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### Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## EUROPEAN COMMISSION

Euro exchange rates <sup>(1)</sup>

28 May 2012

(2012/C 152/01)

## 1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2566	AUD	Australian dollar	1,274
JPY	Japanese yen	99,75	CAD	Canadian dollar	1,2871
DKK	Danish krone	7,4303	HKD	Hong Kong dollar	9,7542
GBP	Pound sterling	0,8001	NZD	New Zealand dollar	1,6477
SEK	Swedish krona	8,9982	SGD	Singapore dollar	1,6038
CHF	Swiss franc	1,2019	KRW	South Korean won	1 483,09
ISK	Iceland króna		ZAR	South African rand	10,461
NOK	Norwegian krone	7,5359	CNY	Chinese yuan renminbi	7,956
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5576
CZK	Czech koruna	25,309	IDR	Indonesian rupiah	11 814,52
HUF	Hungarian forint	298,38	MYR	Malaysian ringgit	3,9495
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	54,662
LVL	Latvian lats	0,698	RUB	Russian rouble	40,116
PLN	Polish zloty	4,3394	THB	Thai baht	39,721
RON	Romanian leu	4,468	BRL	Brazilian real	2,4826
TRY	Turkish lira	2,3074	MXN	Mexican peso	17,517
			INR	Indian rupee	69,345

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

**Euro exchange rates <sup>(1)</sup>****29 May 2012**

(2012/C 152/02)

**1 euro =**

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,2523	AUD	Australian dollar	1,2737
JPY	Japanese yen	99,64	CAD	Canadian dollar	1,2835
DKK	Danish krone	7,4307	HKD	Hong Kong dollar	9,7224
GBP	Pound sterling	0,79940	NZD	New Zealand dollar	1,6481
SEK	Swedish krona	8,9865	SGD	Singapore dollar	1,6001
CHF	Swiss franc	1,2015	KRW	South Korean won	1 472,72
ISK	Iceland króna		ZAR	South African rand	10,4489
NOK	Norwegian krone	7,5205	CNY	Chinese yuan renminbi	7,9301
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5700
CZK	Czech koruna	25,512	IDR	Indonesian rupiah	11 886,57
HUF	Hungarian forint	297,90	MYR	Malaysian ringgit	3,9531
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	54,305
LVL	Latvian lats	0,6983	RUB	Russian rouble	40,3170
PLN	Polish zloty	4,3610	THB	Thai baht	39,735
RON	Romanian leu	4,4653	BRL	Brazilian real	2,4846
TRY	Turkish lira	2,3008	MXN	Mexican peso	17,4445
			INR	Indian rupee	69,7220

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

**Appointment of the Hearing Officer in trade proceedings**

(2012/C 152/03)

With effect from 1 May 2012, the Commission appointed Mr Dominique AVOT to the post of Hearing Officer, in accordance with Article 3 of the Decision of the President of the European Commission of 29 February 2012 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ L 107, 19.4.2012, p. 5).

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## V

(Announcements)

## ADMINISTRATIVE PROCEDURES

## EUROPEAN COMMISSION

**Notice of creditors' meeting of Landsbanki Íslands hf. pursuant to Directive 2001/24/EC of the European Parliament and of the Council on the reorganisation and winding-up of credit institutions**

(2012/C 152/04)

**CREDITORS' MEETING**

On Thursday, 31 May 2012, at 9.00, a meeting will be held with creditors in the winding-up proceedings of Landsbanki Íslands hf., Reg. No 540291-2259, at Hilton Hotel Nordica, Suðurlandsbraut 2, Reykjavík.

Meeting agenda:

1. meeting called to order, selection of chairman and secretary for the meeting;
2. status of the winding-up proceedings and presentation of the principal measures taken since the last creditors' meeting;
3. financials as of the end of Q1 2012;
4. disputes on claims lodged and other cases currently before the courts;
5. presentation of decisions by the Winding-up Board concerning partial payments which have been made to creditors, in accordance with the authorisation in the sixth paragraph of Article 102 of the Act on Financial Undertakings, No 161/2002, as subsequently amended;
6. creditors will have the opportunity to object to the Winding-up Board's decision on the exchange rate reference of partial payments as referred to in item 5 of the agenda. Should no such objections be submitted, the decision is considered final;
7. discussions and Q & A.

The meeting will be held in Icelandic with English interpretation available. Entitled to attend the meeting are those parties who have lodged claims against the bank which have not been finally rejected or parties to whom such claims have been lawfully assigned.

Reykjavík, 15 May 2012.

*The Winding-up Board of Landsbanki Íslands hf.*

Halldór H. BACKMAN, *Supreme Court attorney*  
Herdís HALLMARSÓTTIR, *Supreme Court attorney* and  
Kristinn BJARNASON, *Supreme Court attorney*

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# EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

## Call for expressions of interest for the members of the Scientific Committee of the European Union Agency for Fundamental Rights (FRA)

Ref.: CEI-SCIE-2012

(2012/C 152/05)

### 1. THE AGENCY

The European Union Agency for Fundamental Rights (FRA) is an advisory body of the European Union based in Vienna, Austria <sup>(1)</sup>.

The objective of the FRA shall be to provide the relevant institutions, bodies, offices and agencies and authorities of the Community and its Member States when implementing European Union law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights <sup>(2)</sup>.

The Agency focuses on the situation of fundamental rights in the EU and its 27 Member States. Candidate countries and countries which have concluded a stabilisation and association agreement with the EU can be invited to participate. This is currently the case for Croatia.

The FRA comprises the following bodies:

Management Board

Executive Board

Scientific Committee

Director

### 2. THE SCIENTIFIC COMMITTEE

This call for expressions of interest invites experts, possessing the necessary experience in one or more scientific disciplines in the field of fundamental rights, to express their interest in becoming members of the Scientific Committee of the Agency.

In accordance with Article 14, paragraph 1 of the Council Regulation (EC) No 168/2007 of 15 February 2007 (hereinafter referred to as the 'Regulation') establishing a European Union Agency for Fundamental Rights (hereinafter referred to as the 'Agency'), the Management Board of the Agency shall appoint a Scientific Committee which shall be comprised of 11 independent persons, highly qualified in the field of fundamental rights.

#### Role of the Scientific Committee:

In accordance with Article 14, paragraph 5 of the Regulation, the aforementioned Scientific Committee shall be the guarantor of the scientific quality of the Agency's work.

<sup>(1)</sup> Its founding regulation adopted by the Council of the European Union was published in OJ L 53, 22.2.2007, p. 1.

<sup>(2)</sup> Article 2 of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights.

For that purpose, the Director of the Agency shall involve the Scientific Committee in the preparation of documents drawn up in the context of the tasks the Agency is according to Article 4, paragraph 1(a-f) and (h) of the Regulation entrusted with, namely:

- the collection, recording and dissemination of relevant, objective, reliable and comparable information and data on fundamental rights, including results from research and monitoring communicated to the Agency by EU Member States, Union institutions, bodies, offices and agencies, research centres, national bodies, non-governmental organisations, third countries and international organisations including the competent bodies of the Council of Europe,
- the development of methods and standards to improve the comparability, objectivity and reliability of data on fundamental rights at a European level, in cooperation with the European Commission and the EU Member States,
- the carrying out of scientific research and surveys, preparatory studies and feasibility studies on issues related to fundamental rights,
- the formulation and publication of opinions on specific thematic topics related to fundamental rights,
- the publication of an annual report on fundamental rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice,
- the publication of thematic reports based on the Agency's own analysis, research and surveys,
- the development of a communication strategy and the promotion of dialogue with civil society, in order to raise public awareness of fundamental rights and actively disseminate information about the Agency's work.

#### **The functioning of the Scientific Committee:**

Different from the Management Board, the Scientific Committee is an advisory body that is not involved in the administration and the steering of the Agency. At the same time, the Committee is a working body that is involved in the research processes of the Agency. This implies that the members are expected to be fully committed to make a substantial contribution in terms of time and workload to the Agency's work; with their input being in the form of reasoned arguments concerning the quality of the Agency's work, which may necessitate detailed written contributions. According to the current working methods <sup>(1)</sup>, the individual members of the Committee supervise one or more specific research projects as 'rapporteurs' from the very inception of the project idea to the publication of the final results. However, decisions concerning the 'scientific quality of the Agency's work' are taken in a collective manner by the Scientific Committee's members. The Committee is headed by its Chairperson that is elected by the Committee for a term of office of one year <sup>(2)</sup>. The Chair is assisted by a Secretariat within the operational services of the FRA.

#### **Composition of the Scientific Committee:**

In accordance with Article 14, paragraph 1 of the Regulation, the Scientific Committee shall be composed of 11 independent persons, highly qualified in the field of fundamental rights. The Management Board shall appoint the members following a transparent call for applications and selection procedure after having consulted the competent committee of the European Parliament <sup>(3)</sup>.

The Management Board of the Agency shall ensure even geographical representation in the membership of the Scientific Committee it shall appoint. Furthermore, the Management Board aims to achieve a balanced participation between women and men in the Scientific Committee. It will also pay due attention to the scientific disciplines and specialisations with the aim of covering the different areas as defined by the Agency's Multiannual Framework.

<sup>(1)</sup> Adopted by the current Scientific Committee and subject to modification.

<sup>(2)</sup> Article 19 of the Rules of Procedure of the European Union Agency for Fundamental Rights.

<sup>(3)</sup> The Committee for Civil Liberties, Justice and Home Affairs ('LIBE Committee').



In accordance with Article 14, paragraph 1 of the Regulation, the members of the Agency's Management Board are precluded from being members of the Scientific Committee.

The members of the Scientific Committee shall be experts in one or more of the disciplines related to or relevant for human rights, inter alia:

- social sciences; including candidates with expertise in the fields of research methodologies and cross-national, comparative research,
- law, including comparative constitutional law, EU law and international law,
- political sciences,
- statistics.

**Term of office:**

The term of office of the members of the Scientific Committee shall be five years. It shall not be renewed. The members of the Scientific Committee shall be independent and they have to comply with the rules of confidentiality.

They may be replaced only at their own request, or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall forthwith inform the Commission and the Director of the Agency. Alternatively, the Management Board may declare, on a proposal of one third of its members or of the Commission, a lack of independence and revoke the person concerned. The Management Board shall appoint a new member for the remaining term of office in accordance with the procedure for ordinary members. Where the remaining term of office is less than two years, the mandate of the new member may be extended for a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its website.

**Meetings of the Scientific Committee:**

In accordance with Article 14, paragraph 6 of the Regulation, the Scientific Committee shall meet four times a year in plenary session. The venue of the meetings is the seat of the Agency (Vienna), unless an exception is made. The members are expected to participate in these meetings and to make a substantial contribution in terms of time and workload, including the review of and comments on material submitted to them — which should preferably be in written form and substantiated.

Members of the Scientific Committee shall be entitled to indemnities related to their participation in the activities of the Scientific Committee <sup>(1)</sup>.

**3. QUALIFICATIONS AND EXPERIENCE REQUIRED, CRITERIA OF ASSESSMENT**

*A. Eligibility criteria*

Applicants for membership of the Scientific Committee must fulfil the following four criteria:

- having a postgraduate or comparable university degree in a relevant scientific area,
- having seven years of proven professional experience dealing with fundamental rights in the context of disciplines such as the social sciences, political sciences, law and/or statistics — after obtaining the abovementioned degree,
- nationality of one of the EU Member States,

<sup>(1)</sup> Articles 24(1) and 25(1-3) of the Rules of Procedure of the European Union Agency for Fundamental Rights; and Decision No 11FIN 2010 of 20 April 2010 on the 'Rules on the reimbursement of expenses incurred by members or alternate members of the Management Board, members of the Executive Board, members of the Scientific Committee, external members of Selection Committee(s) and experts invited to attend meetings'.

- thorough knowledge of one of the official languages of the EU and a satisfactory knowledge of another language of the EU <sup>(1)</sup>.

#### B. Selection criteria

##### ESSENTIAL:

The **five essential requirements** for the selection of the members of the Scientific Committee are:

- **scientific excellence:** scientific excellence related to the fields of the mandate of the Agency, including publications in these and/or closely related fields,
- **cross-national, comparative experience:** extensive experience of having worked and/or conducted research in more than one country in fields closely related to the work of the Agency,
- **in-depth insight concerning fundamental rights in practice:** extensive experience with respect to legal, social sciences, policy and/or practical implementation of fundamental rights in practice — such as experience of fieldwork and data analysis, giving technical advice, legal judgments, or having worked for an international governmental or non-governmental organisation,
- **delivery of opinions and/or recommendations:** experience in drafting opinions, or recommendations at national or international level related to the fields of interest of the Agency, which can be in the form of conclusions and findings from major research,
- **excellent scientific English:** an excellent knowledge of written and spoken English. The working language of the Agency is English.

##### ADVANTAGEOUS:

The following three criteria will be considered as added **advantages**:

- holding or having held a permanent professorship or lectureship in an academic institution,
- a doctoral degree,
- professional experience in a multidisciplinary environment, preferably in an international context.

In particular the compliance with the abovementioned essential requirements will be assessed according to the following scale of merit points, facts and evidence:

#### 1. Scientific excellence (0-30 points)

- relevant scientific publications — minimum of 10 high-quality publications,
- relevant expert opinions, recommendations or conclusions delivered to public authorities,
- relevant research projects in different EU Member States,
- relevant teaching in different EU Member States and experience in chairing at international conferences, in participating in international working groups and in multidisciplinary projects.

#### 2. Cross-national, comparative experience (0-15 points)

- relevant experience of fieldwork, including e.g. multinational surveys,
- relevant experience in giving policy and legal advice in an international or transnational context,
- relevant experience in comparison of political systems and comparative constitutional law (EU).

#### 3. In-depth insight concerning fundamental rights in practice and policy (0-15 points)

- relevant experience in public administration or policy, including holding or having held leading positions,

<sup>(1)</sup> Note: the working language for all meetings and deliverables — for both the FRA and members of the Scientific Committee — is English. The FRA translates only the final versions of its deliverables into other EU languages, therefore, candidates are expected to have a very high standard of English — listening, reading and writing — as translation and interpretation are not possible with respect to the work of the Committee.

- relevant experience in the judiciary, including holding or having held leading positions,
- relevant experience in non-governmental organisations, including holding or having held leading positions,
- relevant experience in national human rights institutions or other human rights bodies at national level, including holding or having held leading positions,
- relevant fundamental rights experience at international level, including holding or having held leading positions.

#### 4. Delivery of opinions and/or recommendations/conclusions (0-15 points)

- extensive experience in translating scientific research into relevant recommendations for practice,
- extensive experience in providing concise and policy relevant expert-opinions to public administrations and NGOs,
- extensive experience as a scientific editor,
- experience in communicating fundamental rights to a broader public.

#### 5. Excellent scientific English (0-10 points)

- excellent scientific written English,
- extensive experience in scientific writing and editing in English.

**The criteria indicated as advantageous will be scored 0-5 points.**

The need to ensure a fair geographical and gender balance shall also be taken into account in the selection phase.

#### 4. SUBMISSION OF APPLICATIONS

Candidates are requested to submit their application electronically through the Agency's website: <http://www.fra.europa.eu>

**Only** online applications will be accepted. An application will be deemed admissible only if it includes:

- a **letter of interest** (maximum one page),
- a **registration form** provided on the Agency's website in the page related to this call for expressions of interest,
- a **list of scientific publications** in books and peer-reviewed journals, including **the abstracts of the five most relevant articles (three of these abstracts should be in English)**. Further supporting documents may be requested at a later stage of the selection.

Clarifications on the call and the applications procedure can be requested at the following address:

[selection-scientific-committee@fra.europa.eu](mailto:selection-scientific-committee@fra.europa.eu)

#### 5. SELECTION PROCEDURE, APPOINTMENT AND TERM

##### **Pre-selection:**

The Director of the Agency shall prepare and organise the work for the pre-selection of the members of the Scientific Committee. He or she shall chair a pre-selection panel, composed of the Heads of Department of the Agency and a person appointed for the purpose by the Council of Europe. Two members of the FRA Management Board may attend the pre-selection panel as observers.

The pre-selection panel shall verify the eligibility of the candidates, in accordance with the eligibility requirements. Failure to comply with one of these requirements will result in the exclusion of the concerned candidate from the next steps of the selection process.

The pre-selection panel shall then assess each eligible candidate according to the requirements for selection. It will draw up an 'individual assessment form' for each candidate which will include a short comment, highlighting the specific values/shortcomings of the candidate concerned.

The Director shall present the results of the pre-selection process to the FRA Executive Board, including information on the candidates deemed ineligible.

#### **Selection:**

The Executive Board shall assess all the candidates on the basis of the established selection requirements.

In this assessment the Executive Board shall take into account:

- the work of the pre-selection panel,
- the need that the specialist fields of the members of the Scientific Committee shall cover the most relevant scientific fields linked to fundamental rights, in accordance with the mission and objectives of FRA,
- the need to ensure even geographical and gender balance.

The Executive Board shall submit to the Management Board a list of most eligible candidates. This list should include more than 11 and fewer than 22 names. This list will also include merit points and a conclusion concerning the suitability as a member of the Scientific Committee for each candidate.

The Chair of the Executive Board shall present the results of the selection process to the Management Board, including a record of the candidates not included in the lists mentioned above as well as on candidates deemed ineligible.

The Agency's operational services shall provide technical and logistical support for the selection process.

#### **Appointment:**

On the basis of the list submitted by the Executive Board, the Agency's Management Board shall appoint the members of the Scientific Committee, after having consulted the competent committee of the European Parliament. The candidates not appointed shall be put on a reserve list.

In accordance with Article 14, paragraph 2 of the Regulation, members will be appointed for a five-year term, which shall not be renewable.

The reserve list shall be valid for the duration of the term of the appointed Scientific Committee. In case of a vacancy, the Management Board shall appoint a new member from the reserve list. The filling in of a vacancy shall be for the rest of the duration of the term of the Scientific Committee. However, in accordance with Article 14, paragraph 1 of the Regulation, the Management Board shall follow a process of appointment identical to the one followed for the appointment of the original member including consultation of the LIBE-Committee of the European Parliament. The LIBE-Committee may decide to make the names of the candidates and their CVs public.

### **6. DECLARATION OF COMMITMENT, INTEREST AND CONFIDENTIALITY**

The members of the Scientific Committee are appointed on a personal basis. Members shall undertake to act independently of any external influence. For this reason they will be requested to make a declaration of commitment and a declaration of interest <sup>(1)</sup>.

<sup>(1)</sup> Article 27(1-4) of Rules of Procedure and Annexes 2 and 3 to Annex I.

A declaration of confidentiality will be requested as well in order to comply with the rules of confidentiality when dealing with information specifically identified by the Agency as 'restricted or confidential' <sup>(1)</sup>.

#### 7. EQUAL OPPORTUNITIES

The FRA urges anyone meeting the eligibility criteria and interested in becoming a member of the FRA Scientific Committee to apply.

The FRA is an equal opportunities institution and ensures that its selection procedures do not discriminate on the basis of gender, colour, racial, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, or any other status.

#### 8. PROTECTION OF PERSONAL DATA

Please note that FRA will not return applications to candidates. The personal information FRA requests from candidates will be processed in line with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. This applies in particular to the confidentiality and security of such data.

Personal data shall be processed solely for the purpose of the selection procedure. Should the candidate have any query concerning the processing of his/her personal data, he/she shall address them to the following address:

selection-scientific-committee@fra.europa.eu

#### 9. DEADLINE

The closing date for submission of applications is **4 July 2012 at 13.00** (local time, GMT +1).

**Please note that due to the large number of applications we receive, the system may face problems in processing such amounts of data when reaching the deadline for submission of applications. We therefore advise to apply well ahead of the deadline.**

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<sup>(1)</sup> Article 26(1-3) of Rules of Procedure and Annex I to Annex 1.

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION  
POLICY

EUROPEAN COMMISSION

STATE AID — DENMARK

State aid SA.33728 (12/C) (ex 11/N) — Financing of a new multi-arena in Copenhagen

Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the  
European Union

(Text with EEA relevance)

(2012/C 152/06)

By means of the letter dated 21 March 2012, reproduced in the authentic language on the pages following this summary, the Commission notified Denmark of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned measure.

Interested parties may submit their comments on the measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Competition  
Directorate C  
Rue de la Loi/Wetstraat 200  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Fax +32 22961242

These comments will be communicated to Denmark. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

TEXT OF SUMMARY

**Procedure**

The Danish authorities have notified to the European Commission a measure for the financing of a new multi-arena in Copenhagen. The Commission has received two complaints concerning the proposed measure.

**Description of the measure**

The City of Copenhagen plans to build a 'multi-arena' of international standard which can provide facilities for music, culture and sport of a high, international level. The multi-arena will have a maximum capacity of 15 000 seats.

The main parties (hereafter 'the parties') involved in the multi-arena project are the City of Copenhagen and Realdania (a private foundation). Another actor, By & Havn (owned by the City of Copenhagen (55 %) and the Danish State (45 %)) shall provide for free the right to use land on which the multi-arena

is to be built. Contribution to the financing of the construction of the multi-arena will be provided also by Elitefacilitetsudvalget.

It is currently estimated that the total costs involved in the planning and construction of the multi-arena will be approximately DKK 1 100 million (EUR 148 million). The multi-arena project will be financed by equity from the parties combined with external financing (bank loans). Each of the parties will contribute DKK 325 million (EUR 43,7 million) to the capital of the Arena Company (total of DKK 650 million). The ownership will be proportionate to the contributions made, i.e. 50 % to each of the parties.

The operation of the multi-arena shall be handled by a private party (the operator) selected in an open and transparent tender procedure. An operational grant will be provided by DIF in return to the right to book the multi-arena for use for certain sport events. The selected operator of the arena will be obliged

to ensure that the access to the multi-arena is open to all users on non-discriminatory conditions at market rent.

### Assessment of the measure

The Commission, after carrying out the preliminary assessment, has doubts that the measure does not constitute State aid within the meaning of Article 107(1) of the TFEU. In particular, the preliminary assessment of the Commission shows that a selective economic advantage cannot be excluded at any level (construction, operation and use). In addition, the public co-financing of the multi-arena, without which the arena would not be constructed, would most likely thereby distort or, at least, threaten to distort competition. As the market for organising international events is open to competition between venue providers and event organisers, which generally engage in activities which are subject to trade between Member States, the effect on trade can be assumed. Therefore, at this stage and based on its preliminary assessment, the Commission is of the opinion that the notified measure might constitute State aid within the meaning of Article 107(1) of the TFEU.

Under the conditions referred to above, it is thus necessary to consider whether the measure can be found to be compatible with the internal market under Article 107(3)(c) of the TFEU. Such assessment includes examination of whether the measure pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition. Following its preliminary assessment, the Commission has doubts whether the proposed project could be deemed compatible under Article 107(3)(c) of the TFEU, at this stage at all three levels of possible aid (construction, operation and use).

Given these doubts and the impact of potential State aid on the investments of private operators it appears necessary that the Commission opens the formal investigation procedure.

#### TEXT OF LETTER

'Kommissionen skal herved meddele Danmark, at den efter at have undersøgt de oplysninger, som myndighederne har fremsendt om den omhandlede støtte, har besluttet at indlede proceduren efter artikel 108, stk. 2, i traktaten om Den Europæiske Unions funktionsmåde.

### 1. SAGSFORLØB

- 1) Den 7. december 2012 gav de danske myndigheder Europa-Kommissionen meddelelse om en støtteforanstaltning til finansiering af en ny multiarena i København i forlængelse af en anmeldelsesforberedende fase. Kommissionen har modtaget to klager vedrørende den anmeldte foranstaltning, og den 21. december 2012 bad Kommissionen ved en anmodning om oplysninger de danske myndigheder om at kaste lys over de punkter, der blev fremført i klagerne. De danske myndigheder fremsendte deres svar den 6. februar 2012.

### 2. DETALJERET BESKRIVELSE AF FORANSTALTNINGEN

- 2) København kommune planlægger at bygge en "multiarena" af international standard med musik-, kultur- og sportsfaciliteter på et højt internationalt niveau. Multiarenaen vil have plads til 15 000 siddende tilskuere.
- 3) Der findes allerede andre lignende faciliteter i København, der først og fremmest er beregnet til fodbold, men de danske myndigheder gør gældende, at disse ikke er tilstrækkeligt fleksible og skalérbare til at tiltrække internationale sports-, musik- og underholdningsarrangementer til København. Her skal særligt "Parken" nævnes, et stadium beliggende i centrum af København (FC Københavns hjemmebane, der også anvendes til store shows/koncerter med op til 45 000 tilskuere). Der findes også andre lignende faciliteter i nærheden, f.eks. i Malmø i Sverige.
- 4) Multiarenaprojektets væsentligste parter (herefter "parterne") er Københavns Kommune og Realdania (en privat fond) <sup>(1)</sup>. Endnu en aktør, By & Havn (ejes af Københavns Kommune (55 %) og den danske stat (45 %)), indrømmer vederlagsfrit brugsretten til den jord, hvorpå multiarenaen bygges.
- 5) Efter flere mislykkede forsøg vil der ifølge Københavns Kommune og Realdania ikke blive bygget en multiarena i København, medmindre projektet modtager offentlig medfinansiering.

#### 2.1. Opførelse og ejerskab

- 6) Parterne danner det fællesjede "arenaselskabet", der har til formål at opføre og eje multiarenaen samt at forvalte operatørkontrakten, mens driften af multiarenaen forestås af en særskilt operatør.
- 7) De samlede udgifter til planlægning og opførelse anslås for indeværende til cirka 1 100 mio. DKK (148 mio. EUR) <sup>(2)</sup>. Multiarenaprojektet vil blive finansieret ved parternes indskud af egenkapital kombineret med ekstern finansiering. Parterne bidrager hver med 325 mio. DKK (43,7 mio. EUR) til arenaselskabets formue (i alt 650 mio. DKK). Ejerskabsforholdene vil afspejle de tilførte bidrag, dvs. 50 % til hver af parterne. Den eksterne finansiering på 345 mio. DKK (46,4 mio. EUR) består af lån optaget på markedsvilkår med en afdragsperiode på 30 år. Desuden stiller Elitefacilitetsudvalget <sup>(3)</sup> 15 mio. DKK (2 mio. EUR) til rådighed til finansieringen af multiarenaens opførelse.

<sup>(1)</sup> Selv om Realdania tilstræber at skabe overskud på sit virke, er fonden ikke en profitmaksimerende virksomhed, men en filantropisk fond, der beskriver sit formål således: "Vi støtter og igangsætter projekter inden for det byggede miljø til gavn for almenvellet." Se [www.realdania.dk](http://www.realdania.dk).

<sup>(2)</sup> De samlede udgifter på 1 100 mio. DKK inkluderer de anslåede udgifter til renter samt pris- og lønregulering indtil 2015.

<sup>(3)</sup> Udvalget har til formål at opgradere idrætsfaciliteter til en standard, som gør det muligt at afholde sportsarrangementer på internationalt niveau. Det finansieres delvist af den danske stat.

- 8) I de første 40 år indrømmer By & Havn vederlagsfrit brugsretten til den jord, hvorpå multiarenaen bygges. Herefter betaler arenaselskabet markedslejen.
- 9) Det egentlige anlægsarbejde tildeles gennem et offentligt udbud.

## 2.2. Drift og brug

- 10) Multiarenaens drift overdrages til en operatør. Arenaselskabet indgår en aftale med en privat part (operatøren) om leje af multiarenaen <sup>(1)</sup> på grundlag af et offentligt udbud. Operatøren, som er valgt efter en åben og gennemsigtig udbudsrunde <sup>(2)</sup>, skal sikre, at alle har mulighed for at leje multiarenaen til markedslejen på ikke-diskriminerende vilkår. Operatøren er navnlig forpligtet til at udleje multiarenaen til forskellige brugergrupper og til forskellige aktiviteter og til ikke at give nogen enkel aktivitetsform uberettiget fortrinsbehandling, så det sikres, at arenaen anvendes til mange forskellige formål.
- 11) Gennem lejeaftalen med operatøren vil arenaselskabet få løbende indtægter, som forventes at blive på ca. [...] <sup>(\*)</sup> om året i de første 10 år. Desuden vil arenaselskabet få parkeringsindtægter. Det forventes, at den eksterne finansiering vil stå i et sådant forhold til operatørens leje, at indtægterne kan betale udgifterne til den eksterne finansiering.
- 12) DIF <sup>(3)</sup> stiller et driftstilskud på 5 mio. DKK (672 000 EUR) til rådighed om året i de første 10 driftsår (i alt 50 mio. DKK). Til gengæld får DIF ret til med et aftalt varsel at reservere multiarenaen til brug for internationale sportsmesterskaber og andre sportsarrangementer. Ifølge de danske myndigheder kommer DIF til at betale markedslejen til operatøren.
- 13) Derudover stiller Region Hovedstaden 5 årlige bidrag på 10 mio. DKK (1,4 mio. EUR) til rådighed som økonomisk støtte til væsentlige internationale arrangementer, som det ikke ville have været muligt at gennemføre på almindelige kommercielle vilkår. Enhver, inklusive multiarenaens operatør, kan ansøge om disse legater til afvikling af den type arrangementer i multiarenaen.

## 3. DE DANSKE MYNDIGHEDERS KOMMENTARER

- 14) De danske myndigheder gør gældende, at den foreslåede foranstaltning ikke omfatter statsstøtte og henviser til hidtidig Kommissionspraksis, ifølge hvilken støtte til infrastruktur under visse betingelser kan anses for ikke at

<sup>(1)</sup> Kontrakten med den valgte operatør forventes at få en varighed på 25 år. I februar 2012 modtog Kommissionen meddelelse om, at udbuddet af operatøropgaven var afsluttet, og at der var blevet valgt en operatør. Danmark skal bekræfte, at der ikke er blevet udbetalt støtte til projektet, herunder til den valgte operatør, og at standstill-forpligtelsen overholdes (se afgørelsens punkt 43).

<sup>(2)</sup> De danske myndigheder har bekræftet, at udbudsrunderne om valg af operatør er funderet på gennemsigtige, objektive og ikke-diskriminerende vilkår og krav, at den relative vægtning af de enkelte delkriterier er fastlagt på forhånd, og at pris indgår som et vigtigt kriterium i den samlede vurdering.

<sup>(\*)</sup> Forretningshemmelighed

<sup>(3)</sup> DIF er hovedorganisation for 61 specialforbund med et samlet medlemsantal på over 1,6 millioner fordelt på ca. 10 700 sportsforeninger. Ud over at være ansvarlig for både elite- og breddeidræt er DIF national olympisk komité og er således ansvarlig for den danske deltagelse ved OL.

udgøre statsstøtte i henhold til artikel 107, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde.

- 15) De danske myndigheder fremhæver den set fra deres synspunkt manglende økonomiske fordel, og de gør gældende, at ingen af de involverede parter har direkte eller indirekte økonomisk fordel af den offentlige medfinansiering. I kortfattet form anfører de danske myndigheder følgende:

— Ejere af arenaselskabet (Københavns Kommune og Realdania) får en ejerandel, der afspejler den indskudte kapital, og den eksterne finansiering finder sted på markedsvilkår. Realdanias deltagelse i projektet kan ikke betragtes som en investering, der ville have været foretaget af en almindelig markedsøkonomisk investor, og tilrådgivelsesstillelsen af jord har alene som konsekvens at sænke den særlige ikke-markedsbaserede risiko, som Realdania påtager sig gennem sin investering. Det samme gælder for Elitefacilitetsudvalgets tilskud, som alene bidrager til at sikre projektets levedygtighed. Hvad angår DIF's tilskud, så gøres det gældende, at de ikke er statsmidler, og at de under alle omstændigheder skal betragtes som betaling for retten til at reservere multiarenaen.

— Arenaselskabet opnår ikke en økonomisk fordel, eftersom multiarenaen vil blive anvendt til mange forskellige formål og være åben for forskellige brugere og aktiviteter. Desuden vil både arenaens opførelse og drift blive sat i udbud på en gennemsigtig, objektiv og ikke-diskriminerende måde, ligesom udvælgelseskriterierne og deres indbyrdes vægtning vil blive fastsat på forhånd (med hovedvægt på prisen).

— Operatøren vælges, som nævnt ovenfor, gennem en åben udbudsrunde på grundlag af gennemsigtige, objektive og ikke-diskriminerende betingelser og krav, og den leje, der betales til arenaselskabet, vil ikke ligge under markedslejen. Region Hovedstadens eventuelle tilskud gives også efter et åbent og gennemsigtigt forløb.

- 16) Hvis det fastslås, at multiarenaprojektet omfatter statsstøtte, gør de danske myndigheder gældende, at statsstøtten i så fald bør betragtes som forenelig med det indre marked i henhold til artikel 107, stk. 3, litra c), i traktaten om Den Europæiske Unions funktionsmåde. De gør gældende, at særligt de følgende punkter vil skulle tages i betragtning:

— Der foreligger et markedssvigt (projektet vil ikke blive gennemført uden offentlig medfinansiering)

— Den offentlige medfinansiering er begrænset til det absolut nødvendige, for at projektet kan gennemføres

— Medfinansieringen gives alene til etableringen (opførelsen) af faciliteterne, eftersom den efterfølgende drift vil foregå på markedsvilkår

— Opførelsen af sådanne faciliteter er indbegrebet af en stats ansvar over for offentligheden, og

— Fordi multiarenaen tilbyder anderledes faciliteter, vil den kun i meget begrænset omfang indgå i konkurrence om arrangementer, hvorom det kan antages, at de ellers ville blive afholdt andre steder i København.



#### 4. BEMÆRKNINGER FRA TREDJEPARTER

- 17) Som nævnt har Kommissionen modtaget to klager vedrørende den foreslåede foranstaltning. Begge disse gør gældende, at multiarena-projektet vil fordreje eller true med at fordreje konkurrencevilkårene på markedet for afholdelse af arrangementer, særligt på markedet for afholdelse af kommercielle mellemstore og store underholdningsarrangementer, og påvirke handlen mellem medlemsstaterne, eftersom operatøren vil indgå i konkurrence med operatører af lignende faciliteter i andre medlemsstater.
- 18) En af klagerne går dybere ind i vurderingen af projektet ved at gøre gældende, at der vil være tale om statsstøtte, der er uforenelig med det indre marked på grund af dens konkurrencefordrejende virkning på markedet for afholdelse af kommercielle mellemstore og store underholdningsarrangementer. Det gøres endvidere gældende, [...], vil statsstøtten kunne føre til vertikal markedsafskærmning.
- 19) Klageren gør særligt gældende, at multiarenaen giver operatøren en fordel, eftersom andre lignende faciliteter i København, der kan huse kommercielle mellemstore og store underholdningsarrangementer, enten selv har skullet finansiere opkøb af jord og anlæg eller har indhentet ekstern finansiering, som tilbagebetales med provenuet fra driften af de relevante faciliteter. Ifølge klageren sikrer en udbudsrunde ikke i sig selv, at den godtgørelse, som operatøren betaler til multiarenaens ejer, dækker arenaens finansieringsomkostninger. Desuden afhjælper udbudsprocessen ikke i sig selv det faktum, at den godtgørelse, som den private operatør betaler, vil være kunstigt lav sammenholdt med det investeringsafkast, som de konkurrerende operatører af lignende private faciliteter er nødt til at opnå.
- 20) Følgelig kan der ske det, at multiarenaens operatør gennem sit kunstigt lave omkostningsniveau kan tiltrække alle eller næsten alle mellemstore og store underholdningsarrangementer med entrébetaling på bekostning af andre lignende faciliteter, som vil tabe deres væsentligste indtægtskilde med den konsekvens til følge, at foranstaltningen ikke alene vil fordreje konkurrencevilkårene men endda kan true andre lignende faciliteter på deres overlevelse. Eftersom operatøren vil indgå i konkurrence med operatører af lignende faciliteter i andre medlemsstater (særligt i Sverige og muligvis også i dele af Tyskland), vil foranstaltningen få konsekvenser for samhandelen mellem medlemsstaterne.

#### 5. VURDERING AF FORANSTALTNINGEN

##### 5.1. Vurdering af, om der foreligger statsstøtte efter artikel 107, stk. 1, i traktaten om den Europæiske Unions funktionsmåde <sup>(1)</sup>

- 21) Ifølge artikel 107, stk. 1, i traktaten om den Europæiske Unions funktionsmåde »er statsstøtte eller støtte, som ydes ved hjælp af statsmidler under enhver tænkelig form, og som fordrejer eller truer med at fordreje konkurrencevilkårene ved at begunstige

visse virksomheder eller visse produktioner, uforenelig med det indre marked, i det omfang den påvirker samhandelen mellem medlemsstaterne.«

- 22) For at blive betragtet som statsstøtte, skal den anmeldte foranstaltning således opfylde følgende kumulative betingelser: 1) foranstaltningen skal indebære, at der anvendes statsmidler, 2) den skal give virksomheder en økonomisk fordel, 3) denne fordel skal være selektiv og fordreje eller true med at fordreje konkurrencevilkårene, og 4) foranstaltningen skal påvirke samhandelen mellem medlemsstaterne.
- 23) Hvad angår kravet om, at foranstaltningen skal indebære, at der anvendes statsmidler, og skal kunne henføres til staten, så er det åbenbart, at kriteriet er opfyldt i denne sag, eftersom foranstaltningen delvist finansieres af Københavns Kommune, og By & Havn (ejet af Københavns Kommune og den danske stat) stiller jord til rådighed. Københavns Kommune og den danske stat er selvsagt offentlige myndigheder, der anvender midler, som tilhører og/eller kontrolleres af staten. Tilskuddene fra Elitefacilitetsudvalget, der i hvert fald delvist er finansieret af den danske stat, og Region Hovedstaden (den regionale administrative enhed bestående af Københavns og Frederiksberg Kommune samt Bornholms Regionskommune) burde i princippet også betragtes som statsmidler. Kommuner er offentlige myndigheder og dermed en del af staten, hvorfor deres midler kan henføres til staten. Elitefacilitetsudvalget er utvivlsomt i det mindste delvist finansieret af den danske stat og modtager derfor statsmidler, som udvalget uddeler i overensstemmelse med sit formål. Hvad angår tilskuddene fra DIF, så gør de danske myndigheder gældende, at der ikke er tale om statsmidler. Da DIF også er Danmarks Olympiske Komité og dermed ansvarlig for den danske deltagelse i de olympiske lege, og da DIF's finansiering fremstår uklart, kan det imidlertid ikke på nuværende tidspunkt udelukkes, at DIF modtager og uddeler statsmidler, i det mindste i forbindelse med varetagelsen af denne opgave.
- 24) Kommissionen finder, at såvel opførelsen som driften af infrastruktur udgør en økonomisk aktivitet i sig selv (og derfor er underlagt statsstøttereglerne), hvis den infrastruktur, som der er tale om, anvendes eller vil blive anvendt til at forsyne markedet med varer eller tjenesteydelser. I denne sag er multiarenaen beregnet til f.eks. kommercielle musik-, kultur- og sportsarrangementer, altså til at forsyne markedet med tjenesteydelser. Dette synspunkt deles af Retten i Leipzig/Halle-sagerne <sup>(2)</sup>. I infrastruktursager kan støtte således ydes på flere forskellige niveauer: opførelse, drift og brug af faciliteterne.
- 25) Hvad angår opførelsen, kan det kun udelukkes, at der er tale om statsstøtte, hvis støtten er i overensstemmelse med det markedsøkonomiske investorprincip. I denne sag anerkender de danske myndigheder imidlertid, at multiarena-projektet ikke ville blive gennemført ved markedskræfternes virke alene, og at offentlig støtte er nødvendig for, at projektet kan gennemføres. Således gør de danske myndigheder ikke gældende, at projektet er i overensstemmelse med det markedsøkonomiske investorprincip.

<sup>(1)</sup> Med virkning fra den 1. december 2009 er EF-traktatens artikel 87 og 88 blevet til henholdsvis artikel 107 og 108 i traktaten om Den Europæiske Unions funktionsmåde. De to sæt bestemmelser er i alt væsentligt identiske. I denne afgørelse skal henvisninger til artikel 107 og 108 i traktaten om Den Europæiske Unions funktionsmåde efter omstændighederne forstås som henvisninger til EF-traktatens artikel 87 og 88.

<sup>(2)</sup> Forenede sager T-455/08 og T-443/08.

- 26) På nuværende tidspunkt finder Kommissionen, at den offentlige medfinansiering af multiarenaens opførelse udgør en fordel, og at der dermed er tale om statsstøtte, eftersom medfinansieringen utvivlsomt ikke er i overensstemmelse med det markedsøkonomiske investorprincip og afhjælper et markedssvigt (projektet ville ikke blive gennemført uden offentlig støtte). Kommissionen er derfor ikke på nuværende tidspunkt i stand til at udelukke, at der kan være tale om en økonomisk fordel på operatør- brugerplan.
- 27) Hvad angår driften, så skal de nøjagtige betingelser for valget af operatør og for aftalen mellem operatøren og arenaselskabet undersøges nærmere.
- 28) Hvad angår statsstøtte på brugerplanet, så skal det undersøges nærmere, om det sikres, at multiarenaen vil blive anvendt på ikke-diskriminerende vilkår uden favorisering af nogen specifik virksomhed og på markedsvilkår. Dette er især nødvendigt, fordi det er tilkendegivet, at der kan gives incitament eller fordele til enhver hyppig eller tilbagevendende bruger eller lejer af multiarenaen eller til dens sponsorer eller forretningspartnere.
- 29) I realiteten kan enhver virksomhed, der ejer, anvender eller forvalter en del af faciliteterne få gavn af støtten, med mindre disse virksomheder betaler priser, der tilsvarende prisen for sammenlignelige faciliteter på det relevante marked.
- 30) På nuværende tidspunkt kan Kommissionen således ikke udelukke, at den anmeldte foranstaltning omfatter statsstøtte på både operatør- og brugerplan. I særdeleshed er det nødvendigt med yderligere undersøgelser for at efterprøve, om valget af og aftalen med operatøren kan siges at være baseret på markedsvilkår, idet der også tages hensyn til de ovenfor nævnte bemærkninger fra tredjeparter. Hvad angår brugerplanet, så skal det efterprøves, om alle potentielle brugere har adgang til multiarenaen på lige og ikke-diskriminerende vilkår.
- 31) Kommissionens foreløbige vurdering viser således, at det ikke på noget plan (opførelse, drift eller brug) kan udelukkes, at der er tale om en selektiv økonomisk fordel, og at projektet derfor kan omfatte statsstøtte. Desuden vil den offentlige medfinansiering af multiarenaen, uden hvilken arenaen ikke ville blive opført, højst sandsynligt fordreje eller true med at fordreje konkurrencevilkårene. Eftersom markedet for afholdelse af internationale arrangementer er åbent for konkurrence mellem facilitetsoperatører og tilrettelæggere af arrangementer, der generelt er involveret i aktiviteter, som er genstand for samhandel mellem medlemsstater, kan det antages, at der vil ske en påvirkning af samhandelen. I denne sag er det endda endnu mere sandsynligt, at der vil ske en påvirkning af samhandelen mellem visse nabomedlemsstater på grund af placeringen af den planlagte multiarena. Desuden fandt Retten i sin nylige kendelse vedrørende Ahoy-komplekset i Nederlandene, at der ikke var nogen grund til at begrænse definitionen af markedet til den omtalte medlemsstats område <sup>(1)</sup>.
- 32) På nuværende tidspunkt og på grundlag af sin foreløbige vurdering kan Kommissionen således ikke udelukke, at den anmeldte foranstaltning omfatter elementer, der kan betragtes som statsstøtte i henhold til artikel 107, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde. Under de ovenfor nævnte omstændigheder er det således nødvendigt at overveje, om foranstaltningen kan betragtes som værende forenelig med det indre marked.

## 5.2. Forenelighedsundersøgelse

- 33) De danske myndigheder har gjort gældende, at hvis foranstaltningen skal betragtes som statsstøtte, så må den være forenelig med det indre marked i henhold til artikel 107, stk. 3, i traktaten om Den Europæiske Unions funktionsmåde. Før en foreslået foranstaltning kan betragtes som forenelig med det indre marked i henhold til denne undtagelse, skal Kommissionen undersøge, om foranstaltningen forfølger en politisk målsætning af fælles interesse, og om den er nødvendig og proportionel og ikke fordrejer konkurrencevilkårene urimeligt.
- 34) Hvad angår virkeliggørelsen af en politisk målsætning af fælles interesse, skal det bemærkes, at opførelsen af faciliteter beregnet til sport og andre offentlige arrangementer, og som understøtter forskellige typer aktiviteter til gavn for offentligheden, kan betragtes som et statsansvar, særligt i lyset af Amsterdam-traktatens Erklæring om sport og artikel 165 i traktaten om Den Europæiske Unions funktionsmåde. Opførelsen af faciliteter som multiarenaen indebærer desuden en stor og risikabel investering, som markedet muligvis ikke er i stand til at gennemføre på egen hånd.
- 35) Hvad angår den anmeldte foranstaltnings nødvendighed og proportionalitet, så noterer Kommissionen sig det anførte behov for kapacitetsudvidelse, grundet at den kapacitet, som de eksisterende lignende faciliteter kan tilbyde, er utilstrækkelig og derfor uegnet til visse typer arrangementer, osv. (ifølge de danske myndigheder har ingen andre lignende faciliteter i København kapacitet og fleksibilitet til at tiltrække væsentlige internationale sportsarrangementer og shows). I den henseende bør det også bemærkes, at multiarenaen til en vis grad vil overlappende med anden infrastruktur (der findes andre lignende faciliteter både i nærheden og i nærliggende byer/lande), og på nuværende tidspunkt er det ikke blevet tilstrækkeligt begrundet, hvorfor behovet for yderligere kapacitet ikke kan opfyldes af private aktører eller ved at benytte de eksisterende lignende faciliteter i Danmark. De danske myndigheders argument om, at multiarenaen muliggør afholdelsen af en række arrangementer, som angiveligt ikke kan finde sted i København på nuværende tidspunkt, og at multiarenaen således øger antallet af arrangementer og kun i begrænset udstrækning konkurrerer om arrangementer, som kan antages alligevel at ville være blevet afholdt i København, skal undersøges yderligere, særligt i lyset af de indsendte klager. Det er ligeledes nødvendigt yderligere at vurdere, om den offentlige finansiering virkelig er begrænset til det strengt nødvendige, og om den står i forhold til sit mål. Hvis det desuden også viser sig, at der er tale om statsstøtte til multiarenaen på drifts- og brugsplan, så vil det være nødvendigt at undersøge nærmere, om kravene om nødvendighed og proportionalitet er opfyldt (dvs. at undersøge de nøjagtige betingelser for valg af operatør og aftalen mellem operatøren og arenaselskabet).

<sup>(1)</sup> Rettens kendelse af 26. januar 2012, præmis 45, sag T-90/09, Mojo Concerts og Amsterdam Music Dome Exploitatie mod Kommissionen.

- 36) På baggrund af sin foreløbige vurdering er Kommissionen således i tvivl om, hvorvidt det anmeldte projekt kan betragtes som foreneligt med det indre marked i henhold til artikel 107, stk. 3, litra c), hvad angår alle tre mulige planer for støtte (opførelse, drift og brug).
- 37) På nuværende tidspunkt har Kommissionen ikke foretaget en vurdering af andre mulige undtagelser, i henhold til hvilke foranstaltningen kunne blive betragtet som forenelig med det indre marked. De danske myndigheder har ikke fremført yderligere specifikke argumenter i den henseende.

## 6. KONKLUSION

På grundlag af de oplysninger, som de danske myndigheder og tredjeparter har indgivet, finder Kommissionen efter sin foreløbige vurdering, at finansieringen af en ny multiarena i København – inden for rammerne af det ovenfor beskrevne projekt – kan udgøre statsstøtte som omhandlet i artikel 107, stk. 1, i traktaten om Den Europæiske Unions funktionsmåde.

- 38) Kommissionen er som anført ovenfor i tvivl om, hvorvidt den potentielle statsstøtte er forenelig med det indre marked.
- 39) I betragtning af disse tvivlsspørgsmål og af den potentielle statsstøttes indvirkning på private operatørers investeringer synes det påkrævet, at Kommissionen indleder en formel undersøgelsesprocedure.
- 40) Endelig vil indledningen af proceduren gøre det muligt for interesserede tredjeparter at fremsætte bemærkninger til de spørgsmål, som dette projekt rejser.
- 41) I lyset af de ovennævnte betragtninger opfordrer Kommissionen efter proceduren i artikel 108, stk. 2, i traktaten om Den Europæiske Unions funktionsmåde Danmark til senest en måned efter modtagelsen af dette brev at fremsætte sine bemærkninger hertil og fremsende alle oplysninger, der måtte være nyttige for vurderingen af støtten/foranstaltningen. Kommissionen opfordrer myndighederne til straks at sende en kopi af dette brev til den potentielle støttemodtager.
- 42) Kommissionen minder Danmark om, at artikel 108, stk. 3, i traktaten om Den Europæiske Unions funktionsmåde har opsættende virkning, og henviser til artikel 14 i Rådets forordning (EF) nr. 659/1999, hvor det er fastsat, at ulovligt udbetalt støtte kan kræves tilbagebetalt af støttemodtageren. I den henseende skal Danmark bekræfte, at der ikke er udbetalt støtte til dette projekt, og at Danmark vil overholde standstill-forpligtelsen, dvs. at støtten først kan ydes efter Kommissionens godkendelse, så den foreslåede foranstaltning ikke gennemføres, før Kommissionen har godkendt den<sup>(1)</sup>. I modsat fald vil foranstaltningen blive betragtet som ulovlig (ikke-anmeldt) støtte.
- 43) Kommissionen gør Danmark opmærksom på, at den vil underrette interesserede parter ved at offentliggøre dette brev samt et fyldestgørende resumé af det i *Den Europæiske Unions Tidende*. Kommissionen underretter ligeledes interesserede parter i de EFTA-lande, der har undertegnet EØS-aftalen, ved offentliggørelse af en meddelelse i EØS-tillægget til *De Europæiske Fællesskabers Tidende*, samt EFTA-Tilsynsmyndigheden ved fremsendelse af kopi af dette brev. Alle interesserede parter vil blive opfordret til at fremsætte deres bemærkninger senest en måned efter meddelelsens offentliggørelse.
- 44) Det skal også bemærkes, at denne afgørelse på ingen måde foregriber andre analyser, som Kommissionen eventuelt måtte udføre, for så vidt angår overholdelsen af EU's regler for offentlige indkøb.

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<sup>(1)</sup> Se artikel 3 i Rådets forordning (EF) nr. 659/1999 af 22. marts 1999 om fastlæggelse af regler for anvendelsen af EF-traktatens artikel 93 (nu artikel 88) i EF-traktaten (EFT L 83 af 27.3.1999, s. 1-9).

**STATE AID — SWEDEN****State aid SA.33618 (12/C) (ex 11/N) — Uppsala arena****Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union****(Text with EEA relevance)**

(2012/C 152/07)

By means of the letter dated 21 March 2012, reproduced in the authentic language on the pages following this summary, the Commission notified Sweden of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned measure.

Interested parties may submit their comments on the measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission  
Directorate-General for Competition  
Directorate C  
Rue de la Loi/Wetstraat 200  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË  
Fax +32 22961242

These comments will be communicated to Sweden. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

**TEXT OF SUMMARY****Procedure**

The Swedish authorities have notified to the European Commission a measure for a new arena in Uppsala, Sweden.

**Description of the measure**

The Uppsala arena will be designed for several types of sports (ice hockey, basketball, floor ball, handball and equestrian sports), several types of entertainment events (concerts, family shows, TV productions and gala events) as well as various types of meetings (congresses, conferences, company meetings, trade fairs, corporate events and church meetings). The largest 'arena room' will have the capacity to take 8 500 visitors at sport events and 10 000 at conventions and concerts.

The parties involved in the Uppsala arena project are the municipality of Uppsala, the Arena Company, the Property Company and the Events Company. The arena is budgeted at SEK 650 million (EUR 72 million). The municipality would contribute with a grant of SEK 150 million (EUR 16,5 million), the rest will be financed mainly by loans and to a certain extent by investments from private investors. The arena will be owned by the Property Company which in turn will be owned exclusively by private investors. The municipality will thus not own any part of the arena nor have any influence over the

activities of the Property Company. As regards security for its contribution, the municipality will receive an option to purchase the Property Company. The arena is to be constructed on the municipality's land, for which a site leasehold agreement will be entered into between the Property Company and the municipality with duration of 50 years.

The operation of the arena will be conducted by the 'Events Company' (owned by private investors). Separately, the municipality will enter into a lease agreement with the Events Company in order to regulate, inter alia, ice times for sports associations and the general public, as well as the municipality's use of the arena for its own events. Regarding the use of the arena, the Events Company has to ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions.

**Assessment of the measure**

The Commission, after carrying out the preliminary assessment, has doubts that the measure does not constitute State aid within the meaning of Article 107(1) of the TFEU. In particular, the preliminary assessment of the Commission shows that a selective, economic advantage cannot be excluded at any level (construction, operation and use). In addition, the public co-financing of the arena, which allegedly is limited to the funding gap (i.e. that no other market actors are willing to

contribute) and thus without the municipal contribution there would not be enough funds to finance the arena, would most likely thereby distort, or at least, threaten to distort competition. Even if most of the activities which are to be carried out in the arena are of local character, the arena will have the capacity to host large international events as well, and thus an effect on competition and trade between Member States cannot be excluded. Therefore, at this stage and based on its preliminary assessment, the Commission is of the opinion that the notified measure might constitute State aid within the meaning of Article 107(1) of the TFEU.

Under the conditions referred to above, it is thus necessary to consider whether the measure can be found to be compatible with the internal market under Article 107(3)(c) of the TFEU. Such assessment includes examination of whether the measure pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition. Following its preliminary assessment, the Commission has doubts whether the proposed project could be deemed compatible under Article 107(3)(c) of the TFEU, at this stage at all three levels of possible aid (construction, operation and use).

Given these doubts and the impact of potential State aid on the investments of private operators it appears necessary that the Commission opens the formal investigation procedure.

#### TEXT OF LETTER

The Commission wishes to inform Sweden that, after having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

### 1. PROCEDURE

- (1) On 7 December 2012, the Swedish authorities notified the European Commission a measure for a new arena in Uppsala following a pre-notification phase. On 17 January 2012, the Commission sent a request for information. The Swedish authorities submitted their reply on 16 February 2012. The Swedish authorities have provided a language waiver and agree that the decision will be adopted in English as the authentic language.

### 2. DESCRIPTION OF THE MEASURE

- (2) The parties involved in the Uppsala Arena project are the municipality of Uppsala<sup>(1)</sup> (hereafter the "municipality"), the Arena Company, the Property Company and the Events Company. The Arena Company will manage and coordinate the Arena project until the Property Company and Events Company have been formed. The Arena Company is thus the only one of the three companies which currently exists. It is owned by the private companies SH Bygg (45 %), Aros Holding (45 %) and the sports association Almtuna IS (10 %).

<sup>(1)</sup> Uppsala is the fourth largest city in Sweden (located approx. 70 km north of Stockholm).

- (3) In order to meet the current and future need for new facilities for sports and cultural events, the municipality of Uppsala claims, based on the result of studies made<sup>(2)</sup>, that a multifunctional facility of the size of the arena must be constructed.

- (4) The arena will be designed for several types of sports (ice hockey, basketball, floor ball, handball and equestrian sports), several types of entertainment events (concerts, family shows, TV productions and gala events) as well as various types of meetings (congresses, conferences, company meetings, trade fairs, corporate events and church meetings). The largest "arena room" will have the capacity to take 8,500 visitors at sport events and 10,000 at conventions and concerts.<sup>(3)</sup> The arena will also house a gym and restaurants.

- (5) There are six existing arenas/concert halls in Uppsala (four owned by the municipality and two privately owned). In addition, there are other large arenas within 1-2 hours distance from Uppsala, i.a. in Stockholm. The new arena is to be located next to the present Gränby Ice Rink (the largest existing indoor arena in Uppsala). However, the municipality claims that the present capacity is insufficient to meet the needs for arena space and does not allow hosting of larger sports and cultural events and that alternative means of expansion would be more expensive for the municipality<sup>(4)</sup>.

- (6) The municipality had hoped that private investors would be able to finance the realization of the arena without municipal intervention. However, this has proven impossible.

### 2.1. Construction and Ownership

- (7) The arena will be owned by the Property Company which in turn will be owned exclusively by private investors (currently not known which these will be). The municipality will thus not own any part of the arena nor have any influence over the activities of the Property Company. As regards security for its contribution, the municipality will receive an option to purchase the Property Company.

<sup>(2)</sup> For the Uppsala Arena, several surveys have been submitted e.g. a survey on the needs for facilities for organized sports associations in Uppsala, the result thereof showed that currently only around 70 % of the need for facilities for major sports in Uppsala is being satisfied and thus the lack of capacity would correspond to approximately 30 %. Another questionnaire amongst the residents of Uppsala in which 37 % of the residents believe that the Municipality should invest in sports halls, arenas and stadiums (the second most required investment after bike and walking paths), and that investments in sport events are preferred by 16 %.

<sup>(3)</sup> The larger of the two wings of the Arena will have the capacity to take 2,000 visitors at sports and 3,500 visitors at congresses and concerts. The smaller of the two wings of the Arena will have the capacity to take around 1,000 visitors at any event and the "conference room" of the Arena has room for 10-400 visitors.

<sup>(4)</sup> E.g. only maintaining the existing Gränby Ice Rink without any expansion of capacity would allegedly not be a realistic alternative, because it would not solve the need for new capacity and expanding the capacity of Gränby Ice Rink would allegedly involve higher costs for the municipality.

- (8) The key elements of the option are as follows: The option may not be exercised prior to the expiry of 5 years and after the expiry of 25 years from the date it comes into force; the option shall be transferable and may not be disposed of prior to the expiry of 5 years; and the option holder shall pay a fee for exercising the option [...] (\*). The option is allegedly valued, in the most likely scenario, i.e. the base scenario, at [...]. From the municipal's perspective, the value of the option lies primarily in the fact that the option can be sold in the future for a profit to someone that has a real interest in owning and operating the arena.
- (9) The Arena Project is budgeted at SEK 650 million (EUR 72 million). The municipality would contribute with a grant of SEK 150 million (EUR 16.5 million), the rest will be financed mainly by loans and to a certain extent by investments from private investors. The Property Company will receive SEK 15 million from the municipality, as an advance payment, once/if the project is found compatible with the internal market by the Commission for building planning and design work. The remaining amount of the municipal grant will only be provided once binding agreements regarding the private funding have been secured. Private investors shall contribute SEK 75–100 million (EUR 8-11 million) in a financial instrument, the exact form is under negotiation. The Property Company will take up loans of between SEK 400–425 million (EUR 44-47 million) for which the municipality will not guarantee any commitments. The lenders will take security in the arena.
- (10) The arena is to be constructed on the municipality's land, for which a site leasehold agreement will be entered into between the Property Company and the municipality with duration of 50 years. The lease shall be SEK 50,000 per year (EUR 5,500), which is claimed to be on market terms.

## 2.2. Operation and Use

- (11) The operation of the arena will be conducted by the "Events Company" (owned by private investors, which will not at the same time own shares of the property Company). The Events Company will handle the letting and booking of the arena and shall enter into a lease agreement with the Property Company for this purpose. There are currently [...] letters of intent from different private companies with experience from operating similar businesses.
- (12) Separately, the municipality will enter into a lease agreement with the Events Company in order to regulate, inter alia, ice times for sports associations and the general public, as well as the municipality's use of the arena for its own events. The basic features of the lease are the following: The lease will be for 25 years with a rent of SEK 15 million (EUR 1.7 million) per year, indexed annually according to consumer price index (however the first four years the municipality will pay two years rent in advance each year). In return, the municipality shall be entitled to use the arena around 20 %

of the total possible use of the Arena (on its own behalf or sublease to a third party). Besides the municipality's rent, the arena is estimated to have other revenues of initially SEK 30 million per year (EUR 3.3 million).

- (13) Regarding the use of the arena, the Events Company has to ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions. Thus, the arena is claimed to be multifunctional open to all with no main user.

## 3. THE VIEWS OF THE SWEDISH AUTHORITIES

- (14) The Swedish authorities have, for the purpose of the notification, assumed the presence of aid with regard to the proposed measure and only claim compatibility.
- (15) If the arena project would involve state aid, the Swedish authorities argue that it should be considered compatible with the internal market under article 107(3)(c) TFEU. They argue that in particular the following should be taken into consideration:
- The arena satisfies a well-defined objective of common interest in light of the arena's multifunctional character and present lack of facilities capacity in Uppsala, the municipality will be fulfilling its responsibility to the general public by making the arena project possible.
  - The necessity of the arena is based on the fact that the current arena capacity is not enough and not of the modern design that is demanded for current and future needs of which several studies have been made. <sup>(5)</sup> The current sports and cultural facilities in Uppsala are out of date and hence the arena will not compete with any of the arenas that are used today.
  - There is a market failure (the project would not be realised in the absence of public co-funding as without the municipal contribution there will not be enough funds to finance the arena project, the lease is necessary in order for the municipality to be granted access to the arena, and the site leasehold is essential as only the municipality can provide a place for the arena);
  - The public co-funding is limited to the strictly necessary in order to realise the project (the municipal contribution is limited to the funding gap i.e. what no other market actors are willing to contribute), the lease that the municipality will pay for 20 % of the arena's capacity is fair and on market terms (the municipality is paying a lower hourly price than the Events Company) and the site leasehold is the same as that paid by other site leasehold interest holders in Uppsala to the municipality for land that can only be used for the building of sports facilities;

(\*) Business secret

<sup>(5)</sup> See footnote 2 above.

- Alternatives are more expensive or not realistic. A possibility would be to maintain the existing arena (Gränby Ice Rink) without any expansion of capacity, however this would not be a realistic alternative to the arena because it would not solve the need for new capacity and the costs for operation and maintenance of an unchanged Gränby Ice Rink are particularly high<sup>(6)</sup>. A realistic alternative to the arena could be to expand the capacity of Gränby Ice Rink, although this would involve higher costs for the municipality<sup>(7)</sup> and the arena would not be in a position to satisfy the need for facilities to host larger events. Thus, the alternatives to the arena do not fulfil the need for facilities.
- Limited, if any, effect on competition and trade between member States since the economic activities are mostly local and thus do not significantly affect trade between EU member States. In addition the private facilities in the municipality have different profiles and cannot be considered to compete for the same audiences as the arena.

#### 4. ASSESSMENT OF THE MEASURE

##### 4.1. Existence of aid within the meaning of Article 107(1) of the TFEU<sup>(8)</sup>

- (16) 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*".
- (17) In order to be classified as a state aid, the notified project must thus fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Community trade.
- (18) 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 municipality of Uppsala itself will contribute with a direct grant, pay rent for use of the arena and provide the land where the arena is to be built. Municipalities, like Uppsala,
- are public authorities and part of the State and their resources thereby deemed attributable to the State.
- (19) The Commission is of the opinion that both the construction and operation of an infrastructure constitute an economic activity in itself (and are thus subject to state aid rules) if that infrastructure is, or will be used, to provide goods or services on the market. In this case, the arena is intended for e.g. music, culture and sport events on a commercial basis, i.e. for the provision of services on the market. This view has been confirmed by the General Court in Leipzig/Halle.<sup>(9)</sup> Consequently in infrastructure cases, aid may be granted at several levels: construction, operation and use of the arena.
- (20) Regarding the construction, according to the Swedish authorities, the municipality had initially hoped that private investors would finance the realization of the arena, but it has proven impossible to carry out the project without public funding. The direct grant by the municipality is thus claimed to be necessary, as without it there will not be enough funds to finance the arena project. In return for its contribution, the municipality will receive access to the arena (through a lease agreement) and an option to purchase the Property Company (see paragraph (8) above). The lease agreement, and its relatively long duration, is claimed to be necessary and also reducing risk since the municipality is expected to be an essential customer of the arena. If the municipality would abstain from using the arena, the prerequisites of the project would, according to Sweden, change dramatically. The municipality is also essential for the purpose of the site leasehold, as this measure, allegedly, can only be taken by the municipality. According to the Commission, at least at this stage, the public co-financing of the construction of the arena would constitute an economic advantage and thus aid, since the project would admittedly not be realised in the absence of public funding and the municipality's participation (direct grant, lease agreement and site leasehold) is essential to the arena project as a whole.
- (21) The operation of the Uppsala arena will be carried out by the Events Company, which will be a wholly privately owned company devoted to making the arena as profitable as possible. The municipality will not be involved in selecting the companies that will ultimately make up the ownership and management of the Events Company, as this selection will be coordinated by the Arena Company together with the Property Company, with the expressed condition that the Events Company and the Property Company will not be part of the same corporate group. At this stage, the details of the selection criteria are, at least to the Commission, not clear. The Swedish authorities have stated that "it is reasonable to assume that the selection criteria will be rational and business-focused" and that "the criteria will include experience and knowledge of the events, sports and restaurant markets and commitment to the Events Company". So far [...] letters of intent have been signed by private companies interested in becoming involved in the Events Company.

<sup>(6)</sup> The current value of maintaining the existing Gränby Ice Rink for the next 25 years is SEK 430 million (EUR 48.4 million) at a discount interest of 8 %.

<sup>(7)</sup> As regards the alternative of expanding the capacity of Gränby Ice Rink, it would increase the costs further and the current value of the costs for an expansion is SEK 455 million (EUR 51.3 million). The municipality's rent payments for the arena, in comparison, would allegedly be at the current value of SEK 382 million (EUR 43 million).

<sup>(8)</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

<sup>(9)</sup> Joint cases T-455/08 and T-443/08.

- (22) Regarding the operation of the Uppsala arena, and as explained above, this will be assigned to a predetermined company and the conditions of the lease agreement between the operator and the owner are unclear. Unless the conditions are market-conform, aid from the investment could be passed on to the operator. In addition, the municipality will enter into a lease agreement with the operator. The lease agreement shall be for 25 years with a basic rent of SEK 15 million (EUR 1.7 million) per year (however during the first four years of the agreement the municipality will pay two years rent in advance each year) in return for use of around 20 % of the total possible use of the arena. At this stage, the Commission takes the view that it is very unlikely that such conditions could be considered to represent market terms (e.g. the long duration of 25 years and the amount appears high in relation to the return). This could also point to the existence of aid at the operator level. The Commission can therefore not on the evidence available rule out state aid to the operator of the Uppsala arena. Thus, both the precise details of the selection process and criteria for the operator and its lease agreement with the Property Company would need to be clarified..
- (23) Regarding aid at the user level, it needs to be further verified whether use of the arena will be ensured on a non-discriminatory basis without favouring any specific undertaking(s) and on market terms. This is particularly so as there are indications that it may be intended mainly for elite sports associations and/or that it may become the home arena for (a) certain sport association(s).
- (24) In fact, the potential beneficiaries of the measure could be all undertakings, which can own, use or manage part of the facilities benefiting from the aid, unless these undertakings would pay comparable prices for comparable facilities on the same relevant market.
- (25) Considering the above and in particular the lack of details regarding the selection of the operator and its lease agreement with the Property Company, and possible main user(s) and its/theirs economic activities, the Commission is not, at this stage, in a position to rule out an economic advantage at the operator and user levels.
- (26) Thus, the preliminary assessment of the Commissions shows that a selective economic advantage cannot be excluded at any level (construction, operation and use) and consequently the project would involve state aid. In addition, the public co-financing of the arena, which allegedly is limited to the funding gap (i.e. that no other market actors are willing to contribute) and thus without the municipal contribution there would not be enough funds to finance the arena, would most likely thereby distort, or at least, threaten to distort competition. Even if most of the activities which are to be carried out in the arena are of local character, the arena will have the capacity to host large international events as well, and thus an effect on competition and trade between Member States cannot be excluded. It has also been stated that the majority of the arena's capacity will have to be rented out commercially in fierce competition in order for the arena to be profitable. Moreover, the General Court has recently, in its Order concerning the Ahoy complex in the Netherlands, held that there was no reason to limit the market for use of this type of facilities to the territory of that Member State.<sup>(10)</sup>
- (27) Therefore, at this stage and based on its preliminary assessment, the Commission cannot exclude that the notified measure includes elements of state aid within the meaning of Article 107(1) TFEU. Under the conditions referred to above, it is thus necessary to consider whether the measure can be found to be compatible with the internal market.
- #### 4.2. Compatibility assessment
- (28) The Swedish authorities argued that if the measure was found to constitute state aid, this should be declared compatible under article 107(3)(c) TFEU. In order for a proposed measure to be found compatible with the internal market under this derogation, the Commission examines whether it pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition.
- (29) With regards to the achievement of a policy objective of common interest, it is noted that the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered as a State responsibility, particularly in light of the Amsterdam Declaration on Sport and article 165 TFEU. In addition, the construction of arenas implies a large and risky investment which the market may not be able to carry out entirely on its own.
- (30) Concerning necessity and proportionality of the proposed measure, the Commission notes the alleged need of additional arena capacity as there is a lack of capacity in existing arenas and/or existing arenas would be inappropriate for certain types of events etc (e.g. the Swedish authorities claim that the existing facilities have become outdated and would need to be modernised if they are to meet the modern requirements of the public and that the privately owned facilities typically arrange only smaller types of events). In this respect it should also be noted that the arena would, at least to some extent, result in duplication of infrastructures (other arenas exist both directly in the areas and in nearby cities/countries) and at this stage it has not yet been sufficiently justified why the need of the arena's additional capacity cannot be met by private actors or by use of the existing arenas in Uppsala and/or expansion thereof. The argument that expanding and/or renovating existing arenas would be more expensive can easily be questioned as the costs of the municipality for the construction and use of the new arena would be SEK 150 million, EUR 16.5 million, (direct

<sup>(10)</sup> Case T-90/09, *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v. the European Commission*, Order of the General Court of 26/01/2012, paragraph 45.



grant) + SEK 15 million/year (EUR 1.7 million) for 25 years for use of 20 % of the arena capacity. Consequently it would need to be further justified how/why expanding/renovating the existing arena (located next to the proposed new arena) would be more expensive than constructing the new proposed arena. Moreover, it would also need to be further assessed whether the public financing is indeed limited to the strictly necessary and whether it is proportionate in order to achieve its objective. Furthermore, in case state aid would also be found at the level of operation and use of the arena, it would need to be further examined (e.g. the selection of the operator and its agreement with the Property Company) whether the necessity and proportionality requirements are fulfilled.

- (31) With regards to the user level, the openness to all potential users and, access conditions should be further verified and/or justified in particular taking into account how much the arena appears to be intended/used by elite sports associations and/or may become the home arena for (a) certain sport association(s). It should also be further examined whether the municipality's foreseen use of the arena (approximately 20 % of the time), really means that the arena is open to the general public.
- (32) Consequently, following its preliminary assessment, the Commission has doubts whether the proposed project could be deemed compatible under Article 107(3)(c) TFEU, at this stage at all three levels of possible aid (construction, operation and use) in accordance with the above.
- (33) At this stage, the Commission has not carried out an assessment with respect to other possible derogations, under which the measure could be found compatible with the internal market. In this respect, the Swedish authorities did not bring forward any further specific arguments.

## 5. CONCLUSION

- (34) Based on the information submitted by the Swedish authorities, the Commission, after carrying out the preliminary assessment, is of the opinion that the financing by the municipality of Uppsala of a new arena in Uppsala - within the context of the project as outlined above - might constitute state aid within the meaning of Article 107(1) TFEU. As outlined above, the Commission has doubts as regards the compatibility of the potential state aid with the internal market.
- (35) Given these doubts and the impact of potential state aid on the investments of private operators it appears

necessary that the Commission opens the formal investigation procedure.

- (36) Finally, the opening of the procedure enables interested third parties to comment on the questions raised by this project.
- (37) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Sweden to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (38) The Commission wishes to remind Sweden that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient. In this respect, Sweden is to confirm that no aid has been paid with regards to this project and that the standstill obligation, i.e. that the aid can only be granted after the Commission has approved the aid, will be respected and thus the proposed measure will not be put into effect before it has been authorised by the Commission.<sup>(11)</sup> If not, the measure is considered as unlawful (non-notified) aid.
- (39) The Commission warns Sweden that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
- (40) It should also be noted that this decision in no way prejudices any possible further analysis by the Commission as far as compliance with EU public procurement rules is concerned.
- (41) The Commission notes that Sweden has agreed that the decision shall be adopted in English as the authentic language.'

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<sup>(11)</sup> See Article 3 of Regulation 659/1999, Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art.88) of the EC Treaty. Official Journal L 83/1, 27.03.1999, p. 1-9.

**Prior notification of a concentration****(Case COMP/M.6603 — Hon Hai/Sharp/Sharp Display Products)****(Text with EEA relevance)**

(2012/C 152/08)

1. On 21 May 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which the undertakings Hon Hai Precision Industry Co. ('Hon Hai', Taiwan) and Sharp Corporation ('Sharp', Japan) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Sharp Display Products Corporation ('SDP', Japan) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Sharp: manufacturing and sale of a wide range of consumer and information products and electronic components,
- for Hon Hai: providing electronic manufacturing services to original equipment manufacturers of electronic products, and manufacturing and selling a limited range of electronic products and components under its own brand,
- for SDP: manufacturing and sale of thin film transistor liquid crystal displays ('TFT-LCD') panels.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope the EC Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6603 — Hon Hai/Sharp/Sharp Display Products, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

**Prior notification of a concentration****(Case COMP/M.6517 — The Klesch Group/Arkema's Vinyl Products business)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2012/C 152/09)

1. On 21 May 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which the undertaking Klesch Group Limited, controlled by the Klesch Group ('The Klesch Group', Malta) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Arkema's Vinyl Products business by way of purchase of shares.
2. The business activities of the undertakings concerned are:
  - for the Klesch Group: oil refining and aluminum,
  - for Arkema's Vinyl Products Business: the production of chlorine and chlorinated derivatives, caustic soda, polyvinyl chloride (PVC) subdivided into emulsion PVC and suspension PVC, pipes, compounds and profiles.
3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation <sup>(2)</sup> it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6517 — The Klesch Group/Arkema's Vinyl Products business, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

<sup>(2)</sup> OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').

**Prior notification of a concentration**  
**(Case COMP/M.6559 — Eurochem/K+S Nitrogen)**  
**Candidate case for simplified procedure**  
**(Text with EEA relevance)**  
(2012/C 152/10)

1. On 21 May 2012 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> relating to the proposed acquisition by which the undertaking Eurochem Trading GmbH ('Eurochem Trading', Germany), belonging to the group OJSC — Mineral and Chemical Company Eurochem ('Eurochem', Russia), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the following undertakings (together, 'K+S Nitrogen'), controlled by K+S AG ('K+S', Germany), K+S Nitrogen GmbH (Germany), fertiva GmbH (Germany), K+S Gübre ve Endüstri Ürünleri San.ve Tec. Ltd Sti (Turkey), K plus S Iberia S.L. (Spain), K+S Agricoltura SpA (Italy), K+S Hellas SA (Greece), K+S Agro México SA de C.V. (Mexico) and K+S Interservicios SA de C.V. (Mexico) by way of purchase of shares and acquire(s) within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the following undertakings, controlled by K+S: K+S Nitrogen France SAS (France), Shenzhen K+S Trading Co. Ltd (China), K+S Asia Pacific Pte. Ltd (Singapore) and K+S AG (Germany) by way of purchase of assets, the acquired undertakings and assets together constituting K+S's current activities in the sale of nitrogen fertilisers (the 'Proposed Transaction').

2. The business activities of the undertakings concerned are:

- Eurochem is active in the mining of minerals, coal and the manufacture and sale of mineral fertilisers,
- K+S Nitrogen sells straight nitrogen and NPK fertilizers of independent companies, historically primarily manufactured by BASF in Antwerp.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation <sup>(2)</sup> it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6559 — Eurochem/K+S Nitrogen, to the following address:

European Commission  
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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

<sup>(2)</sup> OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').







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