Subject: State aid SA.43575 (2015/N) – Latvia
Aid for the construction of cultural and sport center "Daugavas stadions" –

Sir,

1. PROCEDURE

(1) By electronic notification registered on 11 November 2015 at the Commission¹, the Latvian authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), the above-mentioned measure. The Commission requested additional information on 21 December 2015. The Latvian authorities submitted further information on 22 January 2016. The Commission sent another request for information on 10 March 2016. The Latvian authorities provided further information on 1 April 2016, followed by additional information formally submitted on 25 April 2016. The Commission sent additional request for information on 4 May 2016, to which the Latvian authorities answered on 11 May 2016. Another request for information was sent on 17 June 2016 and the Latvian authorities replied on 21 and 22 July 2016.

¹ SANI 2015/451638.

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2. **Detailed Description of the Project and the Measure**

The investment project and the aid beneficiary:

(2) The aid measure concerns the public funding of the development of the Daugavas Stadions premises, situated in Riga, which comprises of two parts, the main part of the Daugavas stadions ('DS') and the part of the parking facilities ('PF'). The project will be funded by the European Regional and Development Fund, national co-financing, additional financing from the State budget and own funds.

(3) The beneficiary of the aid is VSIA, a joint-stock company owned by 100% and fully controlled by the Ministry of Education and Science. Currently the land and the buildings are owned by the Ministry of Education and Science, while VSIA is the manager and operator of the existing infrastructure in accordance with the Agreement of State Property Administration signed between the said Ministry and VSIA. The land and the existing buildings of the Daugavas stadiums will be transferred to VSIA without the payment of any fee. According to the evaluation provided by an independent expert, the market value of the land and the existing buildings amounts to EUR 9.71 million (in nominal values). VSIA will manage the construction of both infrastructure projects; in this respect the Latvian authorities confirmed that for the construction of both projects, VSIA will conduct open, transparent and non-discriminatory procedures, having due regard to the applicable procurement rules. VSIA will manage and operate the DS project through its whole estimated operation period. It will also ensure the maintenance of both projects during the whole period. Finally VSIA will continue being the owner of both projects after their completion.

Sports and multifunctional recreational facilities – Daugavas stadiums:

(4) The DS includes an athletics sport hall, an ice stadium, a push-start bobsleigh track, a multipurpose hall, a stadium with stands, as well as a practice field and it is planned to be used both for professional and amateur sport as well as for cultural events. The total investment costs for this project are estimated at EUR 35.59 million (EUR 29.3 million in discounted values) and they relate to programme management services, buildings, stadium stands, capacity and territory improvement works, maintenance and utility systems.

(5) The whole set of facilities under the DS project will have a multi-functional character. They will be designed to ensure both sports and culture functions both for professional and amateur level use. Sport infrastructures will not be used exclusively by a single professional user. Given the various sport facilities offered (athletics sports hall, ice stadium, bobsleigh track, ...

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2 All the activities of VSIA are carried out in performance of tasks set out by the Ministry and VSIA has not the possibility to conduct other economic activities apart the ones relevant to the management, maintenance and operation of the Daugavas Stadions.

3 As according to the Cabinet of Ministers Regulation No.188 (29.03.2016) which establishes the terms and conditions for the Programme implementation, only investment in infrastructure owned by the beneficiary can be made under the Programme implementation.
multipurpose hall, stadium with stands, practice field), various professional users will be attracted. Moreover, Latvia indicated that the use of these facilities by other professional or non-professional sport users will annually account for up to 50% of time capacity. As one of the main purposes of developing this infrastructure is to promote qualitative leisure time for area residents and people from neighbouring areas, it will be largely available for amateur athletes and will also offer different culture activities like exhibitions, concerts etc.

(6) According to the Latvian authorities, the DS facilities will be open to various users on a non-discriminatory and transparent basis. All users will be charged on market terms. Latvia indicated that the price assumptions taken into account for the financing of the project, were based on market study and analysis of comparable private and public cultural and sports facilities in Latvia. The pricing was also set taking into consideration characteristics of the infrastructure project⁴ and comparable facilities used as a benchmark. According to the Latvian authorities the pricing assumptions reflect the current market conditions and the current demand.

Parking facilities:

(7) The parking facilities will be divided into two parts: 75% of the parking lot will serve as a Park and Ride facility and 25% as a commercial parking for DS visitors. The investment costs relevant to this project are estimated at EUR 4.13 million (EUR 3.46 million in discounted values).

(8) VSIA will assign the management and operation of both lots (Park & Ride and commercial parking) to third party operators that will be chosen through an unconditional, open and transparent competitive procedure. These operators will deal with the pay meters and online pay systems, collect the payments and enforce parking charges. According to the Latvian authorities, these operators will make their revenue based upon fees paid by the respective users of these facilities and will pay to VSIA a price for the use of the infrastructure that will correspond to a market price set as a result of a public tender.

(9) Regarding the Park & Ride lot, the prime objective is to reduce the intensity of traffic within the city centre by motivating people to use public transport through increased comfort and safety. In order to attain this objective, the Park and Ride facility is intended to be used with a price corresponding to the ticket of public transportation or a small fee.

(10) Finally Latvia also indicates that any concession or other entrustment to a third party to construct and/or upgrade the infrastructure of both projects will be assigned on the basis of an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

Aid amount and intensity:

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⁴ e.g. technical conditions, purpose of the use, area, capacity etc.
The State will grant to VSIA EUR 37.96 million (EUR 31.31 million in discounted values) in the form of direct grant and EUR 9.71 million (EUR 9.17 million in discounted values) in the form of transfer of the land and buildings for free. Therefore the total aid amount granted by the State to VSIA corresponds to EUR 47.72 million (EUR 40.48 million in discounted values). The investment costs as well as the aid amounts relevant to the project are presented in the table below.

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Discounted values, EUR excl. VAT</th>
<th>Undiscounted values, EUR excl. VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total for sport and multifunctional recreational and local infrastructure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land and existing buildings</td>
<td>(9 171 452)</td>
<td>(9 710 000)</td>
</tr>
<tr>
<td>Daugavas stadiums</td>
<td>(29 308 135)</td>
<td>(35 592 693)</td>
</tr>
<tr>
<td>Parking facilities</td>
<td>(3 456 561)</td>
<td>(4 132 231)</td>
</tr>
<tr>
<td>Net operating profit</td>
<td>1 458 763</td>
<td></td>
</tr>
<tr>
<td>Total eligible costs</td>
<td>(41 936 149)</td>
<td>(49 434 924)</td>
</tr>
<tr>
<td>Maximum aid intensity (Project funding gap) %</td>
<td>95.55%</td>
<td>95.55%</td>
</tr>
<tr>
<td>Total aid amount</td>
<td>40 477 386</td>
<td>(47 715 314)</td>
</tr>
</tbody>
</table>

The project is planned to be funded as a part of the EU funds operational program "Growth and employment", "Promotion of revitalisation of urban areas in Riga, ensuring efficient socioeconomic use of the area". The project will be implemented within the period from 2016 to 2022.

3. **Assessment of the Measure**

3.1. **Existence of aid**

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".

Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to an undertaking; 3) this advantage must be selective and 4) it must distort or threaten to distort competition and affect intra-Union trade.

With regard to the requirement that the measure must be granted through State resources and be attributable to the State, this criterion is clearly fulfilled in the present case as the measure is decided by the State and the State will contribute direct grants for the construction and renovation of both DS and PF infrastructure.
According to the Leipzig/Halle airport judgment of the Court of Justice\textsuperscript{5}, the public funding of the construction and/or upgrade of infrastructure may constitute State aid when the said infrastructure will be used for commercial activities. Following the Court’s judgment, the economic character of the later use of the infrastructure would determine the economic or not nature of its construction.

In the present case, the DS and PF will be used to provide services on the market for organising sports events, conferences and cultural events, hence for economic activities. All the facilities will be used for economic activities.

The Commission reminds that the Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking therefore depends entirely on the nature of its activities. This general principle has three important consequences: (1) the status of the entity under national law is not decisive, (2) the application of the State aid rules as such does not depend on whether the entity is set up to generate profits, and (3) the classification of an entity as an undertaking always depends on the specific activity it conducts. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former. Therefore, the measure confers a selective advantage to the owner and investor in the infrastructure that is relieved of a part of costs which it would normally have to bear for the construction and renovation of the DS and PF.

In this case, the funding gap analysis for the project is carried out at the level of the owner-investor, i.e. the State-owned VSIA in its capacity as an economic operator that makes available sport, cultural and parking facilities on the market.

Concerning the DS, VSIA can rent out the facility to various users on a transparent and non-discriminatory basis. According to the Latvian authorities, there will be no main user of the facility and all users/organisers of the events will pay market-based prices calculated on the basis of a market analysis (taking into account the fees payable for the use of comparable private and public cultural and sports facilities in Latvia). Nevertheless, in the absence of further clarification on how those fees will be calculated, an advantage cannot be entirely excluded at the level of those users that are undertakings (in particular the professional users). Therefore, the renting out of DS facilities may involve the granting of aid to those users that are undertakings within the meaning of Article 107 TFEU if they pay a rent below the rent for the use of comparable infrastructure under normal market conditions. On the contrary the fees paid by non-professional users that do not qualify as undertakings, does not fall within the ambit of State aid rules. In the present case, given that aid to

the professional users of the DS would be compatible with the internal market, as demonstrated below, it is not necessary to definitively conclude on the existence of aid at this level.

(21) As regards the PF in particular, these facilities will be put at the disposal of undertakings - operators which will provide Park and Ride services (75% of the parking lot), and commercial parking services (25% of the parking lot). These operators will be private entities selected through open, transparent and non-discriminatory competitive procedures and they will pay a fee corresponding to the market price for the right to operate the infrastructure in question, as this will derive from the competitive procedure. Nevertheless, while these arrangements may limit the advantage to the selected operators to the minimum necessary to ensure operation of the infrastructure, in the absence of specific clarification on how that fee will be calculated, an advantage cannot be entirely excluded at the level of the operators of the parking facilities. However, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to definitively conclude on the existence of aid at this level.

(22) Finally, when aid granted by a Member State strengthens the position of an undertaking compared with that of other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. The market for organising sport and cultural events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. In the present case, the DS has the capacity to attract and host European and international sports or cultural events. According to the Latvian authorities, the majority of the events hosted will most likely be of local character and users of facilities will be inhabitants of Latvia. As regards the parking facilities, the Commission has already noted in earlier decisions that the car parks are increasingly active on the EU market. Therefore, it cannot be excluded that the aid granted for the DS and the PF could distort competition and affect intra-Union trade.

(23) The Commission therefore concludes that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Assessment of compatibility

(24) The public financing of the construction of the infrastructure with the aim to offer it 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

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6 See Case 730/79 Philip Morris v Commission, ECLI:EU:C:1980:209, para. 11; Case C-53/00 Ferring, ECLI:EU:C:2001:627, para. 21; and Case C-372/97 Italy v Commission, ECLI:EU:C:2004:234, para. 44.


interest, is necessary and proportionate and does not cause undue distortion of competition.

(25) 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 contributes to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function, according to Articles 165 TFEU. In addition, the DS facilities that will be developed will also be used for cultural events (concerts, shows) and, as such, can contribute to the promotion of cultural diversity in the light of article 167(4) of the TFEU. Thus the whole project will contribute to overall welfare through an increased supply of sport and cultural facilities as well as parking options.

(26) In addition, the entire territory of Latvia is an area eligible for regional aid on the basis of Article 107(3)(a) TFEU. The development of a sports and cultural facility that has the potential to attract visitors and improve their quality of life will foster regional development (e.g. business, tourism, employment etc.) of the region. Thus it will contribute to reducing regional disparities within the EU and will promote the policy objective of regional development and cohesion.

(27) Regarding the parking facilities, the Latvian authorities indicated that they are integrated in the national planning strategy of sustainable development of Latvia 2030. In accordance with this Strategy, the development of park and ride facilities is one of the priorities to enhance the use of public transportation in Riga. The plan is to develop a mid-term parking network around Riga Centre Circle in order to minimise the use of private transportation in Riga City Centre. The facilities in question would be developed in areas that can be well connected with a public transportation hub. On this basis, the Commission considers that the objective of Latvia through this project is integrated in the Commission's objective for sustainable urban mobility plans enshrined in its 2013 Urban Mobility Package, and in particular its Communication "Together towards competitive and resource-efficient urban mobility".

(28) In view of the above, the Commission concludes that the construction and development of the facilities under assessment contributes to the attainment of policy objectives of common interest.

(29) Concerning the necessity and proportionality of the notified measure, the Latvian authorities indicated that the existing facilities of Daugavas stadiums territory are in a very bad condition and inappropriate for many of the functions they should have. The said facilities in their current state are unattractive for major and/or multinational sports and cultural events. Thus they require significant refurbishment and further development to create

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sufficient capacity of a high enough standard that can attract several professional and amateur users, but also organisers of international events.

(30) The Latvian authorities consider that the catchment area in this case can be considered as “nearby” (up to 20 min. ride with public transport) for the athletics hall, the practice field, the ice stadium and the multifunctional team sports hall. The Latvian authorities have demonstrated that currently there is insufficient capacity in the catchment area and there is still demand for additional capacity.

(31) The Latvian authorities further consider that the catchment area for the national level stadium is much broader as visitors and users are usually ready to travel longer distances to a national level stadium and could be considered region wide. Currently there is no alternative national level stadium available in the Riga region – Daugavas stadiums would be the only one.

(32) The Latvian authorities highlighted that development and further functioning of the DS is in line with several national and regional planning documents and legal acts because of the historical value of this venue. With regard to the bobsleigh track, they pointed out that while there is a demand, currently there are no identical facilities available in Latvia. Therefore, they indicate that the DS will complement rather than substitute the existing facilities.

(33) Consequently, the Commission considers that Latvia has demonstrated the lack of capacity, at least for certain sport activities, and that the DS will complement rather than substitute the existing (or under construction) facilities in Riga.

(34) In addition the Latvian authorities indicated that there is a general lack of Park and Ride capacity in Riga and in particular in this specific area of the city. The operation of this facility as a city transportation hub is necessary in order to achieve the objectives of the said sustainable development strategy.

(35) Moreover, the Latvian authorities demonstrated that, in the absence of public financing, the project would not be realised as it would not be viable for a private investor, as demonstrated by the funding gap analysis. The funding gap analysis demonstrates that the net operating profit over a period of 19 years (EUR 1.46 million) will not cover the full investment costs of the project (EUR 41.94 million); therefore it must be considered that a private investor would not have undertaken it. The operating profit is deducted ex ante on the basis of reasonable projections. The State contribution is limited to the funding gap, i.e. the difference between the investment cost and the operating profit of the facility over the period of 19 years in net present value (EUR 40.48 million). It has thus been demonstrated that the public co-financing of the DS and PF project is necessary as without it the project would not be implemented. The State contribution is limited to the funding gap and is therefore limited to what is necessary to implement the project. The Commission therefore considers it to be proportionate.

(36) The DS will be operated by a fully State-owned company, VSIA, which will ensure that any concession or other entrustment to a third party to construct,
upgrade and/or operate the Daugavas Stadiums premises shall be assigned on an open, transparent and non-discriminatory basis, having due regards to the applicable public procurement rules. The procedure for the selection of the operator for the PF (i.e. an open, transparent and non-discriminatory tender procedure to find a private partner to manage the facility on commercial conditions) also ensures, together with the above-mentioned considerations, that the necessity and proportionality requirements are fulfilled.

(37) The exploitation of the facility under commercial conditions further ensures that the measure does not adversely affect trading conditions to an extent contrary to the common interest. Access to both facilities will be granted on a transparent and non-discriminatory basis, thus there will be no captive user and it will be open to all end users. The DS will complement existing facilities and will increase the types of events which can take place in Latvia. Hence, the aid may be considered well-targeted and justified.

(38) Moreover, the DS are located almost 100 km far from the nearest border of the Republic of Latvia and even further from similar infrastructure in other Member States. Its catchment area is local to a very large extent (local population, schools etc.) as a significant part of the users are expected to travel no more than 20 minutes by public transport in order to use the facilities. The majority of the events that are expected to be hosted in the facilities are unlikely to attract foreign visitors. In addition, according to the information transmitted by the Latvian authorities, the infrastructure faces very little competition, almost exclusively from the public sector, such as municipalities, state operated organisations and other state owned companies. Therefore it can be concluded that the financing of the DS would not affect trade and competition in a significant way, and thus to an extent contrary to the common interest.

(39) On the basis of the above, the Commission considers that the Latvian authorities have demonstrated that the public funding of the infrastructure under assessment is pursuing acknowledged public policy objectives of EU interest, is 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.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid 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.

Finally, the Commission notes that Latvia agreed to have the present decision adopted in the English language.

11 According to 2012 data, 89% of the registered sport complexes in Latvia are owned by the State and municipalities and only 11% are owned by private owners and these data have not experienced significant changes since then
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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Registry
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION