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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.35606 (2013/N) – Poland
International Congress Centre in Katowice

Sir,

1. PROCEDURE

- (1) On 12 February 2013, Poland notified the Commission a measure for a new multifunctional International Congress Centre in the City of Katowice. Upon request, Poland submitted further information on 16 May 2013 and in July 2013.

2. DESCRIPTION OF THE MEASURE

- (2) The measure consists of the construction of a new multifunctional International Congress Centre (also referred to as "ICC in Katowice"), to be used, for example, for conferences, exhibitions, cultural, educational and sporting events¹ in the City of Katowice in Poland.

¹ The total number of conference seats in the ICC Katowice is 12,000, with the multi-purpose hall capable of accommodating around 8000 persons for conferences, banquet hall for 1000 persons, banquet hall foyer for 300 persons, auditorium for 600 persons, conference rooms for 1200 persons and exhibitor offices for 100 persons, with the total exhibition space being 12,600 m². The multifunctional character of the infrastructure will enable the operator to organise any event, including sports events with audience, for example tennis, boxing, volleyball and horse riding.

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- (3) The total value of the project is approximately PLN 305 million² (around EUR 72 million) and it will be totally funded from public funds (73.3% by ERDF funds³) and the rest (26.7%) from the City of Katowice. The public funding is only for the construction of the infrastructure and the facility will be owned by the City of Katowice.
- (4) The operation will be carried out by a private operator selected in an open, transparent and non-discriminatory procedure. The selection of the operator will be made by the Licensor (the City of Katowice) on whose behalf negotiations will be conducted by a negotiations team.⁴ Neither the City of Katowice, nor any other public authority, will in any way be involved in the management of the constructed infrastructure and thus the selected operator will render services completely on its own behalf and responsibility. Moreover, the operator will not receive any public funding and will pay a fixed fee, at a level to be determined through the tender process for the right to use the facility.
- (5) The operating company will rent out the facility to various users (possibly both professional and non-professional users) on a non-discriminatory basis, which will be part of the agreement with the future operator. There will be no main and/or captive user of the ICC in Katowice. All users/organisers of events therein will pay oriented market levies determined by the selected private operator calculated on the basis of a market analysis. However, according to the open tender, there will be events conducted in the facility by the City of Katowice free of charge (i.e. within the scope of the free of charge days). The exact number of such days will be the result of the tender/ negotiations with the candidates, however, it has been indicated that the number of days organised or co-organised by the City of Katowice will be between 20-40 days /year. All such events (e.g. cultural, educational, entertaining and sports events⁵) will be directed towards the general public in a non-discriminatory way free of charge, or just partly charged (without reflecting the total costs of organising the given event), and the vast majority of such events will thus be non-commercial and for non-professional users (residents of the City of Katowice and the region).

² The exact total gross value of the project has been indicated as PLN 304,646,471.20.

³ The City of Katowice received a grant from the European Fund for Regional Development under Regional Operational Programme of the Silesia Voivodeship for 2007-2013, nevertheless pursuant to the project financing agreement regarding the project, "the agreement is conditional which means that in the absence of European Commission's approval of funding for the relevant project, the agreement shall be terminated". However, it should also be noted that this decision is without prejudice to any decision by the Commission concerning the allocation of the ERDF to the investments and should not be regarded as a pre-assessment on the availability of ERDF funding for the project.

⁴ While selecting the most favourable bid, the following criteria will be applied: (i) amount of expenditure incurred by the operator for the ICC (35%); (ii) time of performing the concession – duration of the Agreement (5%); (iii) amount of forecast payments for the benefit of the Licensor (55%); and (iv) number of days when the City of Katowice may use the ICC free of charge (5%).

⁵ [...].

- (6) The Polish authorities have also explained the importance of this measure in the context of the socio-economic development of the region (business, tourism, employment etc) and that the project implementation is an important element of sustainable development of the city of Katowice and improving the image of Katowice and the region.

2.1. Assessment

2.1.1. Existence of aid

- (7) The question arises whether the planned measure could constitute State aid within the meaning of Article 107 (1) TFEU, by supporting through State resources an economic activity which derives therefrom an advantage which could affect competition and trade between Member States.
- (8) With regard to the requirement that the measure must be granted through State resources and attributable to the State, this criterion is clearly fulfilled in this case as the construction of the facility is fully financed by public funds (ERDF funds and from the City of Katowice). Financing through the ERDF programme is attributable to the State as the allocation of the fund is administered under the responsibility of the Polish authorities.
- (9) The State funding of the ICC in Katowice may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the Leipzig/Halle airport judgment⁶, if all the requirements of Article 107 (1) are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. In this case, the facility will be used to provide services on a market, hence for an economic activity.
- (10) The Polish authorities also acknowledge that the project would not be carried out without public funding as a facility like the ICC is not viable for a private investor (not profitable as well as high risk of return). In addition, the Polish authorities have explained that the selection of a private partner pursuant to the act on public and private partnership (PPP model) is very difficult and time-consuming, with very few successful investments.⁷
- (11) The facility will be put at the disposal of an undertaking (the operator) which will let it to various users against remuneration. The operator will be a private entity selected through an open, transparent and non-discriminatory procedure.⁸ The term of agreement between the City of

⁶ Judgment of 19 December 2012 in Case C-288/11, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

⁷ Examples of previous PPP model failures have been provided.

⁸ For the selection criteria, see footnote 4 above. The information on the procedure is published on the website of Katowice City Hall: www.katowice.eu and on the website: www.convention.katowice.eu.

Katowice and the operator will be 8 to 15 years (the duration is one of the criteria of the selection of the operator). The operator will furthermore not receive any public funding and will pay a fixed fee, at a level to be determined through the tender process for the right to use the infrastructure. While these arrangements limit the advantage to the selected operator to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator cannot be excluded.

- (12) Furthermore, as described above, the operating company will rent out the facility to various users (possibly both professional and non-professional users) on a non-discriminatory basis. There will be no main user of the facility and all users/organisers of events therein will pay market levies determined by the selected private operator calculated on the basis of a market analysis. However, according to the open tender, there will be events conducted in the facility by the City of Katowice free of charge (i.e. within the scope of the free of charge days). Consequently, the renting of the facility may constitute aid for the users, if the users can be considered undertakings within the meaning of Article 107 TFEU and if the rent they pay is below the rent for the use of comparable infrastructure under normal market conditions. Non-professional users do not qualify as undertakings within the meaning of Article 107 TFEU.
- (13) In this case though, given that aid to both the operator and users would be compatible with the internal market, as demonstrated below and there are no captive users, it is not necessary make a definitive finding about the existence of such possible aid.
- (14) Regarding the effect on trade and competition between Member States, the market for organising sport and other types of public events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. This is also underlined in this case, as the facility will have the capacity, as well as the objective, to host international and European events. Consequently, there is at least a potential effect on trade and competition between Member States.

2.1.2. Compatibility

- (15) The public financing of the construction of the infrastructure with the aim to offer it, in part, for commercial use may be compatible with the internal market pursuant to Article 107(3) c TFEU if it pursues a policy objective of common interest, is necessary and proportionate and does not cause undue distortion of competition.
- (16) With regard to the achievement of a policy objective of common interest, the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered a State responsibility towards the general public⁹. The

⁹ Cf. point 67 in decision on case C4/2008, Netherlands, Investment in Ahoy sports palace by Rotterdam.

Amsterdam Declaration on Sport and Article 165 TFEU both acknowledge the social significance of sport: "The Union shall contribute to the promotion of European sporting issues...". The facility will also be used for cultural and educational events, as well as providing a meeting place (conferences, fairs) and as such contribute to the promotion of cultural diversity, according to Article 167(4) TFEU also a Union policy objective. Thus, as the facility will ensure the general public's access to culture, education and sport, and the lack of capacity and/or adequate other such facilities in the region, the State will be fulfilling its responsibility to the general public by making the project possible. The realization of the facility must therefore be regarded as satisfying policy objectives of common interest.

- (17) Regarding the necessity and proportionality of the measure, although there are existing, and/or under construction, exhibitions, sports and entertainment halls in the region¹⁰, the Polish authorities have explained the need of this new multifunctional facility (insufficient supply of congress, conference and exhibition space in Katowice, increased demand for organisation of business events, in particular for exhibition space exceeding 8,000 m²), and the lack of facilities adapted to organising events of international scale (the other facilities too small/unmodern or predominantly for sports/entertainment). In other words the other facilities are not as multifunctional as the ICC in Katowice and they do not combine congress and exhibition with cultural and sports functions. Even if another Congress Centre in Cracow is under construction, the Polish authorities have explained that in case of fair and exhibition events, it will not be in competition with the ICC in Katowice as it does not have a multipurpose hall where exhibition areas could be arranged and it will also have a lower capacity in the main auditorium hall. Overall, it has further been explained that the ICC in Katowice will to a great extent become "a new offer", i. e. a facility for events which could so far not take place there (due not only to size, but also quality and image) with examples provided. The Polish authorities have also explained that other events have had to be held in several locations and/or in less appropriate facilities (size, function etc). Due to the absence of appropriate congress facilities, major events in Katowice are also hosted in the premises of public entities, which they make available only as a substitute of their main activities and as such facilities are designed for other purposes, they do not meet the expectations of the event organisers. Following the construction of the ICC, the Polish authorities also aim for increased recognition of the city/region for European/International events and thus increase the number of events taking place in the city/region both in the ICC and the other facilities which would also contribute to the development of the other facilities with the same functions but operating at a smaller scale.

¹⁰ For example Expo Silesia Sosnowiec (340 seats); Silesia Exhibition Centre Katowice (300 seats); International Exhibition and Congress Centre Cracow (4,000 seats); Hotel Gromada Congress Centre Cracow (2,050 seats); and the following under construction: Concert and Congress Centre Cracow (2,990 seats); Congress and Exhibition Centre Opole (2,700 seats); Entertainment and Sports Hall Podium Gliwice (15,000 seats); Entertainment and Sports Hall Cracow (15,300 seats).

- (18) Therefore, the Commission considers that Poland has shown the lack of capacity, at least for certain types of events, and that the new ICC in Katowice will become a complement (larger and/or multifunctional combining congress and exhibition with cultural and sports functions) rather than substitute to the existing, or under constructions, facilities in the region. The new facility is also likely to lead to an increase in the types of events which can take place in the region.
- (19) In the absence of the public funding, the project would not be realized (not viable for a private investor). According to the project financial analysis, construction of a facility like the ICC in Katowice is not profitable for a private entity and the lack of interest from private investors results from the very high risk of return on invested capital. The Polish authorities have also explained that as the funds for the project derives from two sources, ERDF grant and the City of Katowice contribution, prior to taking a decision on granting ERDF funds under ROP SV 2007-2013 for the benefit of the City of Katowice, an analysis of the admissible co-financing level was made applying the funding gap method. The funding gap method was calculated on the basis of applicable national and regional guidelines, as well as publications from the Commission's Directorate General for Regional Policy.¹¹ As explained, the funding gap method aims to determine the level of eligible expenditures, pursuant to art.55 section 2 of Council Regulation (EC) 1083/2006, which on one hand guarantees that the project will have sufficient financial resources for its implementation, on the other hand enables to prevent granting undue benefits to the recipient, namely providing more financing than necessary. In the present case, the Polish authorities have ensured that the calculation of the funding gap received positive opinion during the project assessment concerning the confirmation of financial contribution by the Directorate General for Regional Policy, and that the manner of preparing the financial and economic analysis was not challenged. In line with this, the ERDF funding must be considered to have been limited to the minimum necessary.
- (20) The selection procedure of the operator, an open tender to find a private partner to manage the facility on commercial conditions also ensures, together with the above reasons, that the necessity and proportionality requirements are fulfilled. The exploitation of the facility by a private entity on commercial conditions further ensures that the measure does not adversely affect trading conditions to an extent contrary to the common interest. Regarding the use of the facility, it has also been shown to be on a non-discriminatory basis, thus being open to all with no captive user. Hence, the public financing must be considered well-targeted and justified.
- (21) From the above reasons, it has been demonstrated that the public funding of the measure is pursuing acknowledged public policy objectives, is

¹¹ Handbook "Cost benefit analysis of investment projects: a Guide" prepared by Evaluation Unit, Directorate General for Regional Policy, European Commission; "Guidelines for the methodology and conducting cost benefit analyses", European Commission, Directorate-General for Regional Policy; and "Management of Project Cycles", European Commission (publication of the Ministry of Economy and Labour 2004).

necessary and proportionate and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107 (3) c TFEU.

3. CONCLUSION

- (22) The Commission therefore finds that the financing of the multifunctional ICC in Katowice is compatible with the internal market pursuant to Article 107 (3) (c) of the Treaty on the Functioning of the European Union and has accordingly decided not to raise objections to the notified measure.

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Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or fax to:

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Yours faithfully,
For the Commission

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