



EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: SA.33149 (2014/NN ex 2011/CP) – Germany - Städtische Projektgesellschaft
"Wirtschaftsbüro Gaarden - Kiel"

Dear Sir,

1. PROCEDURE

1. By letter dated 25 May 2011, Dr. BERNDT Consultants -Beratende Volks- und Betriebswirte ("the complainant") submitted a complaint regarding a breach of public procurement rules and alleged unlawful aid granted by the City of Kiel in favour of "Projektgesellschaft Kiel-Gaarden GmbH" ("the Wirtschaftsbüro") which was registered under reference number 2011/059779. By letters of 8 November 2011 (2011/119135), 24 November 2011 (2011/125686), 23 June 2012 (2012/067704), 13 September 2012 (2012/097174 and 2012/097335), 16 November 2012 (2012/123147), 6 January 2013 (2013/000880), 29 January 2013 (2013/013407), 25 April 2013 (2013/041466), 27 August 2013 (2013/085670), 10 October 2013 (2013/100177), 26 December 2013 (2014/000223), 22 January 2014 (2014/007480), 1 March 2014 (2014/022723) and 5 June 2014 (2014/059302), 18 July 2014 (2014/075825) and 3 December 2014 (2014/123337), the complainant amended his complaint and submitted additional information.
2. The Commission invited the German authorities by letters of 29 September 2011 (2011/103445) and 19 March 2014 to comment on the allegations formulated in the complaint. Germany reacted by submissions of 26 October 2011 (2011/115161) and 9 April 2014 (2014/040444).
3. By letter of 12 December 2012 the Commission rejected the part of the complaint with respect to the public procurement rules. The present decision deals exclusively with the alleged State aid elements in favour of the Wirtschaftsbüro.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

2. DETAILED DESCRIPTION OF THE ALLEGED AID MEASURE

COMPLAINANT AND COMPLAINT

4. The complainant, Dr. BERND Consultants -Beratende Volks- und Betriebswirte, is a small independent consultancy run by Dr. Bernd which provides economic and legal consultancy services for SMEs and start-ups in the area of the city of Kiel.
5. The complainant states that in 2011 Kiel created a separate legal entity (Wirtschaftsbüro Gaarden) owned by the City of Kiel which was entrusted with the task of providing free information and advisory and consultancy services to interested individuals, newly-created firms and SMEs to increase the attractiveness and economic activity in Kiel-Gaarden. Kiel-Gaarden is a disadvantaged part of Kiel which benefits from urban development measures. The City of Kiel approved a budget of EUR 690 198 for a three-year period from 1 September 2011 to 31 August 2014 for the operations of the Wirtschaftsbüro. An additional budget has been approved for the period from 2014 to 2017. EUR 66 000 has been foreseen from 1 September 2014 to 31 December 2014 and a further EUR 198.000 per year for the period between 2015 and 2017.
6. The Wirtschaftsbüro has the legal form of a limited liability company ("Gesellschaft mit beschränkter Haftung"). The staff of the Wirtschaftsbüro Gaarden are two full time equivalent employees as well as one student half time.
7. The complainant alleges that the Wirtschaftsbüro Gaarden benefits from State aid. He states that the Wirtschaftsbüro was entrusted with the provision of services without a public tender, and that he had offered to provide the same services at the lower price (EUR 552 198), but that his offer was not accepted.
8. The complainant states that he offers services similar to those provided by the Wirtschaftsbüro and considers that it acts in direct competition with his consultancy. As the Wirtschaftsbüro provides its services for free, he argues that it is impossible for him and other private consultancies to compete with the publicly financed undertaking, and that therefore the measure distorts competition. According to press reports submitted by the complainant, during the first three-year period the Wirtschaftsbüro gave first advice ("Erstberatungen") to 421 interested parties, was involved in the coaching of 92 firms, having together some 200 employees, and helped setting up 45 firms. Based on the information available to the Commission, all clients are micro-enterprises which in addition are predominately, if not exclusively, from the Kiel area.

COMMENTS AND INFORMATION FROM GERMANY

9. The Gaarden district of the City of Kiel is characterized by a particular social situation, which differs from the other districts of Kiel. Gaarden has a particularly striking high proportion of migrants and recipients of social aid. It is an underprivileged part of the city with high unemployment and serious social conflicts. As a result, the City of Kiel initiated the project "Wirtschaftsbüro Gaarden" to foster and improve the local development of the Gaarden district.
10. Germany confirmed that an amount of EUR 690.198 has been granted for the project's implementation between 1 September 2011 and 31 August 2014, which was partially co-funded by the Land of Schleswig-Holstein under the urban development programme

Social City (EUR 230.066). Germany also confirms the additional budget for the Wirtschaftsbüro Gaarden for the period 2014 to 2017.

11. According to the German authorities, the project was set up as a separate legal entity to be eligible for public funding and has been run by the City of Kiel, the latter being the only personally liable shareholder. The company has no supervisory board and the operations are run by two employees. The company management is provided by the City of Kiel free of charge.
12. The Wirtschaftsbüro serves as an information and networking platform to directly address problems of unemployment and social conflicts in Kiel-Gaarden. It offers consulting and supporting services (the latter include, *inter alia*, support, awareness raising and education about possible funding opportunities and the possibility to obtain advice and consultancy services, including by the investment bank of Schleswig-Holstein, the Chamber of Commerce or the Chamber of Crafts, the organization of information events covering special topics/questions important for companies in Gaarden, the organization of seminars/training opportunities, help with the transition from school to work, support of businesses in finding trainees, the establishment of contacts with vocational and other schools and support in organizing microcredits; in all cases these support services are related to the promotion of Kiel-Gaarden as a business location).
13. The aim is that the services provided by the Wirtschaftsbüro should be closely aligned to "Social City Gaarden", a program launched and funded by Federal, state and local governments with the objective to support the positive development of the city, in order to accommodate synergies (contacts, knowledge, etc.) useful for both projects. Kiel Gaarden has been one of 523 "Social City" projects in Germany since May 2000.
14. The project carried out by Wirtschaftsbüro Gaarden has always been under the supervision of the Ministry of the Interior. Its continued implementation in parallel with the State-funded program "Social City" could not have been equally well secured by a private consultancy. Therefore, the city's direct administration of the project is vital for its success. The granting of aid to the Wirtschaftsbüro constitutes an in-house procurement and hence does not require a European public tender.

3. ASSESSMENT OF THE ALLEGED AID MEASURE

15. Public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".¹

Effect on trade between Member States

16. Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the aid may make it more difficult for operators in other Member States to enter the market by

¹ Case T-288/97 *Regione autonoma Friuli-Venezia Giulia v Commission* ECLI:EU:T:1999:125, paragraph 41.

maintaining or increasing local supply,² or to exercise their right of establishment.

17. It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, the market share of the undertakings in receipt of the aid, the position of competing undertakings or trade flows between Member States.³ In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
18. Nevertheless, an effect on intra-Union trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.⁴
19. In that respect, the Commission has in several cases⁵ considered that certain activities have a purely local impact and no such effect. It seems appropriate to check in particular whether the beneficiary supplies goods or services to a limited area within a Member State and it is unlikely to attract customers from other Member States, and whether it can be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.
20. In the present case, the Commission has gathered information from the German authorities. The latter have submitted substantial facts and arguments regarding the measure's lack of effect on trade between Member States. On the basis of that information, the Commission comes to the following conclusions:
21. As regards the regional zone within which the alleged beneficiary's services may compete, the Commission notes that the nature and scale of the beneficiary's operation is purely local: The services provided cater exclusively to a very local market, namely a part of the City of Kiel (Gaarden, with 19.000 of some 242.000 inhabitants of the City of Kiel), address only very small firms as clients, and are provided by a very small number of staff. The economy in that district is mainly characterized by a small-scale structure. The Commission also notes that the complainant has only local operations. Based on an overall assessment of these various elements, the Commission therefore considers that the competition for the services in question occurs at a purely local level by being limited to a part of the City of Kiel and is thus unlikely to attract customers from other Member States.

² See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* ECLI:EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

³ See for instance Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, paragraph 131.

⁴ See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, paragraph 141.

⁵ See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 16, 19.1.2013, p. 1; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

22. With regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that there is no positive evidence of relevant cross-border investments for such services which provide basic advice to very small businesses in socially deprived urban areas. It does not appear reasonably foreseeable that the alleged subsidy could have any impact on the conditions that determine cross-border investments or establishment in business consultancy services.
23. Based on an overall assessment of the above indications, the Commission considers, in light of the available information, that the measure cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
24. In light of the above, in the present case, the Commission considers that the alleged aid measure is not liable to affect trade between Member States, as specifically detailed in the paragraphs above.
25. As a result, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The Commission has therefore reached the conclusion that the measure in question does not constitute State aid pursuant to Article 107(1) TFEU.

4. CONCLUSION

26. In light of the foregoing assessment, the Commission has decided that the measure described does not constitute State aid pursuant to 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. 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
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax No: 32 2 296 12 42

Yours faithfully,
For the Commission

Margrethe Vestager
Member of the Commission