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**Subject: State aid SA. 43983 (2015/N) – Germany –  
BLSV Sportcamp Nordbayern**

Sir,

**1. PROCEDURE**

- (1) By letter dated 21 December 2015 the German authorities notified to the Commission for the reason of legal certainty the state support for the construction of the "Sportcamp Nordbayern".
- (2) With information at hand, the Commission was not in a position to assess the notified measure and requested additional information by letters of 18 February 2016 and 26 April 2016.
- (3) The German authorities provided additional information on 4 March 2016 and 27 April 2016.

**2. DESCRIPTION OF THE MEASURE**

*2.1. Objective of the measure*

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- (4) The German authorities plan to contribute 20.76 Million Euro to the construction of a new sport infrastructure referred to as "Sportcamp Nordbayern" (hereinafter also "the Sportcamp"). It is a campus with sports facilities designed primarily for use by schools and sport associations.
- (5) The granting authorities are Free State of Bavaria, Upper Franconian Trust (Oberfrankenstiftung)<sup>1</sup> and the municipality Bischofsgrün.

## 2.2. Legal basis

- (6) The notified measure is financed directly from the budget of the Land Bayern and the municipality Bischofsgrün as well as by a one-time grant in the amount of EUR 500.000 from Oberfrankenstiftung, the public law foundation (*Stiftung des öffentlichen Rechts*) of the *Bezirk* Oberfranken, Bavaria. The measure is not implemented on the basis of any aid scheme. The national legal bases for the notified measure are the following legal acts:
  - Gesetz über die Feststellung des Haushaltsplans des Freistaates Bayern für die Haushaltsjahre 2015 und 2016 (Haushaltsgesetz 2015/2016 – HG 2015/2016) vom 17. Dezember 2014, Kapitel 03 03 Titel 893 01-7; Bayerisches Gesetz- und Verordnungsblatt 2014, S. 511)
  - Haushaltsordnung des Freistaates Bayern (Bayerische Haushaltsordnung – BayHO; Bayerische Rechtssammlung (BayRS) IV, S. 664, zuletzt geändert durch § 1 Nr. 348 der Verordnung vom 22. Juli 2014 (Bayerisches Gesetz- und Verordnungsblatt 2014, S. 286)
  - Verwaltungsvorschriften zu Art. 44 der Bayerischen Haushaltsordnung (VV-BayHO; Amtsblatt des Bayerischen Staatsministeriums der Finanzen, für Landesentwicklung und Heimat (FMBI) 1973, S. 259, zuletzt geändert durch Bekanntmachung vom 24. Oktober 2013 (FMBI 2013, S. 314)
  - Satzung der Oberfrankenstiftung vom 18.11.2010
  - Baugesetzbuch (Bekanntmachung vom 23. September 2004 (Bundesgesetzblatt I S. 2414), zuletzt geändert durch Artikel 6 des Gesetzes vom 20. Oktober 2015 (Bundesgesetzblatt I S. 1722)
- (7) The Commission has approved, in decision SA.33952 "Kletteranlagen des Deutschen Alpenvereins"<sup>2</sup>, all aid schemes of the German *Länder* and other public bodies, which are giving aid to sport associations for amateur sport, which are carried out in line with the German rules on non-profit associations and limited to an amount that excludes overcompensation.
- (8) The present case, however, is not based on one of those aid schemes, but constitutes an ad hoc aid. It is therefore necessary to take a separate view on the present notification.

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<sup>1</sup> <http://www.oberfrankenstiftung.de/>.

<sup>2</sup> Staatliche Beihilfe SA.33952 (2012/NN) – Deutschland- Kletteranlagen des Deutschen Alpenvereins, OJ C 21, 24 January 2013, confirmed by the judgment of the General Court of 9 June 2016 "Magic Mountain Kletterhallen GmbH and Others v European Commission" Case T-162/13, not yet published.

### 2.3. Description of the project

- (9) The Sportcamp will be built in Bischofsgrün, near Bayreuth, in the region Oberfranken in Bavaria. The new facility will replace an outdated "Sportcamp Fichtelberg", situated in the same region following the opening of the new one. The foreseen investment aid will cover the construction of several sport facilities: three-pitch sport halls, an artificial grass pitch, a fitness room, an indoor and outdoor climbing wall, a beach-volleyball field, a multifunctional gymnastic room and regeneration facilities like a sauna, a treatment- and massage room as well as meeting/seminar room.
- (10) In addition to the sport facilities, the Sportcamp will offer accommodation of 110 rooms with 299 beds, including full board and lodging. The rooms will be simply equipped fulfilling the standards of a youth hostel but also offer a standard accommodation for adults/trainers (two-bed rooms).
- (11) Apart from provision of sport facilities and accommodation and seminar rooms, the Sportcamp will also offer sport- and outdoor activities such as archery and low rope garden (*Niederseilgarten*) for educational purposes as well as a bonfire area (*Lagerfeuerplatz*). The German authorities confirmed that the Sportcamp will not include any swimming pools, nor will it possess any leisure park attractions.
- (12) The expected user base of the Sportcamp is as follows (in % of overnights): 30 % schools; 28 % non-profit sports associations; 14 % sessions for sport trainer courses (*Übungsleiterausbildungen*); and 28 % for miscellaneous purposes. The latter group will include users from churches as well as social groups using the camp for seminars and teaching courses. In times of vacancies, places may be offered to individuals travelling independently at short notice, with no possibility of advanced booking. An estimated maximum of 4 % of the users would come from abroad, but only in the context of the activities of sport associations and schools.
- (13) Private use of the facilities will not be encouraged or advertised. The following measures will be put in place to ensure that the facility is mainly available to schools and sport associations:
  - Limited number of rooms available for private use;
  - sports associations are given priority if there is overlap;
  - no classification as a hotel / hostel; and
  - no possibility to book well in advance for private individuals.
- (14) In principle, the sport facilities and the accommodation can be used independently, but they cannot be booked separately. Firstly, the accommodation will not be used as a hotel/hostel. It will serve mainly large sport groups<sup>3</sup> and will not target individual travellers. Secondly, it will not be advertised on established hotel searching websites. Thirdly, the booking by sport association is normally done 9 month in advance by signing of a booking contract.

### 3. THE BENEFICIARY OF THE MEASURE

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<sup>3</sup> [In 2015, 85 % of Sportcamps visitors were groups of more than 21 persons.](#)

- (15) The recipient of the measure and the operator of the Sportcamp is the Bavarian State Sports Association (Bayerischer Landes-Sportverband e.V. (BLSV))<sup>4</sup>. BLSV is a non-profit organisation, which i) represents their members, i.e. individual sport clubs and sport associations, towards the state and the society, ii) promotes physical and moral development of individuals, in particular youth, and iii) assumes social, education, preventive and integrative sport function in the society.
- (16) Apart from the planned Sportcamp, BLSV also runs sportcamps near Deggendorf<sup>5</sup>, Inzell<sup>6</sup> and Bayrisch Zell<sup>7</sup>, all in the Bavarian Region. The German authorities confirmed that the mentioned sportcamps are similar as regards the services offered, the customer base and the condition of infrastructure use. The BLSV does not operate any facilities nor conduct any other services in other Member States.

#### 4. ARGUMENTS PROVIDED BY GERMANY ON LACK OF EFFECT ON TRADE

- (17) The German authorities assert that the measure envisaged for the construction of the Sportcamp will not have effect on trade to the extent that it will negatively affect competition between Member States.
- (18) Their main arguments are the following:
- (19) The German authorities claim that the Sportcamp will offer the infrastructure to local non-professional sport associations from Northern Bavaria as well as schools, which do not have any similar infrastructure in a near proximity or which is insufficient for conducting of one or multi-day sport trainings. The German authorities substantiate their claim based on the facts that i) the users of the already existing sportcamps run by BLVS are mainly local/regional and ii) the regional customer base is not affected even in cases where BLVS sportcamps are located on the border with other German *Länder*.
- (20) According to the German authorities, in 2015, 81.5 % of overnight stays of all sportcamps users were from Bavaria<sup>8</sup>. Despite the fact that the Sportcamp Fichtelberg, is in relative proximity to the borders of other German Länder, the relative percentage of the users from Bavaria was still high, i.e. 73 %. Moreover, the German authorities point out the relative small number of foreign visitors in all sportcamps of below 1 % in 2015<sup>9</sup>, still in the context of international non for profit sport events and student exchange programmes. The Sportcamp in Deggendorf, located close to the Czech border has not yet accommodated any foreign visitors.

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<sup>4</sup> <http://www.blsv.de/>

<sup>5</sup> <http://www.blsv.de/sportcamp-regen//>

<sup>6</sup> <http://www.blsv.de/sport-camp-inzell//>

<sup>7</sup> <http://www.blsv.de/blsv-haus-bergsee//>

<sup>8</sup> Anlage 1: BLSV Sportcamp – Anzahl Gäste nach Herkunft Bundesland in 2015

<sup>9</sup> In Sportcamp Fichtelberg only 0.2% of all visitors came from abroad.

- (21) The German authorities therefore expect that ca. 75 % of the visitors of the Sportcamp will be from Bavaria and 25 % from outside Bavaria. The over-regional visitors will be mainly national schools or sport association from neighbouring German *Länder* such as Hesse, Thuringia and Saxony. The German authorities consider that the 4 % of overall night stays of foreign visitors in the new Sportcamp would be the maximum<sup>10</sup>, in the context of international non for profit sport events and student exchange programmes. Based on this figure, the German authorities expect that the annual turnover generated by the foreign visitors would be 0.2 % of the annual turnover.
- (22) A survey about the travel behaviour of Northern Bavarian sport associations showed that 85 % of the sport association would visit a Sportcamp with a travel distance of maximum 200 km. The German authorities further indicate that they are not aware of any similar facility in Northern Bavaria, nor within the view of 200 km around the future Sportcamp.

## **5. ASSESSMENT OF THE MEASURES UNDER ARTICLE 107(1) TFEU**

### *5.1. Conditions for State aid assessment according to Art. 107 (1) TFEU*

- (23) According to Article 107(1) TFEU, State aid includes any measure 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 measure to constitute State aid are cumulative. Only insofar as all these criteria of Article 107(1) TFEU are met could the measure constitute State aid within the meaning of Article 107(1) TFEU.

### *5.2. Economic activity*

- (24) Sport clubs are only considered as undertakings to the extent that they carry out an economic activity. In that regard, the exercise of amateur sport in a non-for-profit associations is not an economic activity.<sup>11</sup>
- (25) For the purpose of the present case, only the provision of training camp to individual travellers would appear to constitute an economic activity, as all other activities are limited to school education and exercise of amateur sport in a non-for-profit association.

### *5.3 Effect on trade and competition between Member States*

- (26) 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. The aid may indeed make it more difficult for operators in other Member States to enter the

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<sup>10</sup> In Sportcamp Fichtelberg only 0.2% of all visitors came from abroad.

<sup>11</sup> SA.31722 – Hungary- Supporting the Hungarian sport sector via tax benefit scheme, OJ C 364, 14 December 201, recital 74; SA.33952 – Deutschland - Kletteranlagen des Deutschen Alpenvereins, recital 47.

market by maintaining or increasing local supply, or to exercise their right of establishment.<sup>12</sup>

- (27) An effect on intra-Union trade cannot however 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>13</sup>
- (28) In that respect, the Commission has in several cases<sup>14</sup> considered that certain activities have a purely local impact and no such effect. In this perspective, it is appropriate to check in the present case 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.
- (29) In the present case, the Commission takes the view that the only economic activity is the occasional renting out of empty rooms at short notice to individual travellers.
- (30) Such private use will be limited by introducing the measures described in para (10) above. Furthermore, due to the restrictions flowing from German law on non-for profit associations and on tax privilege for sport associations, the overall revenues from those economic activities are strictly limited (see § 21 BGB and §§ 51 to 57 Abgabenordnung).
- (31) Moreover, the Commission considers that the activities of Sportcamp and of BLSV are not liable to affect trade between Member States. Because of the very low volume of economic activities, the fact that it is indeed credible that the Sportcamp will cater for a local market as highlighted in paragraphs 19 to 22 and the restrictions in place mentioned in paragraph 30, the activity at stake is not of such a nature as to dissuade operators in other Member States to enter the market by maintaining or increasing local supply, or to exercise their right of establishment, nor of such a nature as to possibly attract more private users from abroad.
- (32) The Commission also analysed whether the investment into the new facility could give a competitive advantage to BLSV as a group, which operates three other

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<sup>12</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>13</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>14</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 16, 19.1.2013, p. 1; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

Sportcamps in Bavaria. However, those camps are subject to the same rules and legal limits that apply to commercial revenue from economic activities apply to BLSV as a whole. .

- (33) It can consequently not be foreseen that the measure, insofar as it concerns an economic activity, would have more than, at most, a marginal effect on the conditions of cross-border investment or establishment.
- (34) In light of the above, in the present case the Commission considers that the public grant to the BLSV is not liable to affect trade between Member States. As a result, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The advantage conferred by the national authorities to BLSV does not fulfil the condition laid down in Article 107(1) TFEU.
- (35) The Commission therefore concludes that the measure in question does not constitute State aid pursuant to Article 107(1) TFEU.

## **6. CONCLUSION**

- (36) In light of the foregoing assessment, the Commission has accordingly decided that the measure described in the notification does not constitute State aid pursuant to Article 107(1) TFEU.

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Yours faithfully,  
For the Commission

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