Subject: State Aid SA.42219 – Germany
Refurbishment of the Schuhmacher-quay in the port of Maasholm

Sir,

1. PROCEDURE

(1) On 9 October 2015, Germany formally notified for legal certainty public support for a port infrastructure investment project in the port of Maasholm. The project had been pre-notified to the Commission on 18 June 2015.

2. DESCRIPTION

2.1. The objective of the notified project

(2) The notified project will be carried out in the port of Maasholm. Maasholm is a small municipality in the German State Schleswig-Holstein. It is located on the northern shore of the Schlei, a small inlet of the Baltic Sea stretching for around 42 kilometres inland to the city of Schleswig.

(3) The investment project foresees the refurbishment of a quay (called Schuhmacherbrücke) in the port. The quay was originally constructed in the 1960s. Due to the way it was constructed it is currently only possible to get onto the quay from ships via small ramps to be put between the quay and the ships. This leads to safety hazards in case of uncontrolled movement of ships during the use of those ramps. In addition, the current construction limits the accessibility to the quay for people with reduced mobility.

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In light of the above, the objective of the planned refurbishment is to preserve and update the quay and, in particular, to ensure the safety on the quay and its accessibility for people with reduced mobility.

2.2. Planned investment

The total costs for the notified project is EUR 738,610, consisting of EUR 165,000 for preparing the land for the project, EUR 483,610 for the construction itself and EUR 90,000 for ancillary costs.

2.3. Financing of the investment project

The project is foreseen to be partly financed through a grant by the State Schleswig-Holstein amounting to EUR 443,166 (60% of the total investment costs). The remaining part of the investment costs, amounting to EUR 295,444, is foreseen to be financed by the municipality of Maasholm.

2.4. The beneficiary

The infrastructure will be owned by the municipality of Maasholm, which will also administer and operate the quay.

2.5. Competition context

According to the German authorities the refurbishment of the quay will not affect competition or intra EU-trade.

The information submitted by Germany shows that the quay will mainly be used for sea rescue services (during all seasons) and sometimes for waterway police, customs and fisheries control services. For the use for these purposes no fees will be charged.

In addition and to a limited degree (less than 20% of the total usage), a seasonal use (against a fee) is foreseen by one small fisher boat, one boat for excursions and two boats for passenger services on the Schlei. According to the information provided by the German authorities, all excursions and passenger services are limited to trips on the Schlei and no trips will be offered leaving the Schlei (i.e. no trips are offered to open waters of the Baltic Sea or to Denmark).

Germany explained in particular that offering trips on the Schlei by shipping companies not located at the Schlei (e.g. companies located in Flensburg, Eckernförde or Kiel) is not economically feasible. The reasons for this are that the distances that would have to be travelled to reach the Schlei would be too long, that the demand by potential customers is not high enough and that the water in the Schlei is not deep enough for large ships being able to travel also on the open seas.

Thus, Germany submits that trips on the Schlei are exclusively offered by small shipping companies located at the Schlei and that it follows that there is no competition with shipping companies located elsewhere, whether in Germany or in other Member States.

As regards the fishing boat, Germany submitted information showing that said boat offers fishing trips on the Baltic Sea for local tourists. However, according to
the information provided the boat located in Maasholm is the only one located on the Schlei which offers such trips. The closest other boats offering such services are located in the Bay of Eckernförde, Strande and the Bay of Kiel. Germany, therefore, argues that these ships are not in competition for such tourist services with the ship located in Maasholm, due to the long distance between their locations.

2.6. Legal basis

(14) The foreseen national legal basis for the grant is section 44 of the Landeshaushaltsordnung Schleswig-Holstein.

2.7. Form and duration of the public funding

(15) As indicated above, the public funding of the project takes the form of a direct grant by the German Land Schleswig-Holstein on the one hand a contribution by the municipality of Maasholm on the other hand. The money shall be disbursed in two tranches during the years 2015 and 2016. According to the planning the project should be finalized on 31 March 2016.

2.8. Cumulation

(16) According to the notification a cumulation of the aid with other aid for the same eligible costs is excluded.

3. ASSESSMENT

3.1. Existence of State aid

(17) 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”.

(18) 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 from other Member States to enter the market by maintaining or increasing local supply, or to exercise their right of establishment.

(19) 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. 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.


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

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 why it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.4

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.

As regards the present case, the Commission at the outset observes that the quay will mainly be used for free by the public authorities for sea rescue services, waterway police, customs and fisheries control services, and, as such, for activities falling under the State's responsibility in the exercise of its powers as public authority.6

As regards the remaining services offered in connection with the quay to be refurbished by the notified project, which can be considered as constituting economic activities, these only compete, as was submitted by the German authorities, in a local zone limited to a small area within Germany.

In particular, the quay will in this regard only be used by one small fisher boat, one boat for excursions and two boats for passenger services on the Schlei. The information provided by the German authorities shows that all excursions and passenger services are limited to trips on the Schlei and that it is not economically feasible for shipping companies not located directly at the Schlei to offer any shipping services on the Schlei.

Furthermore, even though the fishing boat does leave the Schlei for tourist trips on the Baltic Sea, the information provided shows that it is nevertheless not in competition with other boats offering similar services, but is rather only targeting local tourists in Maasholm and the near surroundings. This is further supported by


the relatively small scale of the tourist activities carried out by the fisher boat, which have a yearly turnover of below EUR 150 000.

(26) In light of the above, the Commission considers that in the present case competition for the services offered in connection with the notified project occurs at a purely local level.

(27) With regard to the effect on the conditions of cross-border investments or establishment, the Commission firstly notes that, as already mentioned above, all services offered in connection with the refurbished quay are limited to a purely local area. In addition, the notified project does not foresee the construction of new port infrastructures, but merely the refurbishment of a purely locally used quay. Given these circumstances the planned investment will clearly not have any significant effect on the patterns of trade between Member States in the sense that it would have a decisive and significant impact on the decision of shipping companies from other Member States to use the port in Maasholm rather than ports in other Member States.

(28) Lastly, the Commission observes that the relatively low amount of public funding (for an investment project in a port) of EUR 738 610 gives an additional indication that the impact of said project will, if at all, only insignificantly affect cross-border trade.

(29) Based on an overall assessment of the above indications, the Commission considers, in light of the available evidence, that the public support 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.

Conclusion on the existence of aid

(30) Based on the above the Commission considers that neither the situation of the relevant market, the position of the undertaking in that market or the pattern of trade in the services in question show that the public support could reasonably be foreseen to have more than a marginal effect, if any, on the conditions that determine trade between Member States.

(31) It follows that the notified grant to be given to the municipality of Maasholm does not qualify as State aid in the meaning of Article 107(1) TFEU.

4. Conclusion

The Commission has accordingly decided:

- that the measure does not constitute aid.

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission