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PUBLIC VERSION

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**Subject: State Aid SA.44692 – Germany  
Investment for the Port of Wyk auf Föhr**

Sir,

**1. PROCEDURE**

- (1) On 1 March 2016 Germany formally notified public funding for a port infrastructure investment project in the Port of Wyk ("the Port") on the island Föhr. The Commission requested additional information by letter dated 14 March 2016, which the German authorities provided by letter dated 9 May 2016.

**2. DESCRIPTION**

**2.1. The objective of the notified project**

- (2) Föhr is a small German island in the North Friesian Sea in the Land Schleswig-Holstein. The island has an area of around 82 km<sup>2</sup> and a population of only around 8 400. As stated above, the notified project will be carried out in the port of the municipality of Wyk auf Föhr, which is the only city on the island Föhr and has around 4 300 inhabitants. The port is almost exclusively used for supplying the island and transporting the few agricultural products produced there to the mainland (e.g. milk or grains). It is administered by the *Städtische Hafенbetrieb Wyk auf Föhr* ("SHB").
- (3) Parts of the infrastructure in the Port have reached the end of their economic lifetime. As such, a smooth and safe operation in the Port cannot be guaranteed anymore. The objective of the notified project is, therefore, to renovate and

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modernize this infrastructure. However, no new infrastructures will be constructed and the depth of the Port will not be increased, meaning that the Port will not be put in a position to cater for larger ships than before.

## **2.2. Planned investments**

- (4) The planned project consists of three different parts, namely the renovation of one of three existing quays for ferries as well as of the pier *Alte Mole* and of the pier *Quermole*. At the ferry quay, it is planned to extend the bridge used for loading cars onto ferries, which is currently only 20 meters long although a length of 24 meters is nowadays standard, to facilitate the handling of cars and passengers also in situations of high sea levels. In addition, it is planned to construct an access point for passengers boarding ferries from the side, to enable an effective separation of cars and passengers when loading and unloading ferries. In addition to this, the project foresees the renovation of the two piers mentioned above, which is largely necessary due to their age and an imminent risk of collapse. As regards the pier *Alte Mole* it is, furthermore, planned to increase its height to facilitate its use also in situations of high sea levels.
- (5) The total costs of the project are EUR 10 940 000, out of which EUR 4 050 000 are foreseen for the renovation of the ferry-quay, EUR 6 490 000 for the *Alte Mole* and EUR 400 000 for the *Quermole*.

## **2.3. Financing of the investment project**

- (6) The project is foreseen to be partly financed through a grant by the State Schleswig-Holstein amounting to EUR 6 564 000 (60% of the total investment costs). The remaining part of the investment costs, amounting to EUR 4 376 000, is foreseen to be financed by SHB, partly through revenues stemming from its economic activities (EUR 876 000) and partly through a loan on market terms (EUR 3 500 000).

## **2.4. Beneficiary**

- (7) As mentioned above, the Port is administered by SHB, which is owned by the city Wyk auf Föhr. It is open for all users on non-discriminatory basis. All users are charged fees in accordance with a published table of fees.

## **2.5. Competition context**

- (8) According to the German authorities the notified project will not affect competition or intra-EU trade.
- (9) The German authorities submit that the Port is almost exclusively used for supplying the island and its inhabitants. To this end there is a year-round regular ferry service between the port of Dagebüll on the German mainland, the port in Wyk auf Föhr and the neighbouring German island of Amrum. This service is used for supplying the island as well as for bringing tourists to the island. Besides this there are no other ferry services to any other ports.
- (10) Due to its location in the North Friesian Sea, which entails strong tidal differences, where during low tides it is even possible to walk to the neighbouring island Amrum, only small ships not requiring a large depth can call at the Port.

The investment project will not lead to a deepening of the port, which means that also in the future the port will be in no position to attract larger vessels.

- (11) Germany further submits that, due to Föhr being an island, the hinterland of the Port is limited to the small area of the island itself. Germany argues that this limited hinterland, together with the location of the island and its limited accessibility for larger ships, means that the Port is unattractive for international shipping. The information provided shows that almost all ships calling at the Port are local ships owned by shipping companies established either on the island itself or on neighbouring islands. The data, furthermore, shows that in the 10 year period between 2004 and 2014 only 3 ships called at the Port from other Member States. There was an exception to this very low number of ships from other Member States calling at the Port, namely in the year 2015, when 26 such ships called there. Germany submits, however, that this was due to the need of a one-time delivery of a specific shipment of materials needed on the island for the construction of roads and paths from the German port of Cuxhaven. As such, after this shipment was completed, the traffic in the port returned to its normal patterns.
- (12) Besides the regular traffic mentioned above for the supply of the island the Port also caters for pleasure trips for touristic purposes from Föhr to neighbouring German islands and vice versa. The information provided by Germany shows that the tourists coming to Föhr and using the Port are almost exclusively German (in 2014 the proportion of German tourists out of the total amount of tourists coming to the island was 98.27%).
- (13) The German authorities underline that the notified project will not create any new capacities in the Port, but will merely lead to the renovation and modernization of existing infrastructures to ensure a smooth and safe handling in the port and, thereby, the supply of the island.
- (14) Lastly, according to Germany there are no ports competing with the Port on Föhr. The German authorities, furthermore, submit that any new investment to construct a new competing port would be uneconomically and, in addition, legally not possible since the North Friesian Sea is a nature conservation area, which would prevent such a project. In addition, due to the limited hinterland of the Port and its main function to supply the small population of the island, Germany argues that the notified project will not have any effect on investments or establishments in the hinterland.

## **2.6. Legal basis**

- (15) 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**

- (16) 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 SHB on the other hand. The money shall be disbursed in several tranches during the construction project.

## 2.8. Cumulation

- (17) According to the notification a cumulation of the funding with other funding for the same eligible costs is excluded.

## 3. ASSESSMENT

### 3.1. Existence of State aid

- (18) Article 107(1) of the Treaty provides 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (19) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on an undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and must affect trade between Member States.
- (20) Thus, public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".<sup>1</sup>
- (21) 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,<sup>2</sup> or to exercise their right of establishment.
- (22) 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.<sup>3</sup> In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
- (23) 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

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

<sup>2</sup> See for instance judgment in *Altmark 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.

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

competition and why it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.<sup>4</sup>

- (24) In that respect, the Commission has in several cases<sup>5</sup> considered that certain activities have a purely local impact and no such effect. It seems appropriate to check in particular whether the beneficiary supplies goods or services to a limited area within a Member State and 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.
- (25) In the present case, as regards the local area within which the beneficiary's services compete, the Commission at the outset observes that, as was explained by the German authorities, the geographical location of the Port on a small island in the North Friesian Sea means that only small ships not requiring a large depth can call there. The notified project will not increase the depth in the port and will, therefore, not change the ability of the port to attract larger vessels. The information provided by Germany shows that the ships actually calling at the Port are almost exclusively local ships owned by shipping companies established on Föhr or neighbouring German islands.
- (26) Furthermore, the port is almost exclusively used to supply the island and to transport the few agricultural products produced there to the mainland. To this end there is a regular ferry service between the port of Dagebüll on the German mainland, the port in Wyk auf Föhr and the neighbouring German island of Amrum. Besides this there are no other ferry services to any other ports, neither within Germany nor to neighbouring EU countries.
- (27) In addition, also the pleasure trips for touristic purposes are limited to a local area, in the sense that only trips from Föhr to neighbouring German islands or vice versa are offered. The information provided by Germany also shows that the tourists using these services are almost exclusively of German nationality.
- (28) 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.

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<sup>4</sup> See Joined Cases *AITEC and others v Commission*, T-447/93, T-448/93 and T-449/93, EU:T:1995:130, paragraph 141.

<sup>5</sup> See for instance, the Commission decisions in State aid cases N 258/2000 Leisure Pool Dorsten, OJ C 172, 16.6.2001, p. 16; N 543/2001 – Ireland – Capital allowances for hospitals, OJ C 154, 28.6.2002, p. 4; C 10/2003 – 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; SA.37432 – Czech Republic – Funding to public hospitals in the Hradec Králové Region, OJ C 203, 19.6.2015, p. 2; SA.37904 – Germany – Alleged State aid to medical center in Durmersheim, OJ C 188, 5.6.2015, p. 2; SA.33149 – Germany – Alleged unlawful State aid for the Städtische Projekt "Wirtschaftsbür Gaarden" – Kiel, OJ C 188, 5.6.2015, p. 1; SA.38035 – Germany – Alleged aid to a specialised rehabilitation clinic for orthopaedic medicine and trauma surgery, OJ C 188, 5.6.2015, p. 3; SA.39403 – Netherlands – Investment in the port of Lauwersoog, OJ C 259, 7.8.2015, p. 4; SA.37963 – United Kingdom – Alleged State aid to Glenmore Lodge, OJ C 277, 21.8.2015, p. 3; SA.38208 – United Kingdom – Alleged State aid to UK member-owned golf clubs, OJ C 277, 21.8.2015, p. 4; SA.42219 – Germany – Refurbishment of the Schuhmacher-quay in the port of Maasholm, OJ C 426, 18.12.2015, p. 5.

- (29) With regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that the notified project does not foresee the construction of new infrastructures, but merely the renovation and adaptation of infrastructures in a port serving a purely local area. It is neither foreseen to create new capacities in the Port, nor will the Port be adapted (e.g. by increasing the depth) in a way that would allow larger ships to enter. As such, the Port is not attractive for international shipping companies, which will also not change after the implementation of the notified project. 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 Wyk auf Föhr rather than ports in other Member States.
- (30) The geographical location of the Port on a small island also shows that its hinterland, which is limited to this island, is fully captive, in the sense that it cannot be served from any other port. The Commission, furthermore, considers that, given these geographical circumstances and the fact that the main function of the Port is to guarantee the supply of the island, it is unlikely that the notified project has any effect for investments in the hinterland.
- (31) Lastly, the information provided by Germany shows that there are no ports competing with the Port of Wyk auf Föhr in its catchment area. A new investment to construct a new competing port would be uneconomical and, in addition, legally not possible since the North Friesian Sea is a nature conservation area, which would prevent such a project.
- (32) 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*

- (33) 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.
- (34) It follows that the notified grant to be given to SHB 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

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Member of the Commission