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**Subject: State aid SA.42545 (2015/N) — Germany — Revitalisation of the  
Hamburg Congress Centre (CCH)**

Sir,

## **1 PROCEDURE**

- (1) By electronic notification registered on 14 July 2015 at the Commission, the German authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”) the measures for the renovation of the Hamburg Congress Centre further described below. The Commission requested additional information on 11 September 2015. As the German authorities had not responded to this request within the indicated time the Commission services sent a reminder on 23 October 2015. The German authorities submitted partial information on 30 October 2015. On 12 November 2015 a meeting between the German authorities and the Commission took place. In this meeting, the Commission services informed the German authorities that the submission of 12 November 2015 was incomplete and asked the German authorities to submit the missing information. On request of the German authorities of 21 December 2015, the Commission agreed to suspend the notification process until 31 January 2016.
- (2) On 1 of January 2016, the German authorities informed the Commission that the additional information would be submitted in the course of the month of February 2016. On 19 February 2016 the Commission services extended the agreed deadline for the submission of the full notification until 31 March 2016.

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Following the adoption of Notice on the notion of aid<sup>1</sup> (thereinafter "NoA") on 19 May 2016, the German authorities decided to provide an analysis of this case on the basis of this Communication and submitted a memorandum in this sense on 20 June 2016. The Commission services analysed this information and concluded it was not complete in order to finalise its assessment of the measure.

- (3) The German authorities submitted the requested information on 19 August 2016. After several exchanges with the German authorities and because of the fact that some key information, most notably the funding gap and the calculation of the gross grant equivalent (GGE) in financing instruments of the measure were still missing, the Commission services sent another request for information on 18 November 2016. The German authorities submitted the requested information on 9 December 2016 and 21 December 2016. Furthermore, Germany submitted additional information and the commitment on separation of accounts on 15 March 2017.

## **2 DETAILED DESCRIPTION OF THE MEASURE**

### **2.1 OBJECTIVE AND PROJECT IMPLEMENTATION**

- (4) The City of Hamburg (hereinafter "FHH") plans to renovate a part of its existing congress and culture centre (thereinafter "CCH"). The centre was built in 1973 and requires substantial renovation of the old building (*Altbau Ostflügel*). According to Germany, the State intervention in renovating the CCH was necessary due to the fact that following an EU-wide investor screening (*Markterkundung*) in 2013 no private investor was interested neither to take a stake in the CCH equity nor to finance the costs of the renovation without a guarantee from the FHH. The renovation will take place in the period of 2017-2019 during which the centre will be closed. The measure will be financed by a mix of instruments. According to Germany, the maximum aid, expressed as gross grant equivalent (hereafter "GGE"), of the respective instruments will not exceed EUR 168,9 million.
- (5) The renovated CCH will be used for the following events: a) non-commercial cultural and local events<sup>2</sup> and for b) commercial international events like congresses and international cultural events<sup>3</sup>. Based on previous events conducted in the CCH in the period of 2013-2015 around 35 % of the visitors

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<sup>1</sup> Commission Notice on the notion of aid as referred to in Art. 107 (1) TFEU, OJ C 262 of 19.7.2016, p.1.

<sup>2</sup> Events with a typical duration of max. 1 day, with ca. up to 500- occasionally of up to 1000 - visitors offered mostly to the local population in Hamburg with little cross-border publicity like e.g. small expositions of young artists as well as concerts of German local and regional music bands. The organisers of such events are agencies or undertakings operating mainly in Germany.

<sup>3</sup> Events with a typical duration of more than 2 days, with more than 1000 visitors – on average more than 3000 - visitors also from other Member States like e.g. large pharma congresses, corporate meetings of international companies and concerts of well-known commercially promoted music interpreters/groups. The event organisers of such events mostly pick only one city in the EEA, the events are non-repetitive (once a year in one Member State). The event organisers operate in more Member States or worldwide.

could be allocated to the category a) events whilst generating income of ca. 16.3 % of the total turnover of this period. The remaining 65 % of the visitors belonged to the category b) events generating an income of ca. 83.7 % of the total turnover. Out of the later, around 24.28 % of visitors used the CCH for cultural activities (mainly international concerts) whilst generating income of ca. 6.4% of the total turnover. The international congresses and corporate meetings accounted for ca. 41.71 % whilst generating an income of ca. 77.28 % of the total income. Even though, the German authorities indicated that these ratios may vary slightly due to the annual changes in the planned events (*Veranstaltungsliste*), they confirmed by letter of 28 November 2016 that these proportions of activities would essentially be maintained for the future.

Activities	Participants ratio	Turnover ratio
<b>Category a)</b> Non-commercial cultural events ( <i>local and regional</i> )	<b>35.01 %</b>	<b>16.32%</b>
<b>Category b)</b>	<b>64.99 %</b>	<b>83.68%</b>
i) International cultural events ( <i>non-local</i> )	24.28%	6.40%
ii) International congresses/corporate meetings ( <i>non-local</i> )	40.71%	77.28%

**Table 1: Division of the activities in the CCH (2013-2015)**

- (6) The German authorities further described on the basis of a business plan<sup>4</sup>, that after the renovation, the CCH will be operated on a new refined basis giving more emphasis on innovative event concepts, i.e. allowing for a more flexible use of the available capacity (creation of the so-called "break out rooms"). Germany therefore expects an increase in small and medium-sized events whilst the capacity for large international events will remain constant. Germany provided a study<sup>5</sup> showing that in 2014/2015 the market for small- and medium- mostly local and regional events was growing. The demand for large international events with more than 1.000 participants was constant.
- (7) The owner of the renovated CCH will be a newly created company CCH Immo GmbH & Co. KG with the sole limited partner CCH Immo GmbH (*Kommanditistin*) owned 100 % by FHH and the unlimited partner CCH Verwaltungs-GmbH (*Komplementärin*). Germany considers that the company, as established in 2013, does not qualify as a company in difficulty.
- (8) The operator<sup>6</sup> will be selected via a competitive procedure with negotiation in line with Art. 26 and 29 of the Directive 2014/24/EU on public procurement<sup>7</sup>

<sup>4</sup> Businessplan für die Revitalisierung des Congress Centre's Hamburg, Partnerschaften Deutschland, ÖPP Deutschland AG, 23.8.2013, Berlin.

<sup>5</sup> Meeting- and EventBarometer Deutschland 2014/2015 – Die Deutschland-Studie des Kongress- und Veranstaltungsmarktes, Juli 2015.

<sup>6</sup> The CCH is currently operated by a company owned by the FHH.

in a two-step process. In the first step, a pool of potential bidder will be determined. The maximum number of potential bidders will be restricted to 5. According to Germany, the potential bidder will be selected in a transparent<sup>8</sup> and fair manner. There will be no particular "minimum specifications" imposed on the potential bidder in the selection process. Only objectively unsuitable potential bidder will be rejected. In the second step, the selected bidders will be requested to submit their offers taking into account the fact that the CCH would be mainly used for cultural purposes.

- (9) The contract award criteria will be published on the TED<sup>9</sup> – website and will include qualitative and quantitative criteria. The tender specification includes among others i) the exclusive right of use of the CCH facility, ii) the operation of the CCH as a culture and congress centre, iii) the use of the CCH premises for congresses, which are relevant for Hamburg's region but also for cultural local and regional events, iv) taking over the contract with the existing caterer until 2025 and already contracted events. Moreover, there will be a minimum concession fee that would have to be paid to the owner Immo CCH, which cannot be undercut. The winning bid will be the one, which provides the most economically advantageous offer, in accordance with Art. 67 of the Directive 2014/24/EU on public procurement<sup>10</sup>.
- (10) The selected new operator will rent out the reconstructed CCH to different users, i.e. event organisers on a non-discriminatory basis. There will be no main/captive final user of the facility.

## **2.2 COSTS AND FINANCING**

- (11) The planned costs for the renovation of the CCH amount to ca. EUR 293.5 million over the project's period (respectively 278 million in 2016 NPV)<sup>11</sup>. Germany proposes to discount these costs on the basis of the Reference Rate Communication<sup>12</sup>. These costs include the development and construction costs of ca. EUR 175 million, costs for non-movable technical equipment of ca. EUR 62.5 million and the financial costs of ca. EUR 56 million. The operating costs for the facility management and personal will be covered from the concession fee paid by the future operator of the CCH.
- (12) The new operator of the CCH will invest into movable assets like for instance chairs for the theatre halls with ca. 3000 resp. 1000 places, furniture in the

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<sup>7</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, OJ L 94 of 28.3.2014, p. 65-242.

<sup>8</sup> Published in the Official Journal (OJ).

<sup>9</sup> "Tenders electronic daily (TED)"

<sup>10</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94 of 28.3.2014, p. 65-242.

<sup>11</sup> The applied discount rate is the reference rate calculated on the basis of the Reference Rate Communication (OJ C 14 of 19.1.2008, p.6-9) of 0.98 %.

<sup>12</sup> OJ C 14 of 19.1.2008, p- 6-9.

break out rooms, mobile media equipment and catering. In addition to its own expenditures, he will pay a concession fee to the owner CCH Immo for the exclusive right to use CCH. The final amount of the fee will be determined in the context of the tender described in paragraphs (8) to (10).

- (13) The renovation costs of ca. EUR 293.5 million will be financed through a mix of the following instruments: i) equity injection by the FHH in 2017 and ii) a short-term loan (*Eigenbrückenfinanzierung*) with a duration of 4 years and iii) a long-term debt financing in 2017 with a duration of 25 years (with a possible extension for the follow-up financing of 15 years) for which offers have been made by different banks, including commercial banks. The City of Hamburg intends to provide a State guarantee of up to 100 % for the loan financing of maximum 25 years (possible extension until 2058). Germany indicates that the guarantee premium to be paid to the City of Hamburg for the State guarantee has not yet been finally established. The German authorities will ensure that the aid in the State guarantee will not exceed the funding gap for cultural activities (however, will be in any event subject the limitations of the maximum gross grant equivalent described below).

### 2.3 GROSS GRANT EQUIVALENT IN THE MIX OF FINANCING INSTRUMENTS

- (14) Germany asserts that the State aid involved in all financing instruments will amount to maximum ca. EUR 168,9 million (in 2017 NPV<sup>13</sup>).

- **Direct grants (i) and (ii)**

- (15) According to Germany, the equity injection and the payments linked to costs for planning and technical equipment to be paid to Immo CCH by the FHH in annual rates (incl. interest) are considered to have a gross grant equivalent of direct grants amounting to 160 million EUR.

- **State guarantee in the long term financing (iii)**

Calculation of the GGE in the State guarantee:

- (16) As there is no market price for this State guarantee, the gross grant equivalent of the guarantee will be established in a similar way as the gross grant equivalent for loans. The advantage in the State guarantee (respectively the market-conform guarantee premium) will be then calculated as the difference between the specific interest rate this company would have borne without the State guarantee (price for a non-guaranteed loan) and the interest rate obtained by means of the State guarantee after any premiums paid have been taken into account (price for the guaranteed loan incl. guarantee premium paid). As there is no market interest rate for non-guaranteed loans, Germany proposes to use the reference rate as a proxy. The reference rate of a loan is established on the basis of the Reference Rate Communication<sup>14</sup> and is defined as the sum of i)

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<sup>13</sup> At a discount rate of 0.98 %.

<sup>14</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14 of 19.1.2008, p.6-9.

the refinancing costs of the loan and ii) the appropriate risk margin reflecting the project risks of the company. The risk margin depends on the rating of the company and the collaterals provided. The higher the collateralisation of the loan granted to this specific company (i.e. the lower is the loss of the creditors in case of company's default) and the higher the rating (i.e. the lower the probability of default), the smaller is the risk margin (see table 2 below).

Rating	Collaterals		
	High	Normal	Low
Very good (AAA)	60	75	100
Good (BBB)	75	100	225
Weak (B)	220	400	650
Very bad (CCC)	400	650	1000

**Table 2: Risk margin proxies (Reference Rate Communication 2008)**

- (17) Under the assumption that the refinancing costs remain the same for these two loans (for the guaranteed and the non-guaranteed loan), Germany explains that the advantage included in the State guarantee, respectively the market-conform guarantee premium, can be then calculated as a difference between the risk margin of the non-guaranteed loan and the risk margin of the guaranteed loan minus a guarantee premium paid. If this value is positive, i.e. the guarantee premium paid is lower than the established market-conform guarantee premium, there is an advantage in the State guarantee. Germany further explains that the gross grant equivalent of this guarantee will be the sum of the annual gross-grant equivalents (advantage in basis points (bp)\*the outstanding loan amount per year) paid yearly on the outstanding amount of the guaranteed loan for the time of the guarantee.
- (18) The risk margin of the non-guaranteed loan was established on the basis of information provided by a bank of the most cautious offer made by several banks to CCH (upper range of the bank offers). This bank considers that the rating of Immo CCH falls into the category "Good" (BBB) and the value of the collaterals is high (high collateralisation). The minimum risk margin for the loan without the State guarantee ("non-guaranteed loan") amounts therefore to 75 bp /0.75 % p.a.. The real risk margin of the guaranteed loans was established on the basis of the indicative bank offers with 100 % guarantee (the lower range of the bank offers of 0.23 % p.a.). According to Germany, the advantage in the State guarantee would therefore amount to 0.52 % p.a. (0.75 % - 0.23 %). If Immo CCH would not pay any guarantee fees for this State guarantee to FHH, the advantage (GGE) in the long-term financing to terms to Immo CCH of this guarantee would amount to ca. EUR 8.9 million.

- (19) Lastly, based on the indication by Germany, the gross-grant equivalent of all combined instruments will not exceed EUR 168,9 million.

	Advantage in 100 % State guarantee (in absence of payment of any guarantee premium)
Guarantee premium	0.52 %
Gross grant equivalent in the State guarantee	EUR 8,9 million

**Table 3: GGE included in the State guarantee/ advantage in the State guarantee as calculated by Germany**

### 3 ASSESSMENT OF THE MEASURE

- (20) 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".
- (21) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Union trade.
- (22) The Commission assessed the case in the following manner. Firstly, the Commission determined the presence of the aid at the level of the owner/developer and calculated the advantage in the financing of the revitalisation of the CCH (calculation of the total GGE). In the second step, the Commission established whether the financing of the CCH revitalisation constitutes State aid in its entirety, taking into account the fact that not all the cultural activities of the CCH qualify as economic activity. As the CCH will also be used for other non-cultural activities, the Commission ensured that the aid does not flow to those activities. In this regard, the Commission performed a funding gap analysis separating out the different activities (non-economic cultural, economic cultural and other, such as international events/congresses).

#### 3.1. EXISTENCE OF AID AT THE LEVEL OF THE OWNER/DEVELOPER

- (23) 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".
- (24) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to

undertakings; 3) this advantage must be selective; and 4) the measure must not distort or threaten to distort competition and affect intra-Union trade.

### 3.1.1 Notion of undertaking

- (25) The Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking therefore depends entirely on the nature of its activities. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.
- (26) In this context, the Commission notes that funding provided by means of a mix of the financing instruments will be provided in favour of an infrastructure owned by Immo CCH, which will be used for economic activities. According to the *Leipzig/Halle* judgment of the Court of Justice<sup>15</sup>, the economic character of the later use of the infrastructure determines the nature of the financing of the construction. As explained in paragraph (34) of the NoA, the public funding of cultural activities may be organised in a non-commercial way and thus public funding thereof does not constitute State aid. Indeed the Commission considers that public funding of a cultural or heritage conservation activity accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature. In the same vein, the fact that the visitors pay a monetary contribution that only covers a fraction of the true costs is equally unlikely to be economic in nature.
- (27) The Commission analysed on the basis of the past activities of the CCH the nature of the cultural activities and compared the ticket price charged with the average rental prices/per visitor which are paid by the event organisers to the current CCH operator. Based on this evidence, the Commission observes that the ticket prices in the category for events a) described in paragraph (5) of the present decision cover only ca. 10-20 % of the rental price of the event organisers (costs of the event's organisers). Therefore, the visitors of the mainly local and cultural events pay only a fraction of the real costs of the event's organisers. The Commission concludes that as regards these activities, the CCH is not meant to be commercially exploited, and that the part of financing which can be linked to this part can in principle be excluded from the application of the State aid rules.

### 3.1.2 State resource

- (28) With regard to the requirement that the measure must be granted through State resources and be attributable to the State, this criterion is fulfilled in the present case as the measures described in paragraph (13) by a State authority,

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<sup>15</sup> Cases T-443/08 and T-455/08 *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:T:2011:117, para. 107; Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:C:2012:821. See also the judgement of 24 October 2002, case C-82/01P *Aéroport de Paris*, ECLI:EU:C:2002:617.

FHH will contribute to the benefit of the Immo CCH through a mix of instruments.

### 3.1.3 *Economic advantage*

- (29) The Commission considers that the public financing of the revitalisation of the CCH constitutes an advantage to the owner of the CCH. As mentioned in paragraph (15) above, the Commission observes that the financing provided to Immo CCH in terms of equity injections and short term loan, to be repaid by FHH represents in fact direct grants to Immo CCH of ca. EUR 160 million. The Commission further assessed the GGE in the State guarantee in the loan provided to Immo CCH by FHH. The calculation of the GGE was performed in line with the section 4 of the Guarantee Notice<sup>16</sup>.
- (30) In line with the section 4.1 of the Guarantee Notice, the State aid element included in the guarantee provided to Immo CCH will be deemed to be the difference between the appropriate market price of the guarantee provided individually and the actual price paid for that measure. The resulting yearly cash grant equivalent should be then discounted to their present value using the reference rate, and then added up to obtain the total grant equivalent.
- (31) The Commission notes that no private investor was willing to provide financing for the revitalisation of CCH in absence of a State guarantee. According to the German authorities the guarantee may cover up to 100 % of the outstanding loan. The Commission also understands that the premium price to be paid for the guarantee will be determined in the negotiations with the financiers. Therefore, the Commission has in its assessment of the GGE included in the guarantee based itself on the most conservative assumptions: 100% guarantee, no premium paid, low collateral.
- (32) The Commission then calculated the advantage in the State guarantee in accordance with the section 4.2. of the Guarantee Notice. The Commission takes into account that the rating of Immo CCH rating is "good", i.e. BBB (for further explanations, see para. (34) below). The Commission finds that in order to establish the advantage in the State guarantee, it is assumed that FHH provides low collaterals in value, the guarantee covers 100 % of the outstanding amount and the risk margin paid for this loan is the minimum among the indicative bank offers. The market proxy for a risk-margin of the non-guaranteed loan with low collateralisation and with rating BBB is 2.2 % p.a (see table 2 above). Among the submitted bank offers the minimum risk margin of a loan with 100 % guarantee amounts to 0.23 % p.a. The advantage thus amounts to 1.97 % p.a.. The Commission notes, that the advantage in the 100 % State guarantee for the loan is much higher than the advantage established by Germany of 0.52 % p.a.

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<sup>16</sup> Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, p.10-22.

	Advantage as established by Germany (High collateral)	Advantage as established by the Commission (Low collateral)
Proxy for a minimum market-conform price for State guarantee	<b>0.52 % p.a.</b>	<b>1.97 p.a. %</b>
Market proxy for a risk margin RRC – minimum risk margin (loan without the State guarantee)	0.75 % p.a.	2.20 % p.a.
Risk margin – 100 % guaranteed loan by FHH	0.23 % p.a.	0.23 % p.a.
<b>GGE (state guarantee) in million EUR</b>	<b>8.9</b>	<b>32</b>

**Table 4: Gross grant equivalent in the State guarantee**

- (33) For the calculation of the aid element, the Commission took into account in particular whether the guarantee covers more than 80 % of each outstanding financial obligation and whether the specific characteristics of the guarantee and the loan (or other financial obligation) have been taken into account when determining the market premium of the guarantee.
- (34) The Commission considers that FFH intends providing a 100 % guarantee for the financing of the CCH revitalisation. In that case, the Commission has to look into whether the lender had a real incentive to properly assess, secure and minimise the risk arising from the lending operation. Therefore, the Commission has examined more thoroughly the nature of this transaction. Firstly, the Commission notes that FHH has not yet decided whether the State guarantee will cover 80 % or 100 % of the outstanding loan. Secondly, the Commission calculated the GGE in the instruments already on the basis of a very cautious scenario and taking into account that the guarantee covers 100 % of the outstanding loan. In line with section 4.1 of the Guarantee Notice, the Commission also examined whether there was any reason to doubt whether the bank which provided the rating for Immo CCH of BBB did not do a proper assessment. In this regard, the Commission established whether the increase in the risk margins for a loan with 80 % State guarantee (expressed as a difference between the interest rate of loans with 100 % and 80 % guarantee) is comparably the same or at least lies in a range of risk margins differences in the comparable bank offers. The Commission then concluded that so calculated difference of 0.14 bp lies in the range of the differences in the risk margins of other bank offers and that the deviation from most other offers is minimal. The Commission therefore concludes that the rating of the Immo CCH (with BBB) by the bank has been established in a credible way.
- (35) The Commission then calculated the GGE included in the guarantee for the long term financing and concluded that under the most conservative approach, the aid element in the State guarantee could amount to maximum EUR 32 million, which is an amount higher than the one calculated by Germany of ca. EUR 8.9 million (see paragraphs (16) - (18) above). The Commission also

understands that the value of the precise collaterals to be provided is not yet known. Therefore, the advantage in the 100 % State guarantee will depend on the final value of the collaterals provided by FHH to Immo CCH and will range between minimum EUR 8.9 and maximum EUR 32 million. Taking into account the value of direct grants of EUR 160 million, the overall advantage in the financing of CCH amounts to 192 million.

#### *3.1.4 Selectivity*

- (36) The Commission notes that the equity injection and the loans financing guaranteed by FHH will be provided exclusively to the owner of the reconstructed CCH, i.e. Immo CCH.

#### *3.1.5 Distortion of competition and effect on trade*

- (37) As regards the issue whether the measure at stake has a potential to distort competition and has effect on intra-EU trade, the Commission made a distinction between the local cultural events (category a) and the international events (category b).
- (38) As regards the local cultural events, the Commission considers, in line with the principles set out in paragraph (196) of the NoA, that there is only a limited effect on trade, where the beneficiary supplies goods and services to a limited area within a Member State and is unlikely to attract customers from other Member States, and that it could not be foreseen that the measure would have more than a marginal effect on the condition of cross-border investment or establishment. The Commission notes that in line with principles set out in paragraph (5) above, that the category a) activities attract mainly local visitors. There is no indication in the file that local cultural activities would be promoted internationally, i.e. over the border of Germany. Moreover, the event's organisers are local, respectively regional companies, whose activities are unlikely to attract visitors from other Member States. The Commission therefore concludes that the aid, to the extent it can be linked to these activities only aims at supplying services to a limited area within Germany and is unlikely to attract customers from other Member States. Considering that the revenues generated from these activities are very low as compared to their cost, it is rather unlikely that the financing of the non-commercial part of the CCH would have more than a marginal effect on cross-border investments or establishments.
- (39) As far as the international events are concerned– both cultural and others (category b) – the Commission notes that in the past the CCH has been used for international events, generating income from these activities for ca. 77 % of the total turnover. Therefore, the upgrade of this infrastructure is likely also in the future to have an effect on trade by attracting international visitors and organisers from other Member States concerning international cultural and non-cultural events.
- (40) The Commission therefore concludes that the public funding of the construction of the CCH constitutes State aid in favour of the owner Immo CCH.

### **3.2. EXISTENCE OF THE AID AT THE LEVEL OF THE OPERATOR**

- (41) It results from the paragraph above that the aid will be granted by FHH to the owner/developer of the CCH. The Commission needs to assess moreover to which extent part of this aid could be passed on by the owner/developer to the entity which will operate CCH by renting out its space to the organisers of events. The Commission notes that, as mentioned in paragraph (9) above, Germany will tender out the operation of the centre. In line with principles set out in section 7.3 of the NoA, in particular paragraph (223), an operator who makes use of the aided infrastructure to provide services to end-users receives an advantage if the use of the infrastructure provides it with an economic benefit that it would not have obtained under normal market conditions. Guidance on how to establish whether the terms of operation comply with market conditions is provided in section 4.2 of the NoA. In line with this section, the Commission considers that the economic advantage passed on by the owner/developer to the operator can in particular be excluded if the concession to operate the infrastructure is assigned by the owner/developer for a positive price through a tender that meets all the relevant conditions set out in paragraphs 90-96 of the NoA.
- (42) In paragraph (90) of the NoA it is stipulated that a tender procedure has to be competitive to allow all interested and qualified bidders to participate in the process. This means in accordance with paragraph (91) that the procedure has to be transparent to essentially allow all interested tenderers to be equally and duly informed at each stage of the tender procedure.
- (43) Further in paragraph (92) it is stipulated that non-discriminatory treatment of all bidders at all stages of the procedure and objective selection and award criteria specified in advance of the process are indispensable conditions for ensuring that the resulting transaction is in line with market conditions. To guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. They should also allow for most economically advantageous offer to match the value of the market. The criteria should therefore be defined in such a way as to allow for efficiently competitive tendering procedure which leaves the successful bidder with a normal return, not more. In practice, this implies the use of tenders which put significant weight on the price component of the bid or which are otherwise likely to achieve a competitive tender.
- (44) Firstly, the Commission notes that as mentioned in paragraph (8) above, the operator of the CCH will be selected in accordance with accordance with Art. 29 and 56 of the Directive 2014/24/EU on public procurement<sup>17</sup>. This procedure will allow for all interested parties to participate. There will not be minimum criteria imposed on selecting potential bidders. Secondly, the contract award criteria will be published in the TED-system, to which all potential bidders have access. Thirdly, the Commission notes that the winner of the tender will be determined on the basis of the most economically

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<sup>17</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94 of 28.3.2014, p. 65-242.

advantageous offer. Contract award conditions as described in paragraph (9) apply to all potential bidders equally and are clear-cut. As the concession fee is not the only award criteria and the minimum fee should guarantee that the income from the operator covers at least the developers' costs for facility management, the Commission considers that no reasonable market operator would contract services without this condition (income covers at least the operating costs). The special obligation to operate the CCH mainly as a centre for cultural activities (see above paragraph (5)) does neither include any discrimination nor conditionality as any future operator could source cultural activities to be organised in the congress centre. Finally, the Commission considers that the future operator is likely to pay for the right to exploit the infrastructure a positive price, obtained under normal market condition as a result of an open, non-discriminatory and transparent tender.

- (45) The Commission therefore concludes that the advantage granted to CCH as the owner/developer of the centre is not going to be passed on to the future CCH operator and that the State aid at the level of the operator can be excluded. The Commission can therefore also refrain, in the present decision, from examining whether any aid could be passed by the operator to final users.

### **3.3. COMPATIBILITY ASSESSMENT**

#### *3.3.1 Objective of common interest*

- (46) The public funding of the revitalisation of the infrastructure with the aim to offer it also for commercial use may be compatible with the internal market pursuant to Article 107(3)(d) TFEU if it pursues a policy objective of common interest, is appropriate, necessary and proportionate and does not cause undue distortions of competition.
- (47) With regard to the achievement of the common objective, the Commission first notes that the measure foresees a renovation of a facility which will be mainly used for cultural activities. The Commission has, in its decision practice<sup>18</sup>, confirmed that the construction of venues for cultural events as well as providing meeting place (for conferences) contributing to the promotion of cultural diversity, in line with Art. 167 (4) TFEU, is an objective of common interest. Therefore, State aid in the financing of CCH revitalisation serves a well-defined objective of common interest as far as the aid can be considered to cover the proportion of the costs linked to the likely future cultural activities in the centre. This is all the more relevant in case the cultural activities concerned do not constitute an economic activity as described in the paragraphs (26)-(27) above.

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<sup>18</sup> SA.43206 (2015/N) – The project on Vilnius Concerts and Sports Palace Reconstruction and Arrangement to Congress, Conference and Cultural events (The Vilnius Congress Centre project) – Lithuania (C (2016) 217 of 22.1.2016), SA.35606 (2013/N) – Poland – International Congress Centre in Katowice (C(2013) 4413 of 17.7.2013).

### 3.3.2 Appropriateness

- (48) The Commission notes that Germany tried, without success, to find a private investor to fund the revitalisation of CCH. Moreover, Germany demonstrated on the basis of a funding gap analysis (see next paragraph), that the costs could not have been financed through private funds exclusively.

### 3.3.3 Need for State intervention (Funding gap analysis):

- (49) The Commission performed a funding gap analysis on the basis of the ex-ante business plan submitted by Germany and concludes that the total funding gap calculated as a difference between the investment costs and a conservative assessment of the minimum net-revenues over 25 years is ca. EUR 247 million. The Commission also calculated the funding gap separately for the different activities and concluded that the funding gap of EUR 247 million covers also activities b), which are non-cultural in nature (of ca. 58 million EUR<sup>19</sup>). The funding gap for the cultural activities amounts to ca. EUR 188 million, out of which EUR 108 million are linked to the non-commercial local events and hence not State aid relevant. The funding gap for the commercial cultural events amounts to ca. EUR 80 million.

Activities	Funding gap in million EUR (in discounted values)
Non-commercial and cultural events ( <i>local and regional</i> )	<b>108,115</b>
International cultural events ( <i>non-local</i> )	<b>80,600</b>
<b>Cultural activities total:</b>	<b>188,715</b>
International congresses/corporate meetings ( <i>non-local</i> )	<b>58,320</b>
<b>TOTAL ALL ACTIVITIES:</b>	<b>247,035</b>

**Table 5: Funding gap analysis**

### 3.3.4 Proportionality

- (50) The Commission notes that the cumulated maximum advantage included in the financing of the revitalisation of the CCH as calculated in paragraph (35) by means of EUR 192 million stemming, on the one hand, from an equity injection with a GGE of EUR 160 million and, on the other hand, from a guarantee with a GGE of maximum EUR 32 million is higher than the funding gap linked to the joined economic and non-economic cultural activities. The Commission considers however that the conceptually highest possible aid amount included in the State guarantee, which is linked to the fact of using a 1.97 % market premium (see table 4 above) corresponds to a very low level of collateral which should not occur in the present case as the CCH constitutes, in itself a reasonable collateral which should allow for the spread between the

<sup>19</sup> This amount will be covered by the future operator from his own means.

annual guarantee premium of the guarantee and the real guarantee premium paid by the Immo CCH to FHH does not exceed 1.77 % p.a. leading to a maximum GGE included in the guarantee not higher than EUR 28 million. The aid included in the financing of the revitalisation of the CCH will thus be proportionate to the extent it will exclusively cover the future cultural activities (both of economic and non-economic nature) to the exclusion of non-cultural activities like large international congresses. The Commission moreover notes that even if the cultural non-commercial activities would have qualified (quod non) as economic in nature, the total aid amount linked to the cultural activities would still be proportionate.

- (51) Moreover, the limitation of aid to cultural activities will not allow the Immo CCH to provide an advantage to the future non-cultural activities in view of the commitment of Germany to preserve the current proportion of cultural activities in the future. Moreover, the German authorities committed to maintain a minimum level of the cultural activities at 50 % in future (following the organisation of the tender). The future operator will also have to foresee a separate accounting to ensure financial transparency and trace any cross-subsidies from cultural activities towards non-cultural activities. Finally, the German authorities committed to foresee a yearly monitoring of such cross-subsidies and to reduce proportionally the aid amount in case such cross-subsidies were to appear.

### 3.3.5 Avoidance of undue negative effects on competition and trade between the Member States:

- (52) The Commission notes that the aid in the revitalisation of CCH will contribute in particular to development of local and regional cultural activities mainly addressed to local/regional visitors which will not negatively affect competition between the centres in other Member States. There are no many cultural and congress centres in Germany which would allow for hosting large events with more than 1.000 visitors. The Commission considers as a positive element of the measure that Germany decided to tender out the operation the CCH. Moreover, the final financing package of the CCH revitalisation will be based on the final offers provided by financiers offering the best conditions. The aid amount to be provided to Immo CCH could therefore be even lower than the maximum aid amount established by this decision. The Commission notes also that the CCH will not be dedicated to one final user but will be offered to several event's organisers at non-discriminatory terms. Therefore, the Commission concludes that the measure will not have undue negative effects on competition and trade between the Member States.

### 3.3.6 Transparency

- (53) Germany shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:
- the full text of the individual aid granting decision and its implementing provisions, or a link to it,
  - the identity of the granting authority/(ies),

- the identity of the beneficiary, the form and amount of aid granted, the date of granting, the type of undertaking (SME / large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level).
- (54) The information will be published within 6 months from the granting act [in the case of unlawful aid: date of this decision] and the information will be kept for at least 10 years and will be available to the general public without restrictions.

#### **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)(d) 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:

European Commission,  
Directorate-General Competition  
State Aid Registry  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Member of the Commission