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**Subject: State Aid SA.45848 (2016/N) – Germany
Extension of the cruise ship terminal Putbus-Lauterbach**

Sir,

1. PROCEDURE

- (1) On 4 July 2016, Germany notified public support for a port infrastructure investment project in the port of Lauterbach, which belongs to the City of Putbus located in Northern Germany by the Baltic Sea.

2. DETAILED DESCRIPTION OF THE AID

2.1. The objective of the notified project

- (2) The port of Lauterbach is a small harbour on the island of Rügen at the Bay of Greifswald at the Baltic Sea in Northern Germany. The port is located in the city of Putbus. The port is used predominantly by excursion vessels and river cruise ships.
- (3) The objective of the notified project is to expand and adapt the infrastructure at the port to meet the growing demand in the market for river cruise ship services.
- (4) The beneficiary of the aid will be the in-house unit (*Eigenbetrieb*) of the City of Putbus in charge of the Lauterbach port, which owns and operates the port and acts as port authority.

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- (5) According to Germany's submission, the intended investment will increase the existing capacity of the port for cruise ship passengers by 26%. Moreover, the investment is expected to lead to a higher attractiveness of the port, ecological improvements and the creation of new full time jobs.

2.2. Total investment costs

- (6) The total investment costs of the notified project amount to EUR 5 030 000, to be spent between 2016 and 2018.

2.3. Financing of the investment project

- (7) The project will be financed through a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern (*Landesförderinstitut Mecklenburg-Vorpommern*) with an amount of EUR 4 527 408. The remaining part of the investment cost, amounting to EUR 0.503 million, will be financed by means of a loan based on market terms. The public support covers 90% of the total investment cost.
- (8) The German authorities provided an analysis based on the funding gap¹ of the project, calculated as the difference between the discounted value of the expected net operating profits of the investment (EUR 32 334) and the discounted investment costs of the project (– EUR 5 009 161), which shows that over a reference period of 25 years (2019 - 2043) the project has a negative financial net present value (NPV) of – EUR 4 976 827. The negative NPV indicates that the project is not financially sustainable without public support and that the port infrastructure project requires considerable capital investments that can only be recovered in the long term.
- (9) For the financial analysis the German authorities evaluated the project on the basis of differences in the costs and benefits between the scenario with the project and an alternative scenario without the project, and on the basis that the project will enable the infrastructure operator to generate additional revenues.
- (10) As regards the revenues, the German authorities indicated that both harbour fees (*Hafengebühren*) and quay-usage fees (*Kaibenutzungsgebühren*) are expected to increase from 2019 to 2043 as a consequence of the project.

2.4. The beneficiary

- (11) The infrastructure, as well as the land on which it is built, is owned by the City of Putbus, which will also operate the infrastructure and act as a port authority through an in-house entity (*Eigenbetrieb*).
- (12) The infrastructure will be accessible for any interested user on a non-discriminatory basis. All users will be charged the same port fees in accordance with established and published tariffs.

¹ The funding gap is defined as the difference between the discounted operating profits of the investment (i.e. the profits deriving from the investment plus a possible residual value of the infrastructure at the end of its estimated economic life) and the total discounted investment costs in a given reference period.

2.5. Competition context presented by the German authorities

- (13) According to the German authorities, the project will not significantly affect competition.
- (14) Although not required for the Commission's State aid assessment, Germany took a position on the relevant market involved in the present aid measure. According to a study provided by Germany, the relevant market should encompass the river cruise ship regions of Oder/Elbe, Rhine and tributaries and Danube and tributaries.
- (15) The German Authorities submitted data according to which between 2009 and 2014 the relevant market, as described above at recital (14), grew at 1% per year in terms of passenger numbers (except for 2012 and 2013). Based on Germany's submissions, the average long-term growth between 2006 and February 2016² amounted to 3.7% annually.
- (16) According to the information submitted by the German Authorities, the share of passengers at the Port of Lauterbach compared to all river cruise ports in the relevant market was on average 1.2% in the period examined in the study, i.e. 2009 to 2014.
- (17) The German Authorities forecast a growth of the global cruise ship market of 4.4% per year until 2025, with even stronger growth in Germany. The relevant market, as described above at recital (14), is expected to grow at 3 – 4 % annually. For the area Potsdam / Berlin – river Oder – island Rügen, stronger overall market growth is expected because larger ships can be used after the launch of the new vessel lift at Niederfinow, scheduled for 2017.
- (18) As regards the port of Putbus, the market study projects a full (theoretical) capacity utilisation of the new infrastructure in 2021, i.e. already three years after the first year of operation.
- (19) On that basis, the German authorities argue that the market share of the Port of Putbus-Lauterbach will not increase as a consequence of the project because the capacity increase will be offset by the projected market growth.

2.6. Legal basis

- (20) The national legal basis for the grant is the *Koordinierungsrahmen der Gemeinschaftsaufgabe "Verbesserung der regionalen Wirtschaftsstruktur"*.

2.7. Form and duration of the aid

- (21) As indicated above, the funding takes the form of a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern. The funding is planned to be disbursed in three instalments in the years 2016-2018. The last instalment is planned in September 2018. The objective is to complete the works around the same time.

² The relevant study submitted by the German authorities is dated 9 February 2016.

2.8. Cumulation

- (22) 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 aid

- (23) Article 107(1) TFEU 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.
- (24) 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.
- (25) In the present case the existence of State aid must be examined at the level of the owner and operator of the terminal (in-house entity – *Eigenbetrieb* – of the city of Putbus) and at the level of the port users (river cruise shipping companies).

3.1.1. *Existence of Aid on the level of the owner and operator of the terminal*

3.1.1.1. Notion of undertaking

- (26) According to established case law by the Court,³ whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of EU competition law.
- (27) As regards infrastructure financing the Court, in its judgment in *Leipzig-Halle*,⁴ established that it is the future use of the infrastructure, *i.e.* its economic exploitation or not, which determines whether the funding of the construction of such infrastructure falls within the scope of EU state aid rules or not. In line with this case law the Commission established in a series of decisions that the

³ See e.g. judgment in *Hofner and Elser*, C-41/90, EU:C:1991:161, paragraph 21; judgment in *Poucet and Pistre v. AGF and Cancava*, C-160/91, EU:C:1993:63, paragraph 17; judgment in *Commission v. Italy*, C-35/96, EU:C:1998:303.

⁴ Judgment of 24 March 2011, *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission*, T-455/08, and *Freistaat Sachsen and Land Sachsen Anhalt v. Commission*, T-443/08, EU:T:2011:117, confirmed by the Court of Justice, judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, C-288/11 P, EU:C:2012:821; see also judgment of 12 December 2000, *Aéroports de Paris v. Commission*, T-128/89, EU:T:2000:290, confirmed by the Court of Justice, C-82/01P, EU:C:2002:617; judgment of 17 December 2008, *Ryanair v. Commission*, T-196/04, EU:T:2008:585, paragraph 88.

construction and exploitation of some types of port infrastructures constitutes an economic activity.⁵

- (28) The notified project concerns the extension of infrastructures at the cruise terminal of Putbus-Lauterbach, which are commercially exploited by the City of Putbus by providing port services against remuneration (fees). There are indications that there is competition between ports having cruise ship terminals at German rivers and the Baltic Sea. The Commission therefore considers that there is a market for river cruise ship related port services in relation to which the City of Putbus is in competition with other comparable ports.

Thus, as regards the construction and operation of said cruise ship terminal the City of Putbus – through the in-house entity – engages in an economic activity.

3.1.1.2. State resources and imputability

- (29) As stated above, the project will be partly funded through a direct grant by the regional development institute of the Land Mecklenburg-Vorpommern (*Landesförderinstitut Mecklenburg-Vorpommern*) and, as such, is partly financed through State resources.
- (30) As regards imputability to the State, the decision to fund the project was directly taken by the German authorities. Therefore, the notified measure is imputable to the State.

3.1.1.3. Selectivity

- (31) As the public financing is granted specifically to an individual (construction) project used for carrying out an economic activity, the measure is selective.

3.1.1.4. Economic advantage

- (32) The public funding will be provided through a grant. A grant is a non-refundable financial instrument which bears no financing cost. At market terms, such a financing instrument would not be available to the beneficiary.
- (33) The public financing to be provided, therefore, confers an economic advantage to the beneficiary.

3.1.1.5. Distortion of competition and effect on trade

- (34) According to established 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, there is at least a potential effect on trade between Member States and competition.⁶

⁵ See e.g. Commission Decision of 15 December 2009 in State Aid case no. N 385/2009 – *Public financing of port infrastructure in Ventspils Port*, OJ C 72 of 20.03.2010; Commission Decision of 2 July 2013 in State Aid case no. SA.35418 (2012/N) – Greece – *Extension of Piraeus Port*, OJ C 256 of 5.09.2013, p. 2; Commission Decision of 18 September 2013 in State Aid case no. SA.36953 (2013/N) – Spain – *Port Authority of Bahía de Cádiz*, OJ C 335 of 16.11.2013, p. 1; Commission Decision of 27 March 2014 in State aid case no. SA.38302 – Italy – *Port of Salerno*, OJ C 156 of 23.05.2014, p.1.

⁶ See e.g. judgment in *Philip Morris v. Commission*, Case 730/79, EU:C:1980:209, paragraph 11, and judgment in *Italy v. Commission*, C-372/97, EU:C:2004:234, paragraph 44.

- (35) In the present case, the financial support granted by Germany will be used for extending the existing cruise ship terminal in Putbus-Lauterbach to adapt the port to the expected growing demand in the market for river cruises. It is expected that after completion of the project the cruise ship terminal of Putbus-Lauterbach will be able to increase the number of cruise ship passengers. It can therefore not be excluded that the project will, at least potentially, distort competition between river cruise ship ports in Germany.
- (36) Furthermore, the Commission is of the view the measure is at least potentially capable of affecting trade between Member States by potentially diverting traffic away from other Member States, especially from ports operating around the Baltic Sea.

Conclusion on the existence of aid at the level of the owner and operator

- (37) In light of the above the Commission, therefore, concludes that the notified support measure with a value of EUR 4 527 408 constitutes aid to the benefit of the owner and operator of the cruise ship terminal.

3.1.2. Aid to the benefit of port users

- (38) The Commission notes that port users will be given equal and non-discriminatory access to the infrastructure. Furthermore, the information provided by the German authorities shows that the fees charged to the port users correspond to the level of fees charged in comparable ports and, therefore, reflect market prices.
- (39) Thus, the Commission concludes that no advantage will be granted to port users and that there is, therefore, no aid present at the level of those users.

3.2. Compatibility of the aid

- (40) According to well-established case practice,⁷ the appropriate legal basis for assessing compatibility of State aid to port investment projects is Article 107(3)(c) of the Treaty, which stipulates that "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be found compatible with the internal market.
- (41) It must therefore be examined whether the notified public funding meets a clearly-defined objective of common interest, is necessary and proportional to this objective, has an incentive effect, does not affect competition and intra-EU trade to an extent contrary to the common interest and complies with the transparency principles.

3.2.1. Objective of common interest

- (42) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*,⁸ the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU.

⁷ See Commission Decisions cited in footnote 5 above.

⁸ COM(2009) 279/4, paragraph 46.

- (43) In the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018*,⁹ the Commission underlines that providing new port infrastructures, as well as improving the use of the existing capacities, is essential to ensuring that EU ports can cope efficiently with their function.
- (44) Furthermore, in its well-established case practice mentioned in recital (42), the Commission has considered that improved port infrastructure contributes to common objectives of the EU.
- (45) The above elements indicate that the project contributes to an objective of common EU interest and to the development of both an economic activity and an economic area.

3.2.2. *Necessity, proportionality and incentive effect of the aid*

- (46) The negative NPV (funding gap) of – EUR 4 976 827 over a reference period of 25 years shows that the expected net revenues of the respective in-house unit of the City of Putbus do not cover the investment costs of EUR 5 030 454. The negative NPV indicates that the project is not viable without public support. It should also be noted that the in-house unit of the City of Putbus makes an effort to fund the project itself by contributing EUR 0.503 million to the project with own resources financed through a loan on market terms. It is unlikely that the City of Putbus would be able to obtain the full remaining amount exceeding its planned own contribution on the market.
- (47) Therefore, the Commission considers that the requested aid is necessary for this project.
- (48) Regarding the incentive effect, the Commission notes that the in-house unit of the City of Putbus has already applied for aid and that the works have not started yet. As such, the application for the aid was done before commencement of the project. In addition, as shown above, the City of Putbus would not be able to raise the required funds itself, meaning that the project could not be carried out in absence of the aid. It follows that the aid must be regarded as having an incentive effect.
- (49) As regards proportionality (*i.e.* keeping public funding to the minimum necessary), the Commission notes that the aid, *i.e.* the public funding provided for the project (EUR 4 527 408) is below the funding gap identified for the project (– EUR 4 976 827). The aid is therefore proportionate.
- (50) In the light of the above, the Commission concludes that the aid is necessary, proportionate and has an incentive effect.

3.2.3. *Distortion of competition and affectation of intra-EU trade*

- (51) The German authorities have submitted information regarding the market and the competition context within which the Port of Putbus operates. Although the

⁹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Strategic Goals and Recommendations for the EU Maritime Transport Policy until 2018*, COM (2009) 8.

Commission is not required to define the relevant market in State aid cases, the information submitted by the German authorities is useful for the Commission to assess the possible distortion of competition and affectation of intra-EU trade by the measure. The market analysis as well as projections contained in the submissions of the German authorities are reasonable and constitute a good indication for the Commission as regards distortion of competition.

- (52) This information, in particular, shows that any increase in handling capacities in the Port of Putbus will be in line with the future increase in demand and will, therefore, be counterbalanced by market growth. As indicated above, the market share of the port of Putbus-Lauterbach within the relevant market for river cruises currently corresponds to only 1.2% in terms of passengers transported. This market share is expected not to increase after the project as the overall market is equally expected to grow.
- (53) Based on the above elements, 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.

3.2.1. Transparency of the aid

- (54) Lastly, the Commission observes that Germany committed to comply with the transparency principles.

4. CONCLUSION

- (55) The Commission has accordingly decided:
- not to raise objections to the aid granted to the owner and operator of the planned infrastructure, 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.
 - that the notified measure does not constitute State aid to port users in the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Carlos MOEDAS
Member of the Commission