5.1.15 (see above) by including a requirement to have a valid AEPO in the finance contract (paragraph 5.1.15). The EIB-CM was provided with evidence that the developer has a valid AEPO (paragraph 5.1.10). Before the decision of the renewal of the validity of AEPO is concluded, the issues raised in Allegation II may result in a modification of conditions in the AEPO. The EIB continues to monitor the project it is financing according to its standards and according to the finance contract conditions.
- 5.1.23 The competent authority assessed the environmental impacts of the disputed overall project components and the EIB-financed project component (2) before amending the relevant AEPO (paragraph 2.23). The latest procedure for the extension of validity of the AEPO for the Piraeus port investment programme (including its disputed overall project components) concluded in December 2020, up to which the developer was in a possession of a valid AEPO to operate the project (paragraph 2.24). The requirement of Standard 1<sup>93</sup> as regards the EIA has therefore been met.
- 5.1.24 In relation to the project environmental information, indirectly linked with the allegation, the EIB-CM noted that the relevant NTS(s) or their links were not yet made available on the EIB project page, as required by the EIB's project environmental and social standards. In this regard and with a view to maintaining good administration, the EIB-CM recommended the publication of environmental information as required by the EIB Environmental Handbook (2013) (referred to in paragraph 3.9 of this report). In the course of the investigation, the EIB services published relevant available documents (NTSs prepared for the procedure in 2011, 2018 and 2019) on the EIB's project website<sup>94</sup>.
- 5.1.25 Lastly, the EIB-CM suggests that the most up-to-date information on the relevant EIA and SEA milestones, and implementation of the conditions of the finance contract, be reflected in the ESCS to be issued at the EIB's project completion. This is crucial to demonstrating the compliance of the project with the EIB's ESPS in the development of the Piraeus port investment programme.

## 5.2 Allegation II

### Assessment of certain significant negative environmental impacts of the project

5.2.1 The EIB-CM investigation focused on the following likely significant environmental impacts from Allegation II (paragraph 1.2.2):

- Flooding.
- Induced land transport congestion and air pollution.
- Air pollution caused by increased cruise ship traffic.
- Health risks caused by handling of dredged material and hazardous waste and the use of caissons to dispose of the dredged material.

### Findings on the compliance of the project with the applicable standards

#### **Flooding**

5.2.2 Flooding can be caused by waves generated by vessels, also called vessel wakes, or storm surges, also exacerbated by a climate change-induced rise in sea levels<sup>95</sup>.

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<sup>93</sup> ESPS, Standard 1, paragraphs 8 and 11, page 10 (EIB, 2018).

<sup>94</sup> The project website on the EIB's portal is available [here](#).

<sup>95</sup> Kontogianni A. et al., Linking Sea Level Rise Damage and Vulnerability Assessment: The Case of Greece (2012).

- 5.2.3 Vessel wakes generated in open sea areas decay rapidly with distance from the ship and have negligible impact on the nearshore area<sup>96</sup>. In shallow coastal areas and narrow waterways, however, the wake generation mechanisms, propagation patterns and impact modes may radically deviate from those typical for open sea conditions<sup>97</sup>.
- 5.2.4 Flooding can be a result of sea level rises in combination with storm surges caused by climate change effects. This phenomenon is being examined by the scientific community, international institutions (such as the European Commission and the EIB), national governments and others. Before approving funding for any major project, the European Commission requires the beneficiaries of the EU funds to study the relevant climate change effects, their likely impacts and adaptation needs for projects, with conclusions and recommendations to be incorporated into the project design, if necessary<sup>98</sup>.
- 5.2.5 The developer produced a study for the New Cruise Terminal of Piraeus Port (2018)<sup>99</sup>, which fulfilled the requirement referenced in paragraph 5.2.4 by assessing the climate change-induced flooding and high waves (paragraph 5.2 of the study), pointing out the rising sea levels, which make it necessary to raise infrastructure levels to reduce the flooding risk. The degree of vulnerability to flooding, extreme waves and winds due to climate change was assessed as high. Paragraph 5.2.4 of this study states that “Project adaptation and resilience to these risks has been achieved in a preventive manner through a proper definition of the anticipated wave heights via statistical analysis and consequently through a proper robust design of the crown walls to protect the land area of the terminal exposed to severe winds and storms from the NW direction.”
- 5.2.6 Paragraph 7.13 of a draft Master Plan<sup>100</sup> discusses the results of modelling regarding the distribution of waves in the port and surrounding areas caused by the overall project. According to the draft Master Plan, the simulations indicated a significant reduction in the wave disruption following the construction of the berths (especially after Phase B) in relation to the existing situation. It reports that the wave disturbance is within the limits of the permissible disturbance for the operation of ports.
- 5.2.7 The SEA report for the draft Master Plan looks into flooding, sea level rise and extreme waves in relation to climate change (paragraph 6.1/SEA report)<sup>101</sup>. This report does not analyse the change to wave impacts caused by the increased cruise ship traffic or the changed approach paths due to the expansion, if any.
- 5.2.8 Flooding related to the extension of the southern passenger port was addressed in the EIS<sup>102</sup> for the 2018 modification of the AEPO. Firstly, it was presented in the changes to the scope of the project (paragraph 3.1.2/EIS) and in the part studying the potential impacts of climate change (paragraph 9/EIS). In addition, the likelihood of climate change-induced flooding was assessed in a few proposed technical generic and specific solutions (paragraphs 12.3.3. and 12.3.4/EIS)<sup>103</sup>.
- 5.2.9 Paragraph 9 of draft EIS<sup>104</sup> submitted for the decision making for the extension of validity of the AEPO deals with serious accidents and risks relevant to flooding, also due to climate change. Paragraph 10 of the same report points to the existing coastal protection status and measures proposed by the National Strategy for the Adaptation to Climate Change (April 2016) for the operation of maritime transport and port facilities relevant to the issue of flooding and waves due to extreme weather<sup>105</sup>.

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<sup>96</sup> Sorensen, R. M. Ship-generated waves. *Adv. Hydrosoci.* 9, 49–83 (1973).

<sup>97</sup> Scarpa, G.M. et al., The effects of ship wakes in the Venice Lagoon and implications for the sustainability of shipping in coastal waters 9, (2019).

<sup>98</sup> European Union, Climate Change and Major Projects: Outline of the climate change related requirements and guidance for major projects in the 2014-2020 programming period (2016).

<sup>99</sup> Environmental Compliance Study for the New Cruise Terminal of Piraeus Port (July 2018).

<sup>100</sup> Paragraph 7.13 of the draft Master Plan (2018).

<sup>101</sup> As required by JMD Ref. 31822/1542/E103, which incorporated requirements of the [Directive 2007/60/EC](#) of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks.

<sup>102</sup> The 2018 January EIS leading to the modification of AEPO.

<sup>103</sup> The 2018 January EIS leading to the modification of AEPO.

<sup>104</sup> EIS dated 11.10.2019, paragraph 9.

<sup>105</sup> EIS dated 11.10.2019, paragraph 10.

### ***Induced land transport congestion and pollution***

- 5.2.10 The SEA for the Attica Region Land Use Plan 2021 (as approved by the Council of Attica Region<sup>106</sup>) analysed the issues stemming from land transport and proposed measures for relieving traffic congestion and the associated issues of noise and pollution as well as the effects and impacts of Piraeus port development.
- 5.2.11 Chapter 4 of the draft SEA report for the Master Plan<sup>107</sup> analyses the traffic situation and impacts. The earlier studies and ongoing planning anticipate that the range of measures proposed (paragraph 4.5.6 of the draft SEA report) – which will be further amended – will ensure that traffic congestion will not be influenced by the development programme. Chapter 6 of the SEA report for the Master Plan<sup>108</sup> studies the air and noise pollution sources and proposes measures to deal with them at a programme level.
- 5.2.12 The allegation regarding passenger transport intensification-induced congestion and increased air pollution is analysed as a cumulative issue in the Master Plan. The developer noted, studied and included measures to address this issue in the SEA report and the Master Plan. The scope of analysis included pollution from trucks used in construction and vehicles transporting the additional passengers.
- 5.2.13 The NTS of the EIS informing the decision making of the AEPO modification in 2013 reported on the Road Traffic Impact Assessment Integrated Study, which provided conclusions on the potential congestion and pollution in a wider area than the port.
- 5.2.14 The decision amending the AEPO (2013)<sup>109</sup> included additional mitigation measures for the negative impact of land transport. These included measure 76 concerning heavy-duty trucks, 81 for the transportation of waste and waste management, 82 for the monitoring of air pollution and 83 for the drafting of a plan regarding traffic issues to be submitted to the competent authority.
- 5.2.15 The EIS<sup>110</sup> for the 2018 modification of the AEPO (Air quality section) presents proposed measures to reduce and manage air pollution stemming from construction and operation (paragraph 10.8/EIS) that range from truck transport impact reduction to monitoring. The decision amending the AEPO<sup>111</sup> modified measure 65 regarding dust handling and requested a Technical Environmental Study (TEPM) on air pollution to be submitted for approval.
- 5.2.16 In the draft EIS (2019<sup>112</sup>) submitted for the decision making for the extension of validity of the AEPO, paragraph 9<sup>113</sup> presents the assessment of the air pollution, which is likely to increase because of the truck traffic increase during the project construction and operation due to passenger increases. The report proposed measures to reduce truck-induced dust pollution (covering and sprinkling) and limited hours of operation (during construction and especially during the summer tourist season). Long-term measures proposed encouraging the use of public transport and the replacement of conventional buses (currently with diesel fuel) with electric buses operated by the developer.

### ***Air pollution caused by increased cruise ship traffic***

- 5.2.17 T&E reports (2019) that in 2017 the luxury cruise brands emitted ten times more sulphur dioxide than the entire EU passenger car fleet. The report identifies Greece as one of five most exposed countries to this type of pollution in Europe.

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<sup>106</sup> Decision of the Council of Attica Region Ref. 43/2014 can be found [here](#) (in Greek).

<sup>107</sup> SEA report dated 14.05.2020.

<sup>108</sup> SEA report dated 14.05.2020.

<sup>109</sup> Decision of the Ministry of Environment, Energy and Climate Change Ref. 170400/11-09-2013, made public on [aepo.ypeka.gr](#)

<sup>110</sup> Paragraph 9.9 of EIS (January 2018).

<sup>111</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>112</sup> EIS dated 11.10.2019.

<sup>113</sup> EIS dated 11.10.2019, paragraph 9.

- 5.2.18 The draft SEA report for the Master Plan<sup>114</sup> looks into the issue of air pollution due to intensification of sea traffic in the area. The summary of the assessment, key conclusions and measures proposed to reduce the negative impact are summarised in paragraph 7.4.1.9 of the SEA report looking at the reduction of pollution from hoteling cruise liners (electricity connection) and energy mix to provide electricity to the ships targeting renewable energy sources (RES).
- 5.2.19 The draft SEA report presumes that the national JMD on the reduction of sulphur content in shipping fuel<sup>115</sup> (paragraph 3.3.2) will significantly reduce the impact of ship emissions on human health and will also reduce the impacts of the induced sea traffic on human health and the local population (paragraph 6.22.3/SEA report). The draft SEA report brings up the development of LNG fuelling points to curb the air pollution of Piraeus port (paragraph 4.2.3/SEA report).
- 5.2.20 The NTS of the EIS for modification (2013) of the AEPO<sup>116</sup> only notes a likely increase in air pollution due to port expansion and notes the need for mitigation measures.
- 5.2.21 As noted in paragraph 5.2.13 above, the 2013 decision amending the AEPO<sup>117</sup> refers only to land transport air pollution and measures, but also requires a programme to monitor air pollution and traffic loads in the entire investment programme area (Points 82 and 93/ AEPO).
- 5.2.22 Paragraph 3.3.2 of the EIS informing the modification of the AEPO (2018)<sup>118</sup> notes that “any environmental impacts (noise, air pollutants, traffic) with the new proposed port facilities in the southern part of the central port of Piraeus are more remote, from the urban tissue of the Municipality of Piraeus.” That said, the issue of mitigating the emissions from cruise ships is not addressed in more detail in that study or the 2018 decision amending the AEPO<sup>119</sup>.
- 5.2.23 The draft EIS submitted for the decision making for the extension of validity of the AEPO (signed 11 October 2019<sup>120</sup>) and its NTS (paragraph 2 of the EIS) note the impacts from the increased cruise ship traffic and mitigation measures to address them. Specifically, it is noted that shore-side electricity supply to ships will be provided and gas and renewable energy sources will be tapped into to reduce the air pollution from hoteling cruise liners to the nearby areas.

***Health risks caused by handling of dredged material and hazardous waste and the use of caissons to dispose of the dredged material***

- 5.2.24 The materials to be dredged for development of the southern Piraeus port area were studied by the draft SEA report (2020<sup>121</sup>). It refers to the most recent studies, which confirmed the already established quality of the sediments in the port. The draft SEA report (paragraph 6.25.4/SEA report) noted that “a targeted programme is required to assess the quality of sediment in the port area, focusing on the areas where new dredging operations will be required (also in the monitoring programme)”, but it is in favour of the reuse of dredged material.
- 5.2.25 Paragraph 3.1.2 of the EIS aimed at modification of the AEPO (2018) notes that according to the geophysical research, the top bottom layer of loose material needs to be removed in order to safely address the backfill base on which the caissons will be placed. Paragraph 3.4.1 of this report describes the legal basis for handling the dredged material, while paragraph 3.4.2 presents the sampling results and the contamination degree of the materials aimed to be dredged. The conclusion presented is that chemical composition values are below the thresholds for the classification of dredged material as waste in accordance with Decision 2003/33/EU, which does not allow their direct disposal to landfills or for regeneration of quarries. In paragraph 3.4.3, the EIS proposes a number of alternatives for decision making on the dredged materials. No dredged sediments treatment option was found in the report.

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<sup>114</sup> SEA report dated 14.05.2020.

<sup>115</sup> JMD Ref.128/2016 ΦΕΚ 3958/Β/2016 ([in Greek](#)).

<sup>116</sup> NTS of the EIS (2013).

<sup>117</sup> Decision of the Ministry of Environment, Energy and Climate Change Ref. 170400/11-09-2013, made public on [aepo.ypeka.gr](#).

<sup>118</sup> Paragraph 9.9 of EIS (January 2018).

<sup>119</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>120</sup> EIS dated 11.10.2019.

<sup>121</sup> SEA report dated 14.05.2020.

- 5.2.26 The EIS informed the decision making for Decision Ref. 11021/30.07.2018<sup>122</sup> amending the AEPO regarding “the technical details of the geometric characteristics and the construction works of the expansion of a passenger port to the south”. The competent authority issued a decision which modified the AEPO in terms of usage and final deposition of the dredged materials (Point 66), which it linked with Decision Ref. 9654/29.2.2016 amending the AEPO. This decision does not authorise the treatment of the sediments in the port area, but indicates the areas of disposal at sea and the method of disposal.
- 5.2.27 The draft EIS aimed at decision making for the extension of validity of the AEPO (2019<sup>123</sup>) analysed the quality of dredged materials (paragraph 9.5.2.3/draft EIS), as well as alternatives for the use of the dredged material. It gives priority to the reuse of dredged materials (paragraph 2.4/draft EIS).
- 5.2.28 The practice of using sediments and dredged materials in construction is supported by EU regulations and good practices. Sources including LIFE: Sediment Management Guidelines (2009<sup>124</sup>) suggest reusing contaminated sediments in productive activities and transforming them into non-contaminated material. It is up to the national competent authority to establish the degree of contamination of the material to be extracted due to port construction and to establish the best way to dispose of it by either dumping it into the sea (permitted locations) or using it in construction.
- 5.2.29 The relevant SEA and EIS did not suggest and the decisions issued by the competent authority did not authorise treatment or processing (cleaning) of dredged material in the port or nearby. The competent authority requires dredged sediments to be handled in line with the established national requirements, in the event they are not suitable to be reused in the construction, which is good practice referred to in the above paragraph. The 2018 modification of the AEPO authorised the disposal of excess dredged material in established locations at sea<sup>125</sup>, “provided that the analyses carried out show that these materials are not harmful to the marine environment” (Point 66 of the 2018 modification of the AEPO).

#### Findings on the role of the EIB

- 5.2.30 The EIB services required the promoter to have a new Master Plan approved. The promoter initiated an SEA procedure for the new Master Plan, which studied the significant environmental issues including flooding, be it from vessel wakes (paragraph 5.2.6) or climate change (paragraphs 5.2.7 – 5.2.9), the pollution which may be caused by increased land transport (paragraphs 5.2.10 – 5.2.16), and the pollution from additional cruise ships (paragraphs 5.2.17 – 5.2.23).
- 5.2.31 JASPERS advised on the scope of the EIS prepared for the 2018 AEPO modification. They also commented on the draft EIS for the extension of validity of the AEPO, which addressed the issues of sea level rise, storm surges and flooding, transport congestion, pollution from additional cruise ships and the dredging of sediments necessary for construction.
- 5.2.32 In April 2018, the developer submitted an EIS for decision making, which led to the 2018 decision amending the AEPO<sup>126</sup>. The EIS and the decision looked in detail at the issue of caissons to be used for constructing the additional berths and the passenger terminal in the south port area. The 2018 EIS notes the decision<sup>127</sup> approving a Technical Environmental Study (TEPEM) for the installation and operation of a site for the pre-construction of caissons on the southern coast of the Piraeus passenger port.

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<sup>122</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>123</sup> EIS dated 11.10.2019.

<sup>124</sup> LIFE Sediment management Guidelines, [2009](#)

<sup>125</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>126</sup> Decision of the Ministry of Environment and Energy Ref. 11021/30.07.2018.

<sup>127</sup> Decision of the Ministry of Environment and Energy Ref. 5393 of 7 March 2018.



### Conclusions

- 5.2.33 The evidence reviewed by the EIB-CM demonstrates that the decision making for the disputed overall project components and the EIB-financed project component (2) took into account issues raised in the complaint in the procedures already completed (SEA and EIA for modification of the AEPO). Some procedures providing deeper scrutiny of the matters of concern are still open and ongoing<sup>128</sup>.
- 5.2.34 Based on the evidence reviewed, the EIB-CM found that several recent environmental studies prepared for the decision making addressed the issues raised in the complaint. It therefore considers that EIB Environmental Standards 1 and 2 have been met for the issues raised in Allegation II.
- 5.2.35 The EIB has finished the project appraisal stage. After the finance contract has been signed, the EIB will monitor the situation regarding the environmental decision making for the project.
- 5.2.36 The complaint was lodged at the time when two major decision-making processes relevant for the environmental performance of the Piraeus port investment programme were still ongoing: the extension of validity of AEPO (completed by now) and the SEA for the Master Plan. The opportunities provided by these decision-making windows also available for interested members of the public have not been exhausted and the procedures have not been challenged before the national courts.
- 5.2.37 As conditions for disbursement in accordance with the finance contract are still unfulfilled (paragraph 5.1.14) and no disbursement has yet been made (paragraph 2.6), the EIB-CM was in the position to conclude that there has been no maladministration by the EIB, which is monitoring the situation and receives information from the developer in a timely manner.
- 5.2.38 By studying the applicable SEA and EISs, the EIB-CM found no evidence that the dredged material will be treated in the port area or in the vicinity of the port. The use of dredged material for the filling of caissons is supported by EU regulations and good practices. The EIB-CM therefore considers that this practice is not in breach of the EIB's ESPS (paragraphs 5.2.24-5.2.29).

## **6. SUMMARY OF CONCLUSIONS AND OUTCOMES**

- 6.1 The following table summarises the conclusions and outcomes of the investigation of the case in question.

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<sup>128</sup> The procedures referred to were still ongoing at the time of the issue of this report.

**Table 2. Summary of conclusions**

| Allegation   | Project-applicable standards   | Role of the EIB  | Outcome           | Suggestions for improvement   |
|--|--|--|-------------------|---|
| <p>I. Environmental decision making impinging on Greek and EU law</p>                      | <p>a. The disputed overall project components and the EIB-financed project are included in the renewed Master Plan, which is undergoing approval and has the draft SEA report.</p> <p>b. The Piraeus port investment programme, including the disputed overall project components, is still being assessed in an ongoing procedure, which should lead to the extension of the validity of the AEPO. The developer is in a possession of a valid AEPO to operate the project.</p> | <p>In the finance contract, the EIB made the disbursement conditional on having a valid AEPO and approved Master Plan.</p> <p>The EIB continues to monitor its project according to the standards and according to the finance contract conditions.</p> <p>In the course of the investigation, indirectly linked with the allegation, the EIB-CM established that the EIB's project website does not provide link(s) to NTS(s) or EIS(s) of the EIA (AEPO) and the SEA of the Master Plan. The EIB agreed to take action to remedy this.</p> | <p>No grounds</p> | <p>To reflect the most up-to-date information on the relevant EIA and SEA milestones in the ESCS, in accordance with the internal procedures (paragraph 5.1.24), to be implemented at the completion of the EIB-financed project (expected in Q1 2024).</p> |
| <p>II. Assessment of certain significant negative environmental impacts of the project</p> | <p>The decision making for the Piraeus port investment programme took into account issues raised in the complaint in the procedures already completed (SEA and EIA for modification of AEPO), while some procedures are still open and ongoing. Several recent environmental studies prepared for the decision making addressed the issue raised in the complaint. It is therefore considered that EIB Environmental Standards 1 and 2 were met.</p>                             | <p>As conditions for disbursement in accordance with the finance contract are still unfulfilled, but no disbursement has yet been made, the EIB-CM was in the position to conclude that there has been no maladministration by the EIB.</p>  | <p>No grounds</p> | <p>n/a</p>  |

- 6.2 In appraising the project and setting the conditions in the finance contract, the EIB acted in line with the applicable EIB environmental and social standards and environmental law. The EIB-CM therefore did not find any maladministration on the part of the EIB concerning the allegations raised.
- 6.3 The EIB-CM closes the case with two allegations dismissed before investigation and two allegations dismissed after investigation with no maladministration by the EIB. The EIB-CM issued one suggestion for improvement to the EIB departments concerned.
- 6.4 The complainant has the option to use the national legal system and appeal the decisions in progress, if it considers that national law was breached.



10.03.2021



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