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**Subject: State Aid SA.41193 (2015/N) – Germany
"Green Port" Kiel: Landstromanlage Norwegenkai**

Sir,

1. PROCEDURE

- (1) By notification of 9 March 2015, the German authorities notified the public financing of an infrastructure investment in the Kiel Port – "Green Port" Kiel: Landstromanlage Norwegenkai. The Commission requested additional information on 6 May 2015, 31 July 2015 and 26 October 2015 to which Germany replied on 4 June 2015, 26 August 2015 and 3 November 2015. Supplementary information was submitted on 19 May 2016.

2. DESCRIPTION OF THE MEASURE

2.1. Construction

- (2) The notified project concerns the creation of a technical energy infrastructure at Norwegenkai (Norway Quay) to allow ships docked there to meet their on-board energy requirements (lighting, ventilation, air-conditioning, heating, etc.) through an efficient supply of shore-side electricity. This would allow on-board auxiliary engines to be switched off.

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- (3) Because of the high power demand of the vessels in question – approx. 11 MWh/day – additional investment is required to develop the port itself in order to provide this service, i.e. medium-voltage connection to the nearest medium-voltage junction in the municipal area and construction of a substation in the port along with corresponding cabling and connection technology (quay to vessel plug system).
- (4) The facility enables a shore-side electricity supply at the performance level of the city-side grid connection up to 4.5 MW and thus meets the power requirements of typical large Baltic passenger/freight ferries. The technical design of the shore-side infrastructure (medium-voltage connector, communication technology, shore-side transmission system) meets the relevant international standards in terms of technical feasibility and requirements.

2.2. Operation and beneficiary

- (5) The project will be carried out by the operator of Kiel Port, Seehafen Kiel GmbH & Co. KG (hereinafter SK), which is a municipal company 100% owned by the state capital Kiel. The main business areas of SK include the provision of infrastructure for the maritime transport and cargo handling services of shipping companies and private operators and for the operation of passenger transport. The company is mandated by its shareholder to act in the public interest, albeit combined with the objective of the commercial exploitation of its facilities. The port facilities are placed, on a non-discriminatory basis, at the disposal of all eligible users and operators, i.e. shipping companies, cargo operators, loading and stevedoring companies and other port activities.
- (6) The owner and operator of the medium-voltage connector components will be Stadtwerke Kiel Netz GmbH (SWKiel Netz), which is producing or providing on behalf and at the expense of SK the medium-voltage connector, i.e. the necessary interconnection capacity through the city to the nearest city-side medium-voltage nodal point. This medium-voltage connector then leads in the port area to the switching and connection station near the berth. The present notification concerns only the granting of aid by the State capital of Kiel to SK, and the scope of the present decision has therefore been limited accordingly.
- (7) The owner and operator in terms of the functionally reliable provision of the components 'quay-side connection and switching station with communication technology', 'quay-side cabling and conduits' and 'quay-ship connector system' will be SK.
- (8) The shore-side electricity facility will be made available free of charge to shipping companies, who will purchase electricity on their own account from an electricity provider of their choice.

2.3. Objective

- (9) The objective of the notified measure is of environmental nature. The project aims to significantly reduce emissions, e.g. noise and in particular airborne pollutants compared to those generated under the current practice of vessels producing electricity onboard in power-generating auxiliary engines while they are in port.

- (10) Germany puts forward that although vessels docking for more than two hours in European Union ports are not permitted to use fuels with a sulphur content exceeding 0.1 per cent¹, on-board electricity production still generates considerable emissions of the following magnitude:²
- CO₂: 695 g/kWh
 - SO₂: 0.46 g/kWh
 - NO_x: 11.8 g/kWh
 - Particulates: 0.3 g/kWh.
- (11) By switching off power-generating auxiliary engines, these emissions can be reduced significantly, or even completely by using renewable energy. Based on on-board energy needs of approx. 4 GWh p.a., approximately 544 metric tonnes of airborne pollutants can be avoided each year in respect of CO₂ alone by switching to conventional shore-side power having a CO₂ balance of 559 g/kWh³. Assuming that renewable energy is used, emissions can be reduced by up to approx. 2 800 tonnes p.a.
- (12) The reduction of the emissions may also contribute to meet the obligations under the Directive 2008/50/EC on ambient air quality and cleaner air for Europe⁴.
- (13) The EU has advocated examination of shoreside power facilities in ports (Recommendation 2006/339/EC)⁵ and has suggested that Member States create financial incentives for shipping companies to use shoreside power.
- (14) Furthermore, Directive 2014/94/EU on the deployment of alternative fuels infrastructure⁶ provides in recital 34 that "shore-side electricity can contribute to reducing the environmental impact of sea-going ships and inland waterway vessels, and recommends in Article 4 the installation of shore-side electricity supply in ports of the TEN-T Core Network, and in other ports, by 31 December 2025, unless there is no demand and the costs are disproportionate to the benefits, including environmental benefits.
- (15) Finally, the measure is in line with the Schleswig-Holstein Operational Programme for the European Regional Development Fund for 2014–2020,

¹ Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC as regards the sulphur content of marine fuels, OJ L 191, 22.07.2005, p. 59.

² cf. 'Entec UK, European Commission Directorate General Environment, Task 2a - Shore Side Electricity', August 2005, p. 13 et seq.

³ cf.: Federal Environment Agency, *Entwicklung der spezifischen Kohlendioxid-Emissionen des deutschen Strommix in den Jahren 1990 bis 2013*; and: statistics portal 'statista.com', accessed 18.9.2014

⁴ OJ L 152, 11.06.2008, p. 1.

⁵ Commission Recommendation of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports, OJ L 125, 12.05.2005, p. 38.

⁶ OJ L 307, 28.10.2014, p. 1.

Intervention priority 4b (Objective 7 – Reduction of CO2 emissions from undertakings).

2.4. Costs

- (16) The total cost of the infrastructure measure is expected to be EUR 970 507 which is divided into the following elements:

a. Establishment of medium-voltage connection between port and local power grid, integration cable, building cost subsidy for medium-voltage connection	EUR [...]
b. Medium voltage substation in port area (building, e-technology equipment, cabling, communications technology, etc.)	EUR [...]
c. Quay to vessel transfer equipment incl. plugs	EUR [...]
d. Portside earthworks and civil engineering	EUR [...]
e. Planning, approval and other ancillary costs	EUR [...]
Total	EUR 970 507

2.5. Aid instrument and aid amount

- (17) The total investment costs of the project amount to EUR 970 507 of which EUR 571 232 was qualified as eligible for support from the State capital of Kiel⁷. EUR 342 739 (60% of the eligible costs) is a direct grant from the State capital of Kiel, whereas the remaining costs will be borne by SK⁸.
- (18) The German authorities provided calculations showing that the investment project will have a net negative cash flow over its economic lifetime (15 years), and that the total funding gap amounts to EUR 1 117 659.
- (19) The construction of the work can start only once the notification procedure has been concluded and a grant notice has been issued for the subsidy applied for.

2.6. Transparency

- (20) Germany stated that the relevant transparency requirements set out in section 3.2.7 of the Commission Guidelines on State aid for environmental protection and Energy 2014-2020 (EEAG)⁹ will be respected.

⁷ The costs related to the establishment of a medium-voltage connection between the port and the local power grid, integration cable etc. (EUR [...]) are not eligible for support from the State capital of Kiel and will be fully borne by SK.

⁸ An investment surcharge of EUR [...] for the vessel-adapted connection technology will be paid by Color Line, the current main user of Norwegenkai, to SK.

⁹ OJ C 200 28.06.2014, p.1

2.7. Legal basis

- (21) The legal basis for the grant is the GRW Coordination Framework - Guidelines of the state capital of Kiel regarding financial support for bodies not forming part of the city administration¹⁰.

3. ASSESSMENT

3.1. Existence of aid

- (22) Article 107(1) TFEU stipulates that 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 and affects trade among Member States, is incompatible with the internal market.
- (23) It follows that, for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met. The measure must
- be granted by the State or through State resources,
 - confer an advantage on the recipient undertaking(s),
 - favour certain undertaking or the production of certain goods (selectivity),
 - distort or threaten to distort competition and affect trade between Member States.
- (24) In the present case, the existence of State aid must be examined at the level of SK, which is the owner and operator of the aided infrastructure, and at the level of the shipping companies which have access to the infrastructure.

3.1.1. Existence of aid at the level of the owner and operator of the infrastructure

3.1.1.1. Notion of undertaking

- (25) According to Germany, SK, which will be the owner and the operator of the aided infrastructure, carries out economic activities and is therefore in principle an undertaking within the meaning of Article 107(1) TFEU. Nevertheless, Germany claims that the activity at stake, namely the provision of shore-side electricity facilities, is not an economic activity as no user fees are charged.
- (26) According to well-established case law¹¹ whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it constitutes an undertaking for the purposes of EU competition law.

¹⁰ GRW Coordination Framework: Federal Gazette AT 04.08.2014 B1, Part B No 3.2.8

¹¹ See e.g. Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, para. 21; Case C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, para. 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

- (27) The judgment of *Leipzig-Halle*¹² clarified that it is the future use of the infrastructure which determines whether construction of such infrastructure is an economic activity and accordingly whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not. Also the Commission established in a series of decisions on port cases that the construction of port infrastructure is a prerequisite for the commercial exploitation of the concerned infrastructure and thus constitutes an economic activity¹³.
- (28) As indicated in recital (5) above, SK is a publicly owned company which e.g. provides services to maritime operators which are of an economic nature. The connection facilities in question will be commercially exploited by SK in its capacity of owner and operator of that infrastructure, allowing electricity suppliers to sell electricity to shipping companies. The absence of user fees does not deprive the provision of side-shore electricity facilities of its economic character, all the time it is being offered, as part of SK's commercial activity, allowing the supply of electricity to shipping companies docking in the port of Kiel. Hence, as regards the construction and operation of side-shore electricity facilities, SK is engaging in an economic activity and must be considered to be an undertaking in the meaning of Article 107(1) TFEU.

3.1.1.2. State resources and imputability

- (29) As indicated in recital (17) above, the aid will take the form of a direct grant of EUR 342 739 from the State capital Kiel to partially cover the investment costs of the notified project. Hence, the notified measure is imputable to the German authorities and involves State resources.

3.1.1.3. Economic advantage

- (30) The Commission notes that the public financing to be provided for the project by the German authorities clearly confers an economic advantage on SK insofar as the measure partially covers the investment costs that SK would otherwise have had to bear to realise the project.
- (31) It therefore follows that the measure confers an economic advantage on SK.

3.1.1.4. Selectivity

- (32) As the public financing for the project is granted specifically to SK, the measure is selective in nature.

¹² Joined cases T-455/08 Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission and T-443/08 Feistaat Sachsen and Land Sachsen Anhalt v. Commission [2011] ECR II-1311; see also Case T-128/98 Aéroports de Paris v. Commission [2000] ECR II-3929, confirmed by the ECJ; Case C-82/01P [2002] ECR I-9297; Case T-196/04 Ryanair v. Commission [2008] ECR II-3643, para. 88.

¹³ See Commission Decision of 18 September 2013 on *Spain – Investment Aid to the Port of Bahía de Cádiz*, SA.36953; Commission Decision of 18 December 2013 *Hungary – The intermodal development of the Freeport of Budapest*, SA.37402; Commission Decision of 16 October 2013 *Italy – Investment Aid to Interporto Regionale della Puglia*, SA.35124.

3.1.1.5. Effect on competition and trade between Member States

- (33) According to the case-law, when financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and a potential distortion of competition¹⁴.
- (34) The Commission notes that there is likely to be an impact on the competition between ports. It can be assumed that the measure affects competition for port services in the passenger and RoRo ("roll-on/roll-off") ferry market. In particular with the realisation of the project, the port of Kiel will become more attractive to eco-conscious passengers and to shipping companies who cater for them. Shipping companies using the shore-side electricity infrastructure may start advertising with their green image once the project is completed.
- (35) Based on information provided by the German authorities, the Commission notes that the port of Kiel is likely to be competing, at least to some extent, with other national and foreign ports in the Baltic sea region, such as Lübeck, Rostock, Fredericia and Copenhagen. In summary, the State aid will enable SK to build the infrastructure, which is likely to strengthen its position vis-à-vis other competing port operators in Germany and other EU Member States insofar as thanks to the aid the port can offer an additional service to shipping companies and thus attract more traffic. An impact on competition is therefore likely.
- (36) Trade between Member States should also be affected, since passenger and RoRo ferry operators are active in neighbouring countries all around the North and Baltic Seas. Hence, an advantage granted to a port operator in an EU Member State is likely to enhance its ability to compete with other port operators in the EU to attract traffic and reinforce its market position.
- (37) The Commission therefore concludes that the notified measure constitutes State aid at the level of the owner and operator of the infrastructure.

3.1.2. Existence of aid at the level of the shipping companies

- (38) With regard to the shipping companies, the Commission notes that they shall enjoy equal and non-discriminatory access to the shore-side electricity facilities. The facilities will be made available free of charge to shipping companies, who will purchase electricity on their own account from an electricity provider of their choice.
- (39) Norwegenkai serves predominantly as a terminal for ferry passenger and RoRo traffic to and from Norway, and currently, the main user is the shipping company Color Line with two turnaround vessels a day. However, since Color Line only occupies berth 21 (where the shore-side electricity supply will be installed) for about 4 hours a day, it is also possible for other or further vessels to occupy it.
- (40) Although there will be no specific charge for using the shore side electricity facility, the Commission notes that SK charges fees for the use of the port and quay facilities via generally applicable, market-based tariffs. Hence, the shipping

¹⁴ See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, para. 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, para. 44.

companies using the infrastructure receive no economic advantage able to strengthen their competitive position as compared to other shipping companies.

- (41) Therefore, due to the absence of a selective economic advantage at the level of the user, the Commission concludes that the measure does not constitute state aid within the meaning of Article 107(1) TFEU to the shipping companies using the infrastructure.

3.2. Compatibility

- (42) To the extent that the notified measure amounts to State aid, it must also be assessed if that aid is compatible with the internal market.
- (43) The Commission notes that the financing of environmental protection measures relating to maritime transport infrastructure is covered neither by the current Guidelines on State Aid for Environmental Protection and Energy¹⁵ (EEAG) nor by the Guidelines on State Aid to Maritime Transport¹⁶ (Maritime Aid Guidelines).
- (44) The EEAG do not apply, since they explicitly exclude aid for maritime transport infrastructure¹⁷.
- (45) The Maritime Aid Guidelines do not apply since the investment is not for maritime transport activities as defined by Regulation (EEC) no. 3577/92¹⁸.
- (46) The Commission will therefore assess whether the aid can be considered compatible with the internal market on the basis of Article 107(3) TFEU.
- (47) According to established practice¹⁹ appropriate legal basis for assessing compatibility of the State aid to port infrastructure is Article 107(3)(c) of the Treaty. In keeping with that practice, it should therefore be examined if the aid in question
- meets a clearly-defined objective of common interest,
 - is necessary, appropriate and proportionate for achieving this objective,
 - does not affect competition and trade between Member States to an extent contrary to the common interest.

¹⁵ OJ C 200, 28.06.2014, p. 1.

¹⁶ OJ C 13, 17.01.2004, p. 3.

¹⁷ See point 15 b) thereof.

¹⁸ OJ L 364, 12.12.1992, p. 7.

¹⁹ See e.g. Commission Decision of 15.12.2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventpils Port*, OJ C 72 of 20.03.2010; Commission Decision in State aid case no. 44/2010 *Public financing of port infrastructure in Krievu Sala* – Latvian Republic, OJ C 215 of 21.7.2011, p. 19; Commission Decision in State aid case no. SA.30742 (N/2010) - Lithuania – *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, OJ C 121 of 26.4.2012, p. 1.

3.2.1. *Objective of common interest*

- (48) The above elements indicate that the project contributes to an objective of common EU interest.
- (49) The measure can be seen in context of Directive 2014/94/EU²⁰ which aims at ensuring the build-up of alternative fuel infrastructure and the implementation of common technical specifications for this infrastructure in the Union. According to Article 4(5) of the Directive, shore side electricity supply for waterborne vessels shall be installed as a priority in ports of TEN-T Core Network and in other ports, by 31 December 2025, unless there is no demand and the costs are disproportionate to the benefits, including environmental benefits. As stated in recitals (2) following, the measure contributes to the development of alternative fuel infrastructure.
- (50) Furthermore, the significant reduction of emissions into air and of noise emissions as described above (recital (9) following) clearly meets the objectives of the EU on the improvement of environmental protection. The use of electricity from the national grid could lead to a considerable reduction of air pollutants. Additionally, the onshore electricity supply would reduce the noise emissions resulting from the operating engines significantly.

3.2.2. *Necessity, appropriateness and incentive effect*

- (51) Germany has demonstrated that the net revenues to be derived over a reference period of 15 years do not remunerate the investment costs and in fact result in a negative figure. Without aid, over the lifetime of the project, a financial net present value (FNPV) of EUR –1 117 659 would be expected, demonstrating that the project is not financially sustainable, i.e. no private investor would finance the project.
- (52) As it results from the calculations provided, by realising the notified project SK could not find a way to cover the investment costs during the course of operation. Germany has explained that the costs per kWh for shore-side electricity in Germany cannot compete with the reference costs for running on-board diesel generators. Hence, if SK were to charge fees for the use of the shore-side electricity facility, the shore-side electricity would be so expensive for the users that there would be no incentive to use it.
- (53) The Commission therefore concludes that the aid is necessary and appropriate and that it has an incentive effect.

3.2.3. *Proportionality*

- (54) A State aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum.
- (55) Germany has explained that all contracts related to the part of the project benefitting from the notified aid will be awarded by SK in accordance with domestic and EU public procurement law.

²⁰ OJ L 307, 28.10.2014, p. 1

- (56) According to the calculations submitted by the German authorities the financial contribution from the State Capital of Kiel will amount to 60% of the eligible costs whereas the rest of the costs will be financed by SK²¹.
- (57) The Commission notes that the appropriate aid intensity is variable in each port infrastructure investment case insofar as it reflects the particularities of the project in question. In the *Ventspils* and *Krievu Sala* port cases²² the aid intensity was at the level of 50%, in the case of *Klaipeda*²³ of 65%, in the case of *Augusta*²⁴ of 68.87% whereas in the cases of *Hamburg*²⁵, *Katakolo*²⁶ and *Liverpool*²⁷ it was 75%, 91.23% and 100% respectively. Hence, the notified level of aid is lower than what has been approved in similar cases.
- (58) For the purposes of State aid assessment, bearing in mind the arguments put forward by Germany and the abovementioned case practice, the Commission considers that all investment costs might be deemed to be eligible as in the absence of mandatory national or EU environmental and technological standards and in the light of the specific nature of the planned infrastructure, no comparable investment would credibly be realised without aid by any undertaking.
- (59) Moreover, as demonstrated in the calculations provided by the German authorities, the investment would have a negative FNPV, and even with the notified level of support, the project would not be profitable.
- (60) In conclusion, the Commission considers that the aid is proportional and necessary to make the project feasible.

3.2.4. *No distortion of competition contrary to the common interest*

- (61) As already mentioned in Section 3.1.1.5 above the State aid at stake is liable to affect competition and trade between Member States. In this respect the Commission observes that whether or not a ferry is powered with environmentally-friendly electricity when berthing in the Port of Kiel is only one of many factors in a consumer's decision to book a passage (for passengers, more

²¹ See fn. 8 above

²² Commission Decision in case no N 385/2009 *Public financing of port infrastructure in Ventspils Port*, 15.12.2009, published in OJ C 72 of 20.3.2010; Commission Decision in case no 44/2010 *Public financing of port infrastructure in Krievu Sala*, 15.6.2011, published in OJ C 215 of 21.7.2011.

²³ Commission Decision in case no SA.30742 (N/2010) *Construction of infrastructure for the passenger and cargo ferries terminal in Klaipeda*, 22.2.2012, published in OJ C 121 of 26.4.2012

²⁴ Commission Decision in case SA.34940 *Port of Augusta*, 19 December 2012, published in OJ C 77 of 15.3.2013.

²⁵ Commission Decision in case SA.37322 *Alternative power supply for cruise ships in the Hamburg City Port (Altona – Hafencity)*, 5 June 2013, published in OJ C 280 of 22.8.2014

²⁶ Commission Decision in case SA.35738 *Aid for the upgrading of Katakolo port*, 19 June 2013, published in OJ C 204 of 18.7.2013.

²⁷ Commission Decision in case SA.35720 *Liverpool City Council Cruise Liner Terminal*, 11 March 2013, published in OJ C 120 of 23.4.2014

important factors are likely to be the price, the destination and facilities on board, and for cargo, transport costs, speed and the geography of the transport routes).

- (62) Furthermore, it must be taken into account that this project can serve as a best practice example for other ports in Europe. The aid could have the effect to push other ports towards more environmentally friendly solutions.
- (63) Moreover, the Commission takes the view that the project will not have a sudden and widespread effect on the passenger and RoRo ferry market as ships need to be equipped in order to be able to use the land-based facility. Therefore shipping companies would need some time to adapt their ships to the connection facilities in question.
- (64) Furthermore, the project allows improving the environmental conditions by significantly reducing emissions as described in recitals (10) and (11).
- (65) Taking all the above into account, the Commission concludes that the aid for this project does not affect competition and intra-EU trade to an extent that would be contrary to the common interest.

3.2.5. *Transparency*

- (66) As stated in recital (20) above, Germany confirmed that all the relevant transparency requirements will be met.

3.3. Conclusion

- (67) On the basis of the foregoing findings, the Commission concludes that the notified State aid is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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 electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission