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**Subject:** SA.38035 (2015/NN) – Germany

**Alleged aid to a specialised rehabilitation clinic for orthopaedic medicine and trauma surgery**

Dear Sir,

**1. PROCEDURE**

- (1) On 20 November 2013, the Commission received a complaint concerning the granting of alleged State aid to *Landgrafen-Klinik*.
- (2) The Commission forwarded the non-confidential version of the complaint to the German authorities on 18 June 2014. The German authorities replied on 28 July 2014.
- (3) Following the German authorities' request, the Commission forwarded the non-confidential version of the German authorities' reply to the complainant on 8 August 2014. The complainant provided his comments on the German authorities' reply on 7 October 2014.

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Bundesminister des Auswärtigen  
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GERMANY

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Beneficiary

- (4) *Landgrafen-Klinik* is a rehabilitation clinic with 201 beds specialising in rehabilitation related to orthopaedics and trauma surgery, in particular the treatment and follow-up of several conditions, e.g. osteoarthritis, degenerative diseases of the spine, care after amputation and follow-up for sport injuries. The healthcare services offered by this clinic include physiotherapy, ergotherapy, rehabilitation medicine and physical therapy. *Landgrafen-Klinik* is situated in Bad Nenndorf, a spa town located in the district of Schaumburg in Lower Saxony. *Landgrafen-Klinik* is one of the segments of *Staatsbad Nenndorf Betriebsgesellschaft mbH*. In 2005, ownership in the rehabilitation clinic operated by *Staatsbad Nenndorf Betriebsgesellschaft mbH* was transferred from the State to the municipality of Bad Nenndorf.

### 2.2. The measure

- (5) The Lower Saxony authorities granted public funding to *Landgrafen-Klinik* as compensation for the losses incurred by the rehabilitation clinic related to the provision of its healthcare services. The amounts (in EUR) of public funding granted by the Lower Saxony authorities to *Landgrafen-Klinik* since 2007 are listed in the table below:

2013	2012	2011	2010	2009	2008	2007
963 688.22	949 185.94	1 406 211.11	1 611 537.05	1 541 665.10	1 229 565.03	925 592.59

## 3. ASSESSMENT OF THE MEASURE

### 3.1. Existence of aid

- (6) According to Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU), State aid is 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, in so far as it affects trade between Member States. The conditions laid down by that provision for a finding of State aid are cumulative. Only insofar as all of those conditions are met can the alleged measure constitute State aid within the meaning of Article 107(1) TFEU.
- (7) Since the German authorities have argued that the measure does not affect trade between Member States, this issue is examined first.

### 3.2. Effect on intra-Union trade

- (8) 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*".<sup>1</sup>

- (9) 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 subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply<sup>2</sup>, or to exercise their right of establishment.
- (10) 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 of trade flows between Member States.<sup>3</sup> 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.
- (11) 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 is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.<sup>4</sup>
- (12) In that respect, the Commission has in several cases<sup>5</sup> 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 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.
- (13) In the present case, the Commission notes first of all that the services provided by *Landgrafen-Klinik* are purely local in nature and available only within a limited geographical area. As explained by the German authorities, of the 3080 patients (2932 inpatients and 148 outpatients) that were treated at *Landgrafen-Klinik* in 2013, not a single patient resided in and came from another Member State. In addition, more than 90% of patients treated at *Landgrafen-Klinik* came from Lower Saxony. The city of Bad Nenndorf, in which the clinic is located, does not

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

<sup>2</sup> 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* ECLI:EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

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

<sup>4</sup> 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.

<sup>5</sup> 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 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

seem to have an international appeal as a spa town. In 2013, Bad Nenndorf only registered 249 106 overnight stays, which indicates limited touristic activity.<sup>6</sup>

- (14) The Commission observes next that *Landgrafen-Klinik* offers primary care rehabilitation, including physiotherapy, ergotherapy, rehabilitation medicine and physical therapy. It does not offer complex healthcare services. For such simple health care services, patients are generally not willing to travel far to be treated outside their local area and, since the clinic's patients have reduced mobility, this further reduces their desire to travel afar for competing health care services. Such standard health and medical services show specific characteristics that distinguish them from other health and medical services. For instance, the choice of the health provider is strongly influenced by the language spoken and by the features of the national health or reimbursement system, which might make treatment within the same Member State administratively easier for patients. Those features make cross-border competition particularly unlikely for standard health and medical services that are available locally. In that respect, the Commission has already previously considered that standard health and medical services normally provided within a relatively small geographic area should not be considered to affect trade between Member States, since competition between such services only occurs at a local level.<sup>7</sup>
- (15) Finally, the German authorities indicated that for more than 200 years, *Staatsbad Nenndorf Betriebsgesellschaft mbH* and its predecessors have provided healthcare and rehabilitation services through public institutions and companies that have been partly financed by the public authorities. However, over the years, this public financing has never attracted substantial investment to the district of Schaumburg or the regional state of Lower Saxony in which Bad Nenndorf is located nor created concrete obstacles to the establishment of undertakings from other Member States. In fact, there are more than 20 rehabilitation clinics in the field of orthopaedics within 100 kilometres of the *Landgrafen-Klinik*. This suggests that the public funding granted to *Landgrafen-Klinik* does not create obstacles to the establishment of undertakings providing similar services in the market.
- (16) Accordingly, the Commission concludes that:
- i. the services provided by *Landgrafen-Klinik* are of a purely local nature and are attractive for the geographically limited area of the district of Schaumburg or at most the Lower Saxony regional state; and
  - ii. the impact of the measure at hand cannot be regarded, with a sufficient degree of probability, to have more than a marginal effect on the conditions of cross-border investments or establishment.
- (17) Therefore, in light of the above, the Commission considers that the public funding granted to *Landgrafen-Klinik* is not liable to affect trade between Member States. Consequently, there is no need to examine the other cumulative conditions for the

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<sup>6</sup> Bad Nenndorf is not on the list compiled by the German Federal Statistical Office of the 69 most visited towns in Germany. In 2013, in 69th place in this ranking was the city of Sellin, with a total of 678 322 overnight stays.

<sup>7</sup> Commission decisions in State aid cases SA.34576 Portugal – Jean Piaget north-east continuing care unit and SA.12901 (N 543/2001) Ireland – Capital allowances for hospitals.

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. DECISION**

- (18) 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.

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Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Member of the Commission