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Subject: State aid SA.43206 (2015/N) – The Project on Vilnius Concerts and Sports Palace Reconstruction and Arrangement to Congresses, Conferences and Cultural Events (The Vilnius Congress Centre project) – Lithuania

Sir,

1. PROCEDURE

(1) By electronic notification registered on 29 September 2015 at the Commission (SANI 2015/096014), the Lithuanian authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), the above-mentioned measure. The Commission requested additional information on 30 October 2015. The Lithuanian authorities submitted the requested information on 24 November 2015.

2. DETAILED DESCRIPTION OF THE MEASURE

(2) The measure concerns the public funding of the reconstruction of the Vilnius Concerts and Sport Palace and its rearrangement into a congress, conference and cultural events centre (“VCC”). The VCC is planned to be used for large-scale international congresses and conferences and cultural events (e.g. exhibitions, concerts, educational programmes)¹ in Vilnius, Lithuania.

¹ As from 2019, it is planned that the VCC should host at least 10 large-scale international congresses and conferences (with at least 2500 participants) and at least 10 cultural events per year. No sport events are planned to be held at the VCC.

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- (3) The total investment cost is estimated at around EUR 22.74 million. The acquisition of the building and land from its current private owner (estimated at EUR 5 million) will be funded from State resources. The renovation of the building (estimated at EUR 12.964 million) will be funded from the national Climate Change Fund² and funds contributed by the Ministry of Culture of Lithuania. The future operator of the VCC will have to contribute the remaining EUR 4.774 million for the purchase of equipment.

Table 1: Project funding sources

Project funding structure	Entity	EUR thousand
Acquisition of the complex of Vilnius Concerts and Sports Palace and land	Turto Bankas	5,000
Reconstruction	Climate Change Fund	8,000
Reconstruction	Ministry of Culture	4,964
Purchase of equipment	Private investor	4,774
Total funding resources		22,738

- (4) While the VCC will be owned by the State, for the management of the State property and the implementation of the investment project, the State acts through Turto Bankas³ (a 100% State-owned company that is controlled by the Ministry of Finance of Lithuania⁴). In particular, Turto Bankas will carry out the procedures relating to the acquisition of the buildings from its current (private) owner⁵ and will select a third party to construct/upgrade the VCC on an open, transparent and non-discriminatory basis, having due regard to the applicable EU public procurement procedures.⁶

² Main sources of Programme's funds are from the sale of Assigned Amount Units and EU Emission Allowances. The Ministry of Environment of Lithuania manages the fund.

³ The rights and obligations of the State-owned company Turto Bankas are set out in the Law on the Manager of Centrally Managed State Property of Lithuania, and include amongst others, the right to manage, use and dispose of State immovable property, to acquire new properties under the State's ownership, to organise and coordinate renovation works, to enter into sale-purchase or other agreements on behalf of the State (e.g. lease agreements).

⁴ According to Article 3(2) of the Law on the Manager of Centrally Managed State Property, the rights and obligations of the Ministry of Finance include, amongst others, approving Turto Bankas' articles of association, approving its activity reports and financial statements, appointing and removing the manager of the enterprise and the chairperson of the board and board members, setting and approving the prices and tariffs for services provided by the enterprise (unless laid down by law).

⁵ The Ministry of Finance will allocate funds to Turto Bankas for the acquisition of the buildings. Turto Bankas will commission an independent appraisal of the property in order to establish its market price. It will engage in direct negotiations with the current owner of the building in order to obtain the most advantageous price for the State (in line with the market price). The acquisition will be carried out by means of direct negotiations in accordance with the "Description of the Procedure for Purchase of the Land, Existing Buildings or Other Immovable Assets or Acquisition of Rights to Such Assets".

⁶ Turto Bankas will procure (in accordance with the Lithuanian Law on Public Procurement) services necessary for the preparation of pre-project documents, services of experts and design,

- (5) Turto Bankas will also select a third (private) party to carry out the operation of the VCC on the basis of an open, transparent and non-discriminatory tender procedure. The lease contract will be awarded to the bidder that offers the highest concession fee / rental price.⁷ Neither the Ministry of Finance, nor Turto Bankas or any other public authority, will in any way be involved in the management of the facility. Thus the selected operator will render services completely on his behalf and responsibility. Moreover, the operator will not receive any public funding and will pay a concession fee (to be determined through the open and non-discriminatory tender process) for the right to use the facility.
- (6) The operating company will rent out the facility to various users on a non-discriminatory and transparent basis. There is no main and/or captive user of the VCC. All users/organisers of events will pay market levies determined by the selected private operator (on the basis of a market analysis of the fees payable for the use of comparable infrastructure). These requirements will be included in the terms and conditions of the tender for selecting the operator and will form a part of the lease contract.
- (7) The Lithuanian authorities have also explained the importance of this measure for the socio-economic development of the region in that the VCC will contribute to improving the image of Lithuania as a location for high-level international events. In turn, this will have an indirect positive impact on the tourism sector, on employment and on the general business climate in Lithuania.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (8) 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"*.
- (9) Therefore, for a measure to constitute State aid within the meaning of that provision, the following cumulative conditions apply: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Union trade.

reconstruction works of the buildings, territory arrangement works. The main criterion for the selection of the suppliers will be the lowest price.

⁷ Turto Bankas will select the operator and award the lease pursuant to Article 15 of the Law on the Management, Use and Disposal of State and Municipal Assets. The lease will initially be awarded for a period of 10 years and a new tender will be held upon its expiry (as per Resolution No 1524 on the Lease of State Tangible Property of 14 December 2001). The minimum rental price of the State-owned property will be established either by an independent evaluator or according to the "Rules on the Calculation of Rentals for the Lease of State-Owned Fixed and Short-Term Tangible Assets".

- (10) With regard to the requirement that the measure must be granted through State resources and be attributable to the State, this criterion is clearly fulfilled in the present case as the measure is decided by the State and the State will contribute direct grants for the acquisition and renovation of the VCC.
- (11) The public funding of the construction of the VCC may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure that will be used for commercial activities constitutes State aid, according to the *Leipzig/Halle* airport judgment of the Court of Justice⁸, if all the requirements of Article 107(1) TFEU are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. In the present case, the VCC will be used to provide services on the market for organising international congresses, conferences and cultural events, hence for an economic activity. Consequently, it needs to be assessed whether there is State aid to the different actors involved in the project.
- (12) In the present case, in addition to its public functions, the State acts as an undertaking that will own and reconstruct a facility that will be used for an economic activity. Therefore, the measure confers a selective advantage to the owner and investor in the infrastructure (i.e. the State acting through the State-owned company Turto Bankas) that is relieved of a part of costs which it would normally have to bear for the renovation of the VCC.
- (13) The Commission reminds that the Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking therefore depends entirely on the nature of its activities. This general principle has three important consequences: (1) the status of the entity under national law is not decisive, (2) the application of the State aid rules as such does not depend on whether the entity is set up to generate profits, and (3) the classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.
- (14) The Lithuanian authorities acknowledged that the project would not be carried out without public funding as a facility like the VCC is not sufficiently profitable for a private investor and thus not economically viable. The funding gap analysis demonstrates that the operating profit over a period of 15 years (EUR 3.150 million) will not cover the full investment costs of the project (EUR 22.74 million); therefore it must be considered that a private investor would not have undertaken it. The operating profit is deducted ex ante on the basis of reasonable projections.

⁸ Cases T-443/08 and T-455/08 *Freistaat Sachsen and Land Sachsen-Anhalt and Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:T:2011:117, para. 107; Case C-288/11 *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission*, ECLI:EU:C:2012:821. See also the judgement of 24 October 2002, case C-82/01P *Aéroport de Paris*, ECLI:EU:C:2002:617.

- (15) In this case, the funding gap analysis is carried out at the level of the owner-investor, i.e. the State in its capacity as an economic operator that makes available conference facilities on the market.
- (16) The facility will be put at the disposal of an undertaking (the operator) which will rent it out to various users against remuneration. The operator will be a private entity selected through an open, transparent and non-discriminatory procedure, but, taking into account the expected operating profit of the VCC, it is very unlikely that it would pay the full costs of amortization of the renovated infrastructure. The term of agreement for the lease of the state-owned infrastructure will be 10 years and a new tender will be held upon its expiry. The operator will furthermore not receive any public funding and will pay a concession fee, at a level to be determined through the tender process for the right to use the infrastructure. While these arrangements limit the advantage to the selected operator to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator cannot be excluded. However, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.
- (17) Furthermore, as described above, the operating company will rent out the facility to various users on a transparent and non-discriminatory basis. There will be no main user of the facility and all users/organisers of events will pay market prices determined by the selected private operator calculated on the basis of a market analysis (taking into account the fees payable for the use of comparable infrastructure). Nevertheless, in the absence of further clarification on how that fee will be calculated, an advantage cannot be entirely excluded. Therefore, the renting of the VCC may constitute aid for the users if the users can be considered undertakings within the meaning of Article 107 TFEU and if they pay a rent below the rent for the use of comparable infrastructure under normal market conditions. Non-professional users do not qualify as undertakings within the meaning of Article 107 TFEU. In the present case, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.
- (18) Finally, when aid granted by a Member State strengthens the position of an undertaking compared with that of other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid⁹. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹⁰. The market for organising congress and cultural events is open to competition between venue providers and event organisers, some of which operate in several Member States or belong to international groups. In the present case, the VCC has the objective and the capacity to attract and host

⁹ See Case 730/79 *Philip Morris v Commission*, ECLI:EU:C:1980:209, para. 11; Case C-53/00 *Ferring*, ECLI:EU:C:2001:627, para. 21; and Case C-372/97 *Italy v Commission*, ECLI:EU:C:2004:234, para. 44.

¹⁰ Case T-214/95 *Het Vlaamse Gewest v Commission*, ECLI:EU:T:1998:77.

European and international congresses and conferences. Therefore, the aid is liable to distort competition and affect intra-Union trade.

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

3.2. *Compatibility*

- (20) The public financing of the construction of the infrastructure with the aim to offer it for commercial use may be compatible with the internal market pursuant to Article 107(3)(c) TFEU if it pursues a policy objective of common interest, is necessary and proportionate and does not cause undue distortion of competition.
- (21) With regard to the achievement of a policy objective of common interest, the construction of venues for cultural and educational events as well as providing a meeting place (for conferences, fairs etc.) contributes to the promotion of cultural diversity, according to Article 167(4) TFEU. In addition, the reconstruction of the VCC will contribute to overall welfare through an increased supply of cultural offerings and large-scale international events.
- (22) In addition, the entire territory of Lithuania is an area eligible for regional aid on the basis of Article 107(3)(a) TFEU.¹¹ The development of a congress centre that has the potential to attract and host large-scale international events will foster the regional development (e.g. business, tourism, employment etc.) of Lithuania. Thus it will contribute to reducing regional disparities within the EU and will promote the policy objective of regional development and cohesion.
- (23) In view of the above, the Commission considers that the reconstruction of the facility contributes to the attainment of policy objectives of common interest.
- (24) Concerning the necessity and proportionality of the notified measure, the Lithuanian authorities demonstrated the need for the additional capacity of the congress facility due not only to an increasing number of events that have been hosted in Lithuania¹² but also to an increased demand for organising international congresses and conferences in the country.¹³ Additionally, the Lithuanian authorities pointed out that there is lack of well-suited facilities

¹¹ See State aid No. SA.38510 (2014/N) – Republic of Lithuania – Regional aid map 2014 – 2020.

¹² In 2014, Vilnius hosted 408 international conferences which is an increase by at least 2 times compared to the number of events held in 2012. The number of participants in international conferences in Lithuania increased by 42.3% compared to 2012. The Lithuanian authorities excluded from the analysis the data for 2013 when a larger number of targeted events took place in Vilnius due to the fact that Lithuania held the EU Presidency.

¹³ Based on the statistical information provided by the Vilnius Tourist Information Centre and Convention Bureau, due to the lack of suitable infrastructure for organising large-scale international events, Vilnius misses the opportunity to host a substantial number of events every year. It is estimated that Vilnius does not submit proposals for at least 10 events per year and at least for 50 events per year Vilnius is not even considered as a possible location due to the lack of appropriate facilities.

that meet the standards expected by organisers of international events¹⁴ and that have sufficient capacity to accommodate large-scale events (with at least 2500 participants).

- (25) The Lithuanian authorities have explained that the VCC aims to attract events that so far could not take place in Vilnius due not only to size but also to quality and image of the facilities. Other existing venues in Vilnius are considered to be too small, not sufficiently modern or predominantly intended for informal mass events (e.g. sport, entertainment).
- (26) The main existing facilities in Vilnius are the Siemens Arena, Concert Hall Compensa and the Lithuanian Exhibition and Congress Centre LITEXPO. The Siemens Arena (with 8000 seats) that is primarily used for sports and entertainment events and the Concert Hall Compensa (2300 seats) that is mainly used for concerts are considered to be inappropriate for organising high-level international conferences as they do not meet international standards for congress facilities.¹⁵ The conference centre LITEXPO can accommodate 1800 participants and so far has been used as the primary facility to host conferences in Vilnius. However, it does not have sufficient capacity to attract large-scale international events with more than 2500 participants.
- (27) Concerning venues in countries of the Baltic region (Estonia and Latvia), the following has been taken into account. The existing venues suitable to host international congresses, conferences and similar events in Latvia and Estonia are the Riga Congress Centre and Solaris Centre (Tallinn) that can accommodate 1142 and 1800 participants, respectively. However, the functionality of the facilities and their ability to host large-scale international events is limited.¹⁶ The Radisson Blu Hotel Latvija meets the requirements for organising international conferences but can only accommodate 1200 participants.
- (28) Consequently, the Commission considers that Lithuania has demonstrated the lack of capacity, at least for certain types of large-scale high profile events,

¹⁴ According to Lithuania, a facility that can host high-level international events should fulfil the following criteria: (i) capacity to accommodate at least 2500-3000 participants, (ii) accessibility within 20 minutes from the city centre or other accommodation, (iii) available space for banquet events and catering available at the facility or in a nearby premise, (iv) possibility to separate premises for workshops etc., (v) accessibility by disabled people.

¹⁵ Lithuania explained that the Siemens arena fulfils the criteria for capacity but for instance does not have the flexibility to separate premises for workshops, meetings or conferences; there is insufficient number of seats in the banquet areas. In addition, the prestige of a conference held in a sports arena is diminished. The Concert Hall Compensa is considered to be a modern facility with sufficient number of seats that is however more suitable for concerts and or for television projects (as a filming studio) than for hosting congress events.

¹⁶ Lithuania also analysed the suitability of other venues for organising large-scale international events such as Arena Riga and Saku Arena in Tallinn but concluded that these venues are primarily used for sports events and are not arranged to host international conferences. The World Trade Centre in Riga is used for exhibitions, small-scale conferences, seminar and meeting and also does have limited capacity (420 seats).

and that the VCC will complement rather than substitute the existing (or under construction) facilities in Vilnius and the Baltic region. The new facility is likely to increase the recognition of Lithuania as a location for the organisation of international/European high profile large-scale events and lead to an increase in the number of such events taking place in the region.

- (29) In the absence of public financing, the project would not be realised as it will not be viable for a private investor, as demonstrated by the funding gap analysis. The State contribution is limited to the funding gap, i.e. the difference between the investment costs and the operating profit of the facility over the period of 15 years in net present value (EUR 17.86 million). It has thus been demonstrated that the public co-financing of the VCC is necessary because without the public contribution the financing needed for the project implementation would not be forthcoming. The State contribution is limited to the funding gap and is therefore limited to what is strictly necessary to implement the project. The Commission therefore considers it to be proportionate.
- (30) The procedure for the selection of the operator (i.e. an open, transparent and non-discriminatory tender procedure to find a private partner to manage the facility on commercial conditions) also ensures, together with the above-mentioned reasons, that the necessity and proportionality requirements are fulfilled. The exploitation of the facility by a private entity under commercial conditions further ensures that the measure does not adversely affect trading conditions to an extent contrary to the common interest. Access to the facility will be granted on a transparent and non-discriminatory basis, thus there will be no captive user and it will be open to all end users. The VCC will complement existing facilities and will increase the types of events which can take place in Lithuania. Hence, the aid must be considered well-targeted and justified.
- (31) From the above reasons, it has been demonstrated that the public funding of the measure is pursuing acknowledged public policy objectives, is necessary and proportionate and does not affect trade and competition between Member States to an extent contrary to the common interest, according to Article 107 (3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission
Margrethe VESTAGER
Member of the Commission

