



## EUROPEAN COMMISSION

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**PUBLIC VERSION**

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**Subject: State aid SA.37900 (2013/FC) – Denmark  
Support to local sports associations**

Sir,

### **1. PROCEDURE**

- (1) By letter received by the Commission on 29 November 2013, Dansk Kommerciel Fitnes & Sundhet, an association of commercial gyms and fitness centres in Denmark ("the complainant"), introduced a complaint against the Danish government for alleged State aid to local sports associations for setting up and running fitness centres for their members (foreningsfitness centres).
- (2) After having received the Danish government's comments on the complaint, the Commission on 31 October 2014 sent a letter to the complainant setting out the Commission services' preliminary assessment regarding the complaint, which was that the measure objected to does not constitute aid under Article 107(1) TFEU.
- (3) The complainant rejected the Commission services' position by letter of 28 November 2014. Again, the Danish government was asked to comment on the complainant's allegations. The Commission services then sent the complainant a second letter on 12 February 2015, in which it was explained that the Commission services did not consider that the additional elements invoked by the complainant gave reason to change its preliminary position that the measure does not constitute aid.
- (4) The complainant again rejected this position by the Commission services by letter of 9 March 2015. Following this, the Commission had various contacts

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with the Danish government in order to obtain additional information. Also the complainant provided several additional submissions.

- (5) The Danish authorities have provided a language waiver and agree that the decision will be adopted in English as the authentic language.

## 2. DESCRIPTION OF THE CONTESTED MEASURES

- (6) The complaint regards the creation by two national sports federations, DGI (Danske gymnastik- og idrætsforeninger) and DIF (Danmarks idrætsforbund), of an association of interests (a so-called *interesentskab*), Foreningsfitness I/S, which operates a concept for the setting up of fitness centres for local non-profit sports associations. While the local sports associations operate the fitness centres on their own account, the concept includes advantageous loans to the local sports associations in return for buying equipment and training of instructors from Foreningsfitness. DIF and DGI receive a large part of their income from annual grants from the Danish State (from the proceeds from the Danish gambling market) but also from other (non-public) sources. In accordance with DIF's and DGI's rules, the governing bodies are elected without any influence from public authorities and without influencing the individual decision adopted by DIF's and DGI's governing bodies. The time period covered by the complaint is 2008 to date.
- (7) **Objective:** The objective of the contested financial contributions is to provide support to local, non-profit sports associations which are member associations of the federations DGI and DIF, to set up fitness centres for the use of their members. At a general level they aim at fulfilling the Danish government's sports policy goals, i.e. to increase the level of physical activity amongst the Danish population and thereby improve the health and well-being of the general population.
- (8) **Duration:** Foreningsfitness I/S was created in 2008 and continues to be active.
- (9) **Legal basis:** The funding received by the local sports associations via Foreningsfitness I/S has two sources: surplus funds from the Danish State Lottery<sup>1</sup> (channelled through DGI and DIF) and municipal support granted under *folkeoplysningsloven* ("Act on Non-formal Education and Democratic Voluntary Activity")<sup>2</sup>. The lottery proceeds are allocated by the Ministry of Culture to DGI and DIF on a yearly basis. DGI and DIF in turn support local sports associations in creating fitness centres by providing advantageous loans for investment in equipment etc., through their common association of interests Foreningsfitness I/S. The grants originating from an application of the *folkeoplysningsloven* are granted by each municipality directly to the local sports associations running fitness centres within their geographical area. In addition, the complainant alleges that local non-profit sports associations receive

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<sup>1</sup> Danske Spil A/S and Dansk Klasselotteri A/S.

<sup>2</sup> Folkeoplysningsloven dates back to 1954 and focuses on activities aimed at supporting initiatives educating the public, to a large extent carried out by non-profit associations where much work is non remunerated and carried out by members. The current legal base is lov nr. 854 of 11 July 2011 om støtte til folkeoplysende voksenundervisning, frivilligt folkeoplysende foreningsarbejde og daghøjskoler samt om Folkeuniversitet. [https://ec.europa.eu/epale/sites/epale/files/the\\_act\\_on\\_non-formal\\_education\\_and\\_democratic\\_voluntary\\_activity.pdf](https://ec.europa.eu/epale/sites/epale/files/the_act_on_non-formal_education_and_democratic_voluntary_activity.pdf)

a selective advantage in the form of a VAT exemption set out in *momsloven* (see recital (12) below).

- (10) **Form of the aid:** The alleged aid takes the form of direct grants (folkeoplysningsloven) and loans and grants (State Lottery proceeds), and a VAT exemption.
- (11) **Beneficiaries:** The foreningsfitness centres do not belong to a commercial chain or franchise. They are all individually run by local sports associations, which are members of the federations DGI or DIF and open only to the members of the particular local sports association.
- (12) **Aid amount and intensity:** The complainant has not indicated any substantiated figures as to the precise size of the alleged aid.
  - **State lottery proceeds:** The Danish government has informed the Commission that the lottery proceeds are channelled through DGI and DIF, which through their common entity Foreningsfitness I/S grant loans to local fitness centres of maximum DKK 400 000 (approximately EUR 57 300), without interest, to be reimbursed within 5 or 10 years. The local sports association must co-finance at least 50% of the investment costs. According to the Danish authorities, the total amount available for Foreningsfitness I/S to grant such loans is DKK 6 million (approximately EUR 806 000) per year for a maximum of 20 local sports associations a year, which makes an average loan amount of DKK 300 000 (approximately EUR 40 300) annually per recipient. DGI and DIF also channel, through Foreningsfitness I/S, grants to local sports associations for training of instructors. In 2014, the amount per participant in such training courses varied between DKK 250 (EUR 33) and DKK 1000 (EUR 134), and the total number of participants was, in 2014, 678 persons.
  - **VAT exemption:** According to the complainant, the VAT exemption would amount to DKK 5.2 million (approximately EUR 698 000). The VAT exemption applied to local fitness centres is based on Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.<sup>3</sup> This provision is placed in chapter 2 "*Exemptions for certain activities in the public interest*", and sets out that "*Member States shall exempt [from VAT] the following transactions [...] (m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education*". The Directive was transposed into Danish law by lovbekendtgørelse nr 106 of 23 January 2013 (*momsloven*), § 13, stk. 1, nr. 5. According to *momsloven*, activities closely related to the exercise of sports or physical activities, carried out by non-profit-making entities for the benefit of individuals carrying out sports activities, are exempted from VAT.
  - **Grants under folkeoplysningsloven:** The attribution of grants under folkeoplysningsloven is carried out separately by 98 municipalities. The Danish government has provided figures of the funds granted under folkeoplysningsloven to the three largest (based on number of members)

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<sup>3</sup> OJ L 347, 11.12.2006, p. 1.

local non-profit sports associations during the time period 2008 to 2015 (see table below). The grants support the following objectives: grants for activities (based on number of members), grants for training of instructors and grants to support costs related to facilities (renting of premises).

Local sports association	Type of grant	2008	2009	2010	2011	2012	2013	2014	2015
Brande	Activities (in DKK)	55.815	21.069	23.858	56.509	58.584	97.470	80.500	91.630
	Training of instructors (in DKK)	21.933	21.100	44.925	40.000	45.000	23.372	26.603	54.451
	Facilities (in DKK)	0	0	0	0	0	0	0	0
	<i>No of members</i>	925	929	1093	1164	1335	1387	1560	1605
<b>Total grants per year Brande</b>		DKK 77.748 (EUR 10.400)	DKK 42.169 (EUR 5.600)	DKK 68.783 (EUR 9.200)	DKK 96509 (EUR 12.900)	DKK 103.584 (EUR 13.900)	DKK 120.842 (EUR 16.200)	DKK 107.103 (EUR 14.400)	DKK 146.081 (EUR 19.600)
HI Fitness	Activities (in DKK)	Opened in 2012				0	0	0	0
	Training of instructors (in DKK)					6.228	8.437	8.139	13.291
	Facilities					0	0	0	0
	<i>No of members</i>					1076	1325	1346	1424
<b>Total grants per year HI Fitness</b>					DKK 6.228 (EUR 837)	DKK 8.437 (EUR 1.133)	DKK 8.139 (EUR 1.093)	DKK 13.291 (EUR 1.785)	
Tune Center for bedre livskvalitet	Activities (in DKK)	N.A	N.A	N.A	N.A	63.000	30.313	51.468	51.170
	Training of instructors (in DKK)	N.A	N.A	N.A	N.A	N.A	N.A	32.442	34.864
	Facilities (in DKK)	N.A	N.A	N.A	N.A	0	0	0	0
	<i>No of members</i>	819	780	950	1127	1117	1126	1024	1100
<b>Total grants per year Tune Center for bedre livskvalitet</b>					DKK 63.000 (EUR 8.464)	DKK 30.313 (EUR 4.072)	DKK 83.910 (EUR 11.273)	DKK 86.034 (EUR 11.558)	

- (13) The complainant has invoked a report carried out by Copenhagen Economics for the Danish Competition Authority dated 2 October 2015<sup>4</sup>. The report contains an estimated quantification of the total annual grants to local foreningsfitness centres under folkeoplysningsloven. The estimation was based on random samples from 12 municipalities in 2014, and estimated the total amount at DKK 4.3 million (approximately EUR 578 000). According to the Danish authorities, 100 out of 126 local sports associations received grants in 2014, which - based on the estimation by Copenhagen Economics - amounts to an annual average grant under folkeoplysningsloven per foreningsfitness centre of DKK 43 000 (approximately EUR 5 780).

### 3. ASSESSMENT OF THE MEASURE

#### EXISTENCE OF AID

- (14) 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*". It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States.
- (15) **State Lottery proceeds:** The financial means in question appear to constitute State resources. However, in order for the means to constitute State aid, public authorities must have influence on the decisions of the body granting the financial aid to the beneficiaries. As set out in recital 5, DIF and DGI receive a large part of their income from annual grants from the Danish State (from the proceeds from the Danish gambling market) but also from other (non-public) sources. In accordance with DIF's and DGI's rules, the governing bodies are elected without any influence from public authorities and without influencing the individual decision adopted by DIF's and DGI's governing bodies. Thus, neither the Danish State nor any other public body has any influence on the decisions adopted by DIF or DGI. Consequently, the payments by DIF and DGI to Foreningsfitness I/S cannot be imputed to the State and are therefore not considered as aid in the sense of Article 107(1) of the Treaty. This issue was assessed in previous EU State aid case law, see C-482/99 *France v Commission* (Stardust Marine) [2002] ECR I-4397, and Commission case practice, see Commission decision of 15.5.2013 on State aid SA.33728 (2012/C) which Denmark is planning to implement for the financing of a new multiarena in Copenhagen.
- (16) In view of the above, it is concluded that the funds originating from the State Lottery do not constitute State aid in the meaning of Article 107(1) TFEU.

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<sup>4</sup> Title of the report: *Fører støtte til fitness og dans til forvridning af konkurrencen?*, available at <http://www.kfst.dk/Indhold-KFST/Publikationer/Dansk/2015/20151002-Fitness-og-dans-analyse?tc=0C9A70179FAC4312A5DD71CBE4EB3BCB>.

- (17) **VAT exemption for sports related activities carried out by non-profit organisations:** As explained in recital (12) above, the VAT exemption applied to local fitness centres is based on Article 132(1)(m) of Council Directive 2006/112/EC. It follows from the wording of the Directive that the VAT exemption in this case is an obligation for the Member States, from which the Member State cannot deviate.
- (18) It is well established that the terms used to specify the exemptions in Article 132 of Directive 2006/112/EC are to be interpreted strictly. The interpretation of those terms must, however, be consistent with the objectives underlying the exemptions and must comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. The Court of Justice has pointed out that in relation to exemptions, the principles of fiscal neutrality and strict interpretation must be applied in parallel (see Case C-174/11<sup>5</sup>, *Zimmermann*, point 49).
- (19) The precise scope of the exemption in Article 132(1)(m) has been examined by the Court in Case C-174/00<sup>6</sup>, *Kennemer Golf and Country Club*, and in Case C-253/07<sup>7</sup>, *Canterbury Hockey Club*. In the latter judgment in particular (see points 19-23), the Court noted that the exemption is intended to encourage the pursuit of sport and physical education as activities in the public interest, but does not extend to all supplies of services linked to those activities. On the contrary, the exemption is subject to a number of conditions laid down in Article 132(1)(m). Thus, the services in question must be provided by a non-profit-making organisation. The services must be closely linked to sport or physical education and must be supplied to persons taking part in such activities. Supplies of these services may be exempted only if they are essential to sport or physical recreation.
- (20) As regards the term "non-profit-making organisation", it is for the competent Danish authorities to determine whether a particular organisation satisfies the requirements enabling it to be categorised as a non-profit-making organisation as referred to in Article 132(1)(m). Regard must be had to the objects of the organisation in question as defined in its constitution, and in the light of the specific facts of the case (see Case C-174/00, *Kennemer*, points 26 and 27). The aim which the organisation pursues is essential, that is to say that the organisation must not have the aim of achieving profits for its members. On the other hand it is not required that the non-profit-making organisation should be a philanthropic benefit type of organisation. The fact that a non-profit-making organisation achieves profits, even if it seeks to make them or makes them systematically, will not affect the original categorisation of the organisation as long as those profits are not distributed to its members as profits. Indeed, Article 132(1)(m) does not prohibit the organisations covered by that provision from finishing their accounting year with a positive balance (see Case C-174/00 *Kennemer*, point 28).

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<sup>5</sup> ECLI:EU:C:2012:716.

<sup>6</sup> ECLI:EU:C:2002:200.

<sup>7</sup> ECLI:EU:C:2008:571.

- (21) Directive 2006/112/EC was transposed into Danish law by lovbekendtgørelse nr 106 of 23 January 2013 (momsloven), § 13, stk. 1, nr. 5. According to momsloven, activities closely related to the exercise of sports or physical activities, carried out by non-profit-making entities for the benefit of individuals carrying out sports activities, are exempted from VAT.
- (22) It follows from the above description of the regulatory framework that Denmark is under an obligation under Union law to implement the VAT exemption in question, and that the foreningsfitness centres qualify as exempted entities. In that case, the measure stems from an act of the Union legislature and is not imputable to the State. The VAT exemption therefore does not constitute State aid in the meaning of Article 107(1) TFEU.<sup>8</sup>
- (23) **Grants under folkeoplysningsloven:** The grants are granted independently by local municipalities to local sports associations within their territory. As indicated in recital (12) above, the grants are provided for supporting certain activities (based on number of members), for training of instructors and for facility-related costs (renting of premises). Moreover, the foreningsfitness centres are individually and independently run by local non-profit sports associations, which in turn are members of the federations DGI or DIF. The foreningsfitness centres are for the use of the members of the local sports association only.
- (24) As regards the condition of State resources, the funding on the basis of folkeoplysningsloven is granted by each municipality directly to local sports associations (recital (9)). The funding therefore constitutes State resources within the meaning of Article 107(1) TFEU and is imputable to the State, since the funds come from the Danish State budget and are distributed according to legislation. The State, therefore, exercises control over the money. The funding also grants a selective advantage in that it provides financing to a specific group of economic operators, namely non-profit local sports associations that fulfil specific criteria.
- (25) As regards the condition of possible effect on trade between Member States and distortion of competition, the Commission notes that such an effect cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and has an effect on trade between Member States.<sup>9</sup> *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, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States.*<sup>10</sup> In the case

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<sup>8</sup> See Judgment of the Court of Justice of 23 April 2009, Puffer, C-460/07, ECLI:EU:C:2009:254, paragraph 70, on the right to tax deductions under the VAT system set up by the Union, and Judgment of the General Court of 5 April 2006, Deutsche Bahn AG v Commission, T-351/02, ECLI:EU:T:2006:104, paragraph 102, on tax exemptions required by Union law.

<sup>9</sup> See for instance Joined Cases T-304/04 and T-316/04 *Italy and Wam v Commission* ECLI:EU:T:2006:239, para 63; confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57.

<sup>10</sup> See for instance Case T-177/07 *Mediaset v Commission* ECLI:EU:T:2010:233, paras 145-146, confirmed by Case C-403/10 P *Mediaset v Commission* ECLI:EU:C:2011:533, paras 111, 113 and 115; Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, para 131.

of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade. It must however be explained how, and on what market, competition is affected or likely to be affected by the aid,<sup>11</sup> based on the *foreseeable effects of the measure*.<sup>12</sup>

- (26) In this regard, the Commission has in several cases<sup>13</sup> considered that certain activities, due to their specific circumstances, have a purely local impact and consequently no such effect if the following criteria are met. First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.
- (27) As a preliminary comment, the Commission notes that the grants under folkeoplysningsloven are individual funding decisions by local authorities based on their general budgetary powers to fund (or not) certain types of activities within their territory. The Commission further notes that the foreningsfitness centres are not part of a business network but are separate local amenities, open only to their respective members, and which have only the label foreningsfitness in common but no commercial interconnections.
- (28) In the present case, with regard to the geographical zone within which the beneficiary supplies goods or services, the target group for the offer is the local population in the vicinity of the respective sports associations. The zone of attraction would not go beyond the limits of neighbouring municipalities, and in any case not extend into the territory of other Member States.
- (29) The measure can therefore be distinguished from aid measures which would support the development of major sports facilities which are aimed at a national, or even an international market, and which are widely promoted outside of the region in which they are located. Such measures would be likely to affect trade between Member States. It is, conversely, unlikely that the facilities of the local non-profit sports associations would attract visitors from outside of the vicinity of the respective associations.
- (30) Based on an overall assessment of the above indications, the Commission considers, in light of the available information, that the measure is unlikely to attract customers from other Member States.

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<sup>11</sup> Case T-34/02 *Le Levant 001 and others v Commission* ECLI:EU:T:2006:59, para 123.

<sup>12</sup> See for instance confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57; Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, para 141.

<sup>13</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 034, 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 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.



- (31) With regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that the amounts of the grants are very low, and the nature and scale of the beneficiaries' operations are local and limited, and thus the grants are not likely to have more than an insignificant effect on the conditions of cross-border investments or establishment.
- (32) The annual average grant of EUR 5 780 per beneficiary (see recital (13) above) is established by the Danish authorities on the basis of an estimation made in a study invoked by the complainant (see recital (13) above). The Danish authorities have provided details of the annual grant amounts for the period 2008 to 2015 to the three largest foreningsfitness centres, which are largely based on membership numbers. The largest sports association received EUR 19 600 in 2015. Therefore, in the case of grants under folkeoplysningsloven, the Commission is of the view that amounts of this size cannot be considered liable to affect trade between Member States. Furthermore, there is no indication in the case at hand that during the time period in question, there were significant deviations from the grant amounts provided, altering this assessment.
- (33) Based on an overall assessment of the above indications, the Commission considers, in light of the available information, that the measure 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.
- (34) Consequently, the attribution of grants to foreningsfitness centres under folkeoplysningsloven can be deemed not to have any effect on trade between Member States and not to distort or threaten to distort competition.
- (35) The Commission therefore concludes that the contested grants under folkeoplysningsloven to foreningsfitness centres do not constitute State aid pursuant to Article 107(1) TFEU.

#### **4. DE MINIMIS AID OR COMPATIBILITY OF THE AID (GRANTS UNDER FOLKEOPLYSNINGSLOVEN TO LOCAL SPORTS ASSOCIATIONS)**

- (36) As explained above, the measures at stake do not qualify as State aid in the sense of Article 107 (1) TFEU.
- (37) Nevertheless, and only for the sake of completeness, the Commission decided to examine, in a subsidiary manner, whether the grants under folkeoplysningsloven would fulfil the conditions set out in a regulation adopted pursuant to Articles 1 or 2 of Regulation (EC) No 2015/1588<sup>14</sup>, namely the *de minimis* Regulation<sup>15</sup> or

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<sup>14</sup> Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid, OJ L 248, 24.9.2015, p. 1.

<sup>15</sup> Commission Regulation No 1407/2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid, OJ L352, 24.12.2013, p. 5.

the General Block exemption regulation<sup>16</sup>, or would otherwise be compatible under Article 107(3)(c) TFEU.

- (38) As regards the *de minimis* Regulation, as was already explained above, the estimated amounts per beneficiary are in all cases well below EUR 200 000 for any fiscal period of three years, the threshold for considering the aid to be *de minimis*.<sup>17</sup> The *de minimis* principle stipulates that a single undertaking may only receive up to EUR 200 000 per Member State over any period of three years (Article 3 of the *de minimis* Regulation) and the Commission has no indication that such aid was cumulated with other State aid. Moreover, the aid is provided in grants and therefore it is considered as transparent (Article 4.2 of the *de minimis* Regulation).<sup>18</sup>
- (39) Furthermore, the Commission considers that aid for sport infrastructures can be exempted from the notification requirement, if it complies with all conditions set out in Regulation 651/2014 ("the GBER"). Article 55 of the GBER comprises, *inter alia*, exemption criteria for operating aid for sport infrastructures. As mentioned above, the grants at stake support the activities of the centre (based on number of members), training of instructors and costs related to facilities (renting of premises), all of which fall under the definition of eligible costs of operating aid for sport infrastructure and do not exceed the operating losses of the centres. Moreover, the access to the fitness centres is open and non-discriminatory.<sup>19</sup> Therefore, even if the aid would not be covered by the GBER, in any event, on a subsidiary basis, the Commission considers that the aid would be compatible with Article 107(3)(c) TFEU, as it complies with the substantive conditions set out in Article 55 of that Regulation.

## 5. CONCLUSION

- (40) The Commission has accordingly decided that the three contested measures do not constitute aid.
- The Commission concludes that the funds channelled through DGI and DIF cannot be imputed to the State, and therefore do not constitute State aid in the meaning of Article 107(1) TFEU.
  - The Commission concludes that as Denmark is under an obligation under Union law to implement the VAT exemption in question, the measure stems from an act of the Union legislature and is not imputable to the State. The VAT exemption therefore does not constitute State aid in the meaning of Article 107(1) TFEU.

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<sup>16</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

<sup>17</sup> Commission Regulation No 1407/2013 on the application of Articles 107 and 108 of the Treaty of the Functioning of the European Union to *de minimis* aid, OJ L352, 24.12.2013, p. 5.

<sup>18</sup> In case the Danish authorities would like to apply the *de minimis* Regulation for future grants, the Commission reminds the Danish authorities of the monitoring obligations provided for in Article 6 of the *de minimis* Regulation.

<sup>19</sup> In case the Danish authorities would like to apply the GBER for future grants, the Commission reminds the Danish authorities of the publication obligations provided for in Article 9 of the GBER.

- The Commission concludes that the grant amounts of the contested grants under folkeoplysningsloven to foreningsfitness centres do not constitute State aid within the meaning of Article 107(1) TFEU, because they are not liable to affect trade between Member States (and, in any event, comply with the substantive conditions set out in the *de minimis* Regulation).
- However, even if it would be considered that these measures constitute State aid, such aids comply with the substantive conditions established in the GBER, and are, in any event, compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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 Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

