



EUROPEAN COMMISSION
Competition DG

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Subject: State aid SA.34576 (2012/N) - Portugal
Jean Piaget / Northeast Medium and Long-Term Continuing Care
Unit

Sir,

1. PROCEDURE

- 1) On 28 March 2012, the Portuguese authorities notified to the Commission the above mentioned measure, in accordance with Article 108(3) TFEU.
- 2) The Commission requested additional information on 11 May 2012 and on 23 July 2012, which was provided by the Portuguese authorities on 6 June 2012 and 13 August 2012.

2. DESCRIPTION OF THE MEASURE

- 3) The Portuguese authorities intend to support the creation of a medium and long-term and mental health care unit ("the Unit") on the University Campus of the Piaget Institute in the municipality of Macedo de Cavaleiros, in the Trás-os-Montes region (northern region of Portugal, which is classified as NUTS III).

Beneficiary

- 4) The beneficiary of the funding is *Instituto Piaget, Cooperativa para o Desenvolvimento Humano, Integral e Ecológico, CRL* (the "Piaget Institute"). The Piaget Institute is a cooperative (non-profit entity by nature under Portuguese law), active in Portugal and in Portuguese-speaking countries (in Africa and in Brazil). It was created in 1979 and its purpose is to create and maintain establishments

providing higher education and, within that, to promote social care and research, among others, in order to participate actively in the development of the community.

- 5) The Piaget Institute's campus of Macedo de Cavaleiros currently has two higher education establishments respectively specialised in education and health. The Unit would be located on the same campus-.

Project to be financed: characteristics and situation

- 6) The Piaget Institute intends to provide three different types of care in the same facility: medium-term care, long-term care and mental health care.¹ The Unit shall provide both in-patient and home care. The in-patient module will have 50 beds distributed over the three types of care.
- 7) Patients will be referred to the Unit from the Rede Nacional de Cuidados Continuados Integrados (National Network of Integrated Continuing Care facilities), from the national health system or from other health institutions. The Unit will not promote its services or actively attract patients.
- 8) The Unit will be integrated into Portugal's National Integrated Long-Term Care Network (RNCCI). The users of the Unit will thus be entitled to the public health system reimbursement; treatment costs are supported by the users, the Regional Health Administration and the Social Security system. The revenue generated by the Unit's activity is to be reinvested in the Unit itself.
- 9) The Portuguese authorities have informed the Commission that it is expected that the Unit will employ around 26 people.
- 10) The Municipality of Macedo de Cavaleiros (with 17 210 inhabitants as per data of 2011) is located in the Alto Trás-os-Montes region (which has a population of approximately 220 000 inhabitants). The region is equipped with only a few care units for medium and long-term in-patient care. Since the city of Macedo de Cavaleiros has a central location in the Trás-os-Montes region, and is well connected by road and motorway, the Portuguese Authorities believe that the creation of the Unit in this Municipality is a good response to a need of both the municipality and the region.

Form of the financial support, legal basis and granting authority

- 11) The total cost of the construction of the Unit amounts to EUR 3 046 976 out of which EUR 1 897 833, or approximately 62% of the total sum, will be provided by the European Regional Development Fund. The remaining costs will be covered by the Piaget Institute.

¹ The inpatient medium-term care and rehabilitation unit will provide clinical care, rehabilitation and psychosocial support to clinical conditions resulting from recovery from an acute condition, or following a chronic pathological process in patients whose temporary loss of autonomy is potentially recoverable. The period of stay in the Unit is expected to be longer than 30 days and shorter than 90 consecutive days. The in-patient long-term and maintenance unit aims at providing the care that prevents and / or slows down the deterioration of dependency situations, promoting comfort and quality of life during periods of stay that exceed 90 consecutive days. The Unit will also be able to provide care for shorter periods of stay, up to 90 days, in special situations. The in-patient unit for mental health has not yet been regulated.

- 12) The financing will be granted by the Portuguese authorities under the Thematic Territorial Enhancement Operational Programme (Programa Operacional Temático Valorização do Território, "POVT") for 2002-2013. The financing is to be devoted to the building of the Unit, which will be constructed on land owned by the Piaget Institute on its Macedo de Cavaleiros campus. All amounts will fund construction-related expenses.
- 13) The project of the construction of the Unit was presented by the Piaget Institute to the POVT in 2009 which was approved by this organism. The "Favourable Decision for Conditional Financing" was communicated to the Piaget Institute on 16 April 2009.
- 14) The funds for the project were planned to be disbursed during the period between 02/01/2009 and 31/03/2010. Nevertheless, the funds have not yet been disbursed nor have the construction works started as the disbursement is conditioned to the approval of the operation by the Portuguese national authorities and the European Commission under the European Union State aid rules.

3. ASSESSMENT OF THE MEASURE

3.1 Existence of aid within the meaning of Article 107(1) TFEU

- 15) According to Article 107(1) TFEU, "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".
- 16) This means that in order to be qualified as State aid, the following cumulative conditions have to be met: (i) the measure has to be granted out of State resources, (ii) it has to confer a selective advantage on undertakings, and (iii) it has to distort or threaten to distort competition, and to affect intra-EU trade.
- 17) In view of the nature of the measure, the Commission will first examine whether any aid to the Piaget Institute is liable to affect trade between Member States. Only insofar as that criterion is met could the public funding of the Unit (provided all other conditions of Article 107(1) TFEU are met) constitute State aid.
- 18) In relation to this last condition, it is a matter of settled case-law that it is not necessary to demonstrate that the aid has a real effect on trade between Member States, but only to examine whether that aid is liable to affect such trade.²
- 19) In assessing the matter, the Commission has, in particular, taken the following aspects into account.
- 20) The limited number of beds available in the Unit is an important factor: there will be only 50 places divided between mental health, medium-term, and long-term care services.

² Case C-372/97 Italy v Commission, paragraph 44 and case C-66/02 Italy v Commission, paragraph 111.

- 21) A second important factor is that the turnover of these places is expected to be low. Medium-term patients will stay between 30 and 90 days; long-term patients from more than 90 days. Although the length of stay for mental health patients has not yet been regulated, the turnover of these places is also expected to be limited.
- 22) Taken together, these two factors mean that the overall capacity of the Unit to provide services is very limited. Given that there is a current shortage of medium- and long-term care facilities in the Alto Trás-os-Montes Region as a whole (which the construction of the Unit is intended to at least partly correct) the Unit's limited capacity will almost certainly be entirely taken up with the provision of services to residents of the area.
- 23) This conclusion is supported by the fact that, as explained by the Portuguese authorities, patients will be referred to the Unit from other health institutions (integrated into the Portuguese health system), which, as a matter of fact, suggests that the vast majority if not all patients of the Unit are likely to be Portuguese residents.³
- 24) Finally, the creation of the Unit responds to a need identified by the Portuguese authorities and does not preclude the establishment of other facilities in the area. Besides, the project of the construction of the Unit presented by Jean Piaget to the POVT in 2009 was, as explained by the Portuguese authorities, the only project related to the provision of health services presented in the framework of the programme and the Portuguese authorities have confirmed that no other entity, Portuguese or foreign, has shown an interest in the creation of a similar facility in the area.
- 25) For these reasons the Commission considers that the public funding of the construction of the Unit is not liable to affect trade between Member States.
- 26) In view of the fact that the measure does not affect trade between Member States, there is no need to examine whether the measure gives rise to a selective advantage for the potential beneficiary through State resources and distorts or threatens to distort competition.

4. DECISION

- 27) In light of the foregoing assessment, the Commission accordingly finds that the measure described in the complaint does not constitute State aid within the meaning of Article 107(1) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt.

³ This without prejudice to the principle of non-discrimination with regard to nationality regarding patients from other Member States in the spirit of Directive 2011/24/EU of 9 March 2011 on the application of patient's rights in cross-border care. Indeed, it is important to note that a Member State may, where it is justified by overriding reasons of general interest, adopt measures regarding access to treatment to ensure sufficient and permanent access to healthcare within its territory. This is confirmed by Article 4(3) of the Directive (which also notes that such measures must be non-discriminatory and made public in advance). Indeed, where the capacity of a given provider to provide services is entirely taken up by the needs of the local population it is even possible for that provider to limit its service provision to that population.

If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent by registered letter or fax to:

European Commission
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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission