



EUROPEAN COMMISSION

Brussels, 26.11.2015
C(2015) 8261 final

PUBLIC VERSION

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**Subject: State Aid SA.43250 (2015/NN) – Portugal
Cruise ship terminal Porto de Leixões**

Sir,

1. PROCEDURE

- (1) On 7 October 2015 Portugal pre-notified public support for a port infrastructure project in the port of Leixões.
- (2) In the pre-notification process, Portugal agreed that the present decision would be adopted and notified in English.
- (3) Since the information provided showed that the public funding for the project had already been disbursed, the Commission informed Portugal by email of 15 October 2015 that the measure had been registered as unlawful aid (2015/NN) and that the procedural rules applicable would, therefore, be those laid down in Chapter III of Council Regulation No 2015/1589¹ (Procedure regarding unlawful aid).
- (4) On 21 October 2015 a meeting took place between the Portuguese authorities and the Commission services.
- (5) The Portuguese authorities submitted additional information by emails dated 26 October 2015 and 28 October 2015.

¹ Council Regulation (EU) No 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.

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2. DESCRIPTION

2.1. Objective

- (6) The port of Leixões is a commercial port located at the northeast coast of Portugal in the municipality of Matosinhos. It is administered and managed by the Port Authority of Douro, Leixões and Viana do Castelo ("APDL"). The port manages all types of cargo, receiving roll-on/roll-off, liquid and dry bulk, container and passenger vessels.
- (7) The objective of the project is to expand and adapt the existing infrastructure at the port of Leixões to meet the increasing demand for cruise ship related services by adding a new berth for passenger cruise vessels up to 300 meters in length and a passenger terminal building. In addition, the project foresees the creation of capacities for recreational crafts through the construction of the basic infrastructure of a marina.

2.2. Planned investments

- (8) The total investment costs of the project amount to EUR 56.052 million. The project consists of two main parts, or "interventions", as described below.
- (9) Intervention 1 consists of the construction of a new berth for passenger cruise vessels of up to 300 meters in length and of the basic infrastructure for a marina.
- (10) Intervention 2 consists of the construction of a new terminal building. This building will house a passenger cruise terminal, as well as customs, border control and police services. In addition, part of the terminal building, namely floors -1, 2 and 2a (representing 4 521 sqm out of the total of 14 532 sqm of the terminal building), will be used by the Science and Technologies Sea Centre of the public University of Porto.
- (11) The breakdown of the total investment costs for the two interventions described above is as follows:

Measure	Costs (EUR)
Construction of new berth	20 437 695
Marina	4 210 116
New terminal building (of which)	31 404 754
• Passenger cruise terminal	• 22 194 771
• Customs, border control, police	• 174 354
• Science and Technologies Sea Centre	• 9 035 629
Total	56 052 565

2.3. Financing of the investment project

- (12) The project will be financed through a non-repayable direct grant by the Portuguese State through the European Regional Development Fund ("ERDF") amounting to EUR 25.495 million. The remaining part of EUR 30.557 million will be provided by the APDL with own and aid-free funds stemming from its economic activities.
- (13) According to the Portuguese authorities the breakdown of the ERDF funding spent on the different parts of the project is as follows:

Measure	ERDF funding (EUR)
Construction of new berth	10 887 840
Marina	1 354 863
New terminal building (of which)	13 253 123,22
<ul style="list-style-type: none"> • Passenger cruise terminal • Customs, border control, police • Science and Technologies Sea Centre 	<ul style="list-style-type: none"> • 8 656 823,22 • 97 611 • 4 498 689
Total	25 495 826,22

- (14) The Portuguese authorities provided an analysis based on the funding gap² of the project,³ calculated as the difference between the discounted value of the expected net operating profits of the investment (EUR 960 398) and the discounted investment costs of the project (EUR 35 906 159), which shows that over a reference period of 25 years the project has a negative financial net present value (NPV) of – EUR 34 945 761. The negative NPV indicates that the project is not financially sustainable without public support.
- (15) As regards the main revenues stemming from the investment taken into account for the calculation of the funding gap of the project, the Portuguese authorities indicated cruise vessel fees (paid by cruise ships per gross tonnage) and passenger fees (paid by passengers of cruise vessels).

² 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 during a given reference period.

³ For the calculation of the funding gap only the investment costs and revenues linked to the parts of the project the funding of which constitutes aid (see below, section 3.1.) are taken into account.

2.4. The beneficiary

- (16) According to the information provided by Portugal, the infrastructure resulting from the project is part of the public domain. It is administered and exploited by the APDL, which is a fully publicly-owned company.
- (17) The infrastructure will be accessible for any interested user on a non-discriminatory basis and all users will be charged the same fees in accordance with the applicable tariffs. The Portuguese authorities provided data showing that the fees charged in the port of Leixões are in line with fees charged in comparable ports in Portugal.
- (18) As mentioned above, parts of the terminal building will be used by the Science and Technologies Sea Centre, which is part of the Public University of Porto, a higher education institution forming a part of the national educational system of the Portuguese State. This part of the building will be used by the Science and Technologies Sea Centre for free. The centre will lodge the CIIMAR – Interdisciplinary Centre of Marine and Environmental Research ("CIIMAR"), which is a research and advanced training institution of the public University of Porto. It develops several Master courses, the Portuguese Doctoral Program in Environmental and Marine Sciences and the European Doctoral Program on Marine Ecosystem Health and Conservation.

2.5. Competition context

- (19) According to the Portuguese authorities, the new infrastructure in the port of Leixões resulting from the project will not significantly affect competition on the relevant market. In particular, the Portuguese authorities submit that, with regard to the parts of the project linked to transport activities (i.e. the berth for cruise vessels and the passenger cruise terminal) the capacity increases due to the project will be offset by projected market growth.
- (20) According to the information provided by Portugal, the relevant geographical market must be seen as the market for cruises in the Atlantic corridor.⁴ In this regard the market is defined by the nature of the services of cruises, which typically take place within a certain geographically predefined area (such as the Caribbean, the Mediterranean or, as in the case at hand, the Atlantic corridor), within which the cruise ships make calls at different ports. Thus, while the Atlantic corridor as such might compete with the Mediterranean for cruises, a port in the Atlantic corridor does not compete with a port in the Mediterranean for calls by cruise ships.
- (21) In the period 2009-2014, the market for cruise ships in the Atlantic corridor exhibited a strong growth, namely by 27% as regards port calls by cruise ships and by 54% in terms of passengers. The market share of the Port of Leixões in this market is estimated, in terms of port calls, at 2% (in 2009) and 4% (in 2014, with the new terminal already in activity) and in terms of passengers at 1% (in 2009) and 2% (in 2014, with the new terminal already in activity).

⁴ Defined in the submissions by Portugal as comprising of the following ports: Amsterdam, Antwerp, Bayonne, Bilbao, Bordeaux, Bremerhaven, Brest, Cadiz, Cherbourg, Ferrol, Funchal, Guernsey, Hamburg, Ijmuiden, La Coruna, La Rochelle, Le Havre, Leixões, Lisbon, Lorient, Malo, Nantes, Portimao, Rotterdam, Rouen, Santander, Vigo, Vilagarcia, Zeebrugge and Zeeland.

- (22) As regards the new marina the Portuguese authorities submit that there were, in the year 2011, around 13 082 moorings for pleasure boats in 51 nautical facilities in Portugal. On an EU level, there are more than 10 000 marinas with more than 1.5 million moorings. Furthermore, the total number of pleasure boats in Portugal is estimated to be around 77 487 and there are around 6 million of such boats in the EU.
- (23) The marina constructed as part of the project in the port of Leixões has 170 moorings. This represents 1.3% of the Portuguese mooring market and 0.011% of the EU mooring market. The Portuguese authorities submit that out of the 170 moorings in the port of Leixões it is estimated that around 5% will be used by foreign tourists.

2.6. Legal basis

- (24) The legal basis for the funding of the project is (i) the National Strategic Reference Framework 2007-2013, validated by the Government through Council of Ministers Resolution No. 86/2007, 28 June 2007, signed with the European Commission on 2 July 2007, which sets the main rules for the national application of EU funds with a structural nature in the 2007-2013 period and for the structuring of the national regional operation programmes; (ii) the North Regional Operational Programme 2007-2013, Decision C(2007)5070 final; (iii) Decree-Law no. 312/2007, 17 September 2007, as amended by Decree-Law No 74/2008, 22 April 2008; and (iv) Council Regulation No. 1083/2006, 11 July 2006, as amended, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation No 1260/1999.

2.7. Form and duration of the aid

- (25) The funding is provided in the form of a non-repayable grant by the European Regional Development Fund in the amount of EUR 25 495 826.22. The funding was disbursed during the execution of the project in the years 2010-2013.

2.8. Cumulation

- (26) The Portuguese authorities confirmed that the funding for the project has not been cumulated with aid received from other local or national sources for the same eligible costs.

3. ASSESSMENT

3.1. Existence of aid

- (27) 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.
- (28) 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.

- (29) In the present case the existence of State aid must be examined on the level of the Port authority APDL, which manages and operates the infrastructure, and on the level of the users (cruise shipping companies).

3.1.1. Existence of aid on the level of the APDL

3.1.1.1. Notion of undertaking

- (30) According to established case law by the Court,⁵ 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.
- (31) As regards infrastructure financing the Court, in its judgment in *Leipzig-Halle*,⁶ 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 construction and exploitation of some types of port infrastructures constitutes an economic activity.⁷
- (32) The notified project concerns the construction of a new berth for cruise vessels, a marina and a new terminal building in the Port of Leixões, which are commercially exploited by APDL by providing port services on the market against remuneration. There is undoubtedly competition between sea ports, as also confirmed by the market study provided by Portugal. As such, there is a market for port services, on which APDL, through its operation and economic exploitation of the infrastructure in question, is in competition with other ports.
- (33) Thus, as regards the construction and operation of said infrastructure the APDL engages in an economic activity, and must therefore be considered an undertaking for the purposes of the present decision.

⁵ 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.

⁶ Judgment of 24 March 2011, *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission*, T-455/08, and *Feistaat 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.

⁷ 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.

Economic vs. non-economic infrastructures

- (34) However, as stated above, the new terminal building will, besides the new passenger cruise terminal, which will be exploited economically by the APDL, also house customs, border control and police services. In addition, parts of the terminal building will be left for use without remuneration to the Science and Technologies Sea Centre lodging the CIIMAR.
- (35) As regards the parts of the terminal building which will house the customs, border control and police services, Portugal argues that these will be used for activities that fall under the State's responsibility in the exercise of its powers as a public authority and, therefore, are not of an economic nature and do not fall within the scope of the rules on State aid.
- (36) As regards the part of the terminal building left for use to the Science and Technologies Sea Centre lodging the CIIMAR, the Portuguese authorities stress that this is done without remuneration. As such, leaving the relevant parts of the terminal building to the Science and Technologies Sea Centre for free does not constitute an economic activity in the sense of State aid law for the APDL.
- (37) In light of these arguments, the Commission considers the following.
- (38) According to well established case-law, activities that normally fall under the State's responsibility in the exercise of its powers as a public authority are not of an economic nature and do not fall within the scope of the State aid rules.⁸ This may concern activities linked to performing tasks of ensuring security, safety, police services,⁹ or anti-pollution surveillance in ports¹⁰ – insofar as they are not an intrinsic part of a project with a commercial end. The financing of such activities has to be limited to the costs to which they give rise and may not be used instead to fund other activities.
- (39) Thus, even if an entity that is engaged in an economic activity and must, therefore, be regarded as an undertaking for the purposes of State aid law, it is possible that parts of its activities, due to their nature, fall under the State's responsibility in the exercise of its powers as a public authority. It follows that funding received by an undertaking linked to such activities falling under the exercise of the State's public powers is not to be regarded as being linked to economic activities and, as such, does not constitute State aid.
- (40) In this regard, the Commission agrees with Portugal's assessment that the customs, border control and police services do not constitute economic activities but fall under the State's powers as a public authority. It follows that the ERDF funding related to these parts of the terminal building amounting to EUR 97 611 does not constitute State aid within the meaning of Article 107(1) of the Treaty.
- (41) Concerning the parts of the terminal building left for use to the Science and Technologies Sea Centre lodging the CIIMAR the Commission takes note of the fact that the APDL does so without collecting a rent and that this activity is

⁸ See judgment in *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, C-288/11 P, EU:C:2012:821, paragraph 42.

⁹ Commission Decision N309/2002 of 19 March 2003 on *Aviation security - compensation for costs incurred following the attacks of 11 September 2001*.

¹⁰ Judgment in *Diego Cali & Figli*, C-343/95, EU:C:1997:160, paragraphs 22 and 23.

neither directly nor indirectly linked to the APDL's economic activities of managing and exploiting the port infrastructures.

- (42) In light of this the Commission agrees with Portugal's arguments to the end that leaving the relevant parts of the terminal building to the Science and Technologies Sea Centre lodging the CIIMAR to use for free does not constitute an economic activity in itself for the APDL and is also not linked to its economic activities. It follows that the ERDF funding related to these parts of the terminal building amounting to EUR 4 498 689 does not constitute State aid within the meaning of Article 107(1) of the Treaty.

3.1.1.2. State resources and imputability

- (43) The ERDF funding for the project was placed at the disposal of the Portuguese authorities before having been released to APDL and, therefore, must be regarded as constituting State resources.
- (44) As regards imputability to the State of the ERDF funding at stake, it is noted that the Portuguese authorities enjoy a high degree of discretion in the selection at national level of the projects to be financed with said funding. The present project was directly chosen by the Portuguese authorities. Therefore, the ERDF funding in the present case is imputable to the State.

3.1.1.3. Selectivity

- (45) The public financing was granted specifically to the APDL for carrying out a specific and individual project and is, therefore, selective.

3.1.1.4. Economic advantage

- (46) The public funding was provided in form of a grant. A grant is a non-refundable financial instrument which bears no financing cost. At market terms, such a financing instrument would not have been available to the beneficiary.
- (47) The public financing, therefore, conferred an economic advantage on the beneficiary.

3.1.1.5. Distortion of competition and affectation of trade

- (48) The Commission considers it necessary to assess the criterion of distortion of competition and affectation of trade separately for the transport related parts of the economically used transport infrastructure (i.e. the berth for cruise vessels and the part of the terminal building housing the passenger cruise terminal) and the parts of the project linked to recreational activities (i.e. the marina).

Economically used transport infrastructure

- (49) 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.¹¹

- (50) In the present case, the financial support granted by Portugal will be used for constructing a new berth for cruise vessels as well as a passenger cruise terminal to adapt the port of Leixões to meet demand in the growing market of cruises. By completing the project the port of Leixões could increase its capacity for cruise ships. The project does, therefore, at least potentially distort competition between cruise ship terminals in the relevant market.
- (51) Furthermore, the Commission observes that cruise vessels in the relevant market generally call at ports in different Member States. As such, due to the specific nature of how such cruise trips are organised, the measure is at least potentially capable of affecting trade between Member States by potentially diverting commerce away from other Member States.

Recreational activities

- (52) As regards the public funding for part of the project consisting in the construction of a new marina the Portuguese authorities argued that it does not constitute aid in the meaning of Article 107 TFEU, since it does not distort or threaten to distort competition or affect trade between Member States.
- (53) 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 in other Member States to enter the market by maintaining or increasing local supply,¹² or to exercise their right of establishment.
- (54) 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.¹³ 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.
- (55) 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 competition and it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.¹⁴
- (56) In that respect, the Commission has in several cases¹⁵ considered that certain activities have a purely local impact and no such effect. It seems appropriate to

¹¹ 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.

¹² See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* EU:C:2015:9, paragraph 67.

¹³ See for instance Case C-279/08 P *Commission v Netherlands* EU:C:2011:551, paragraph 131.

¹⁴ See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* EU:T:1995:130, paragraph 141.

¹⁵ 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; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de*

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. In line with these considerations and more specifically as regards the present project under consideration, the Commission has concluded in several cases¹⁶ that public funding for investments in small ports for recreational crafts does, under certain circumstances, not affect trade between Member States and, as such, does not constitute State aid in the meaning of Article 107(1) TFEU.

- (57) In the present case the Commission observes that the part of the project related to the marina is targeted at a local market.¹⁷ As stated above, according to data provided by the Portuguese authorities, there are around 51 marinas with around 13 082 moorings in Portugal. As regards Europe, there are more than 10 000 marinas providing 1.5 million moorings. Furthermore, there are around 77 487 pleasure boats in Portugal and around 6 million of such boats in Europe.
- (58) The marina in the port of Leixões only has 170 moorings, which is insignificant both in relation to the Portuguese market as well as the European market. The percentage of international landings in the marina is estimated to be roughly 5%. However, since the 170 moorings in the port of Leixões only represent around 1.3% of the Portuguese and only 0.011% of the European mooring market, it can be concluded that the impact of the port of Leixões on the market is very limited.
- (59) In the light of the above, the Commission concludes that the part of the port linked to recreational activities is not aimed at attracting international visitors but rather at a local market. The very limited number of international landings in the marina and the very low market share mean that the impact of the investment on the market is limited to the local level. As such, the Commission considers that in the present case competition for the services offered in the marina occurs at a purely local level and that it is, thus, unlikely that this part of the investment project will attract customers from other Member States.
- (60) Furthermore, given the small scale of the market share and the operation of the marina, which is expected to have a gross annual turnover of around EUR 360 000 (in 2017) and up to EUR 450 000 (in 2033), as well as the relatively small amount of public funding for this part of the project of EUR 1.355 million show 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.

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.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.

¹⁶ C 10/2003 – Netherlands – Non-profit harbours for recreational crafts, OJ L 34, 06.02.2004, p. 63; SA.39403 – Netherlands – Investment in the port of Lauwersoog, OJ C 259, 7.8.2015, p. 4.

¹⁷ See also C 10/2003 *Netherlands – Non profit harbours for recreational crafts*, OJ L 34, 6.2.2004, p. 63, paras. 48 et seqq and SA.39403 – Netherlands – Investment in the port of Lauwersoog, OJ C 259, 7.8.2015, p. 4, paras. 28 et seqq.

- (61) Based on the above the Commission considers that neither the situation of the relevant market, the position of the marina in the port of Leixões 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.
- (62) Thus, the Commission agrees with the arguments submitted by Portugal to the end that the ERDF funding related to the marina amounting to EUR 1 354 863 does not constitute State aid within the meaning of Article 107(1) of the Treaty.

Conclusion on the existence of aid at the level of the APDL

- (63) In light of the above the Commission concludes that the public funding for the project constitutes aid at the level of the APDL.
- (64) However, as stated above, certain parts of the project, namely the funding for the construction of the new marina and for the construction of the parts of the terminal building used by customs, border control and police services as well as by the Science and Technologies Sea Centre lodging the CIIMAR, do not constitute aid in the meaning of Article 107 TFEU. It follows that out of the total amount of the ERDF grant for the project (EUR 25 495 826.22) only EUR 19 544 663.22 are to be qualified as State aid.

3.1.2. Existence of aid on the level of the users

- (65) As regards the users of the transport related parts of the project (i.e. the new berth and the passenger cruise terminal), namely cruise shipping companies, the Commission notes that all such users shall enjoy equal and non-discriminatory access to the infrastructure. Furthermore, the information provided by the Portuguese authorities show that the fees charged to the port users correspond to the level of fees charged in comparable ports and, therefore, constitute market prices.
- (66) Thus, the Commission concludes that no advantage will be granted to users and that there is, therefore, no aid present at the level of those users.

3.2. Compatibility of the aid

- (67) According to established case practice,¹⁸ 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.
- (68) It must therefore be examined if the notified public funding meets a clearly-defined objective of common interest, is necessary and proportional to this objective, has an incentive effect and does not affect competition and intra-EU trade to an extent contrary to the common interest.

¹⁸ See Commission Decisions cited in footnote 7 above.

3.2.1. Objective of common interest

- (69) In the Communication entitled *A Sustainable Future for Transport: Towards an integrated, technology-led and user-friendly system*,¹⁹ the Commission underlined that the development of ports and intermodal terminals is key to achieving an integrated and intelligent logistic system in the EU.
- (70) 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*,²⁰ 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.
- (71) According to the trans-European transport networks (TEN-T) Regulation,²¹ the Port of Leixões is considered as part of the European core network corridor. According to this Regulation, the TEN-T could be best developed through a dual-layer approach, consisting of a comprehensive network and a core network. The comprehensive network constitutes the basic layer of the new TEN-T and consists of all existing and planned infrastructure meeting the requirements of the TEN-T Regulation. The core network should be identified and appropriate measures should be taken for its development by 2030 as a priority within the framework provided by the comprehensive network. The core network should constitute the backbone of the development of a sustainable multimodal transport network and should stimulate the development of the entire comprehensive network.
- (72) 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

- (73) The negative NPV (funding gap) of – EUR 34 945 761 over a reference period of 25 years shows that the expected net revenues of the APDL do not cover the investment costs of EUR 42 806 820 (investment costs linked to the economic activity). The negative NPV indicates that the project is not viable without public support. It should also be noted that the APDL makes an effort to fund the project itself, by contributing EUR 23 164 546 to the economic part of the project of its own resources stemming from its economic activities. It is unlikely that the APDL would have been able to obtain the full remaining amount exceeding its planned own contribution on the market. Therefore, the Commission considers that the aid is necessary for this project.
- (74) With regard to the incentive effect of the aid, the Commission notes that the application for the aid was done in 2009 before the commencement of the project.

¹⁹ COM(2009) 279/4, paragraph 46.

²⁰ 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.

²¹ See Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, text available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R1315:EN:NOT>.

In addition, as shown above, the APDL would not be able to raise the funding required for carrying out the project 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.

- (75) As regards proportionality (*i.e.* keeping public funding down to the minimum necessary), the Commission notes that the aid, *i.e.* the public funding provided for the part of the project qualified as an economic activity (EUR 19 544 663,22), is below the funding gap identified for that part of the project (– EUR 34 945 761). Therefore, the aid is proportionate.
- (76) In the light of the above, the Commission concludes that the aid is necessary, proportionate and has an incentive effect.

3.2.3. *Avoidance of undue negative effects on competition and trade between Member States*

- (77) As indicated above, the market share of the Port of Leixões within the relevant market for cruises in the Atlantic corridor is estimated, in terms of port calls, to have corresponded to only 2% and, in terms of passengers, to only 1% in the year 2009 before completion of the investment project.
- (78) The information provided by Portugal shows that after completion of the project this market share has increased to 4% in terms of port calls and 2% in terms of passengers.
- (79) The very low market shares of the Port of Leixões even after completion of the project allow concluding 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.

4. CONCLUSION

The Commission concludes that the public support for the construction of the new marina (EUR 1 354 863) and the construction of the parts of the terminal building used by customs, border control and police services (EUR 97 611) as well as by the Science and Technologies Sea Centre lodging the CIIMAR (EUR 4 498 689) does not constitute State aid.

The public support of EUR 19 544 663.22 to ADPL constitutes State aid. The Commission regrets that Portugal put that aid in question into effect in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the ground that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

The Commission notes that Portugal has agreed that the present decision would be adopted, notified and published in the English language.

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

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

