

VALSTS ATBALSTS – ZVIEDRIJA**Valsts atbalsts SA.33618 (12/C) (ex 11/N) – Upsalas arēna**

Uzaicinājums iesniegt piezīmes saskaņā ar Līguma par Eiropas Savienības darbību 108. panta 2. punktu

(Dokuments attiecas uz EEZ)

(2012/C 152/07)

Ar 2012. gada 21. marta vēstuli, kura autentiskajā valodā ir pievienota kopsavilkumam, Komisija paziņoja Zviedrijai par savu lēmumu uzsākt Līguma par Eiropas Savienības darbību 108. panta 2. punktā paredzēto procedūru attiecībā uz iepriekš minēto pasākumu.

Viena mēneša laikā pēc šā kopsavilkuma un tam pievienotās vēstules publicēšanas ieinteresētās personas var iesniegt piezīmes par pasākumu, attiecībā uz kuru Komisija sāk procedūru, nosūtot tās uz šādu adresi:

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Šīs piezīmes paziņos Zviedrijai. Ieinteresētā persona, kas iesniedz piezīmes, var rakstveidā pieprasīt, lai tās identitāte netiktu atklāta, norādot šāda pieprasījuma iemeslus.

KOPSAVILKUMA TEKSTS**Procedūra**

Zviedrijas iestādes informēja Eiropas Komisiju par pasākumu jaunas arēnas būvniecībai Upsalā, Zviedrijā.

Pasākuma apraksts

Upsalas arēna būs paredzēta dažādiem sporta veidiem (hokejam, basketbolam, florbolam, rokasbumbai un jāšanas sportam), dažādiem izklaides pasākumu veidiem (koncertiem, ģimeņu šoviem, TV programmām un svinīgām ceremonijām), kā arī dažāda veida sanāksmēm (kongresiem, konferencēm, uzņēmumu sapulcēm, gadatirgiem, korporatīvajiem pasākumiem un baznīcu sanāksmēm). Vislielākajai arēnas telpai būs 8 500 apmeklētāju ietilpība sporta pasākumiem un 10 000 kongresiem un koncertiem.

Upsalas arēnas projektā iesaistītās puses ir: Upsalas pašvaldība, *Arena Company*, *Property Company* un *Events Company*. Arēnas izmaksas ir SEK 650 miljoni (EUR 72 miljoni). Pašvaldība ieguldīs dotācijas SEK 150 miljonu (EUR 16,5 miljoni) apmērā, pārējais galvenokārt tiks finansēts ar aizdevumiem un zināmā mērā ar privāto investoru ieguldījumiem. Arēna piederēs *Property Company*, kas savukārt piederēs tikai privātiem ieguldītājiem. Pašvaldībai tādējādi nepiederēs neviena arēnas daļa un tai nebūs ietekmes attiecībā uz *Property Company* darbībām. Attiecībā uz tās ieguldījumu nodrošinājumu pašvaldībai tiks nodro-

šināta iespēja iegādāties *Property Company*. Arēnu būs uz pašvaldības zemes, par kuru starp *Property Company* un pašvaldību uz 50 gadiem tiks noslēgts zemes nomas līgums.

Arēnas ekspluatāciju nodrošinās *Events Company* (īpašnieki – privātie ieguldītāji). Pašvaldība slēgs atsevišķu nomas līgumu ar *Events Company*, lai regulētu cita starpā ledus halles izmantošanas grafiku sporta asociācijām un iedzīvotājiem, kā arī arēnas izmantošanu pašvaldības pasākumiem. Attiecībā uz arēnas izmantošanu *Events Company* jānodrošina tas, ka arēna ir pieejama iedzīvotājiem atbilstoši tirgus noteikumiem un saskaņā ar nediskriminējošiem nosacījumiem.

Pasākuma novērtējums

Komisija pēc sākotnējā novērtējuma veikšanas apšaubā, ka šie pasākumi nav uzskatāmi par valsts atbalstu LESD 107. panta 1. punkta nozīmē. Komisijas sākotnējais novērtējums liecina, ka nevar izslēgt selektīvu ekonomisku priekšrocību jebkurā līmenī (būvniecības, ekspluatācijas un izmantošanas). Turklāt arēnas valsts līdzfinansējums, kas it kā ir tikai finansējuma iztrūkumu kompensēšana (t. i., ka neviens cits tirgus dalībnieks nav gatavs sniegt savu ieguldījumu) un tādējādi bez pašvaldības ieguldījuma arēnas finansēšanai trūktu līdzekļu, visticamāk tādā veidā rada vai vismaz draud radīt konkurences izkropļojumus. Pat ja lielākoties arēnā tiks organizēti vietēja rakstura pasākumi, tajā būs ietilpība rīkot arī liela mēroga starptautiskus pasākumus, līdz ar

to nevar izslēgt ietekmi uz konkurenci un tirdzniecību dalībvalstu starpā. Tādējādi pašreizējā posmā, balstoties uz sākotnējo novērtējumu, Komisijas viedoklis ir, ka paziņotais pasākums var būt uzskatāms par valsts atbalstu LESD 107. panta 1. punkta nozīmē.

Saskaņā ar iepriekš minētajiem nosacījumiem ir jāizvērtē tas, vai šo pasākumu var uzskatīt par saderīgu ar iekšējo tirgu saskaņā ar LESD 107. panta 3. punkta c) apakšpunktu. Šādā novērtējumā iekļauj pārbaudi, vai ar pasākumu tiek veicināts vispārēju interešu politikas mērķis, kā arī tas, vai pasākums ir nepieciešams un samērīgs un vai tas nerada nevajadzīgus konkurences traucējumus. Pēc sākotnējā novērtējuma veikšanas Komisijai apšauba, vai ierosināto projektu var uzskatīt par saderīgu saskaņā ar LESD 107. panta 3. punkta c) apakšpunktu pašreizējā posmā visos trīs iespējamā atbalsta līmeņos (būvniecības, ekspluatācijas un izmantošanas).

Nemot vērā šīs šaubas un iespējamā valsts atbalsta ietekmi uz privāto uzņēmēju ieguldījumiem, Komisija uzskata par nepieciešamu uzsākt formālu izmeklēšanas procedūru.

VĒSTULES TEKSTS

“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⁽¹⁾ (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 %).

⁽¹⁾ 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⁽²⁾, 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.⁽³⁾ 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⁽⁴⁾.

- (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.

⁽²⁾ 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 %.

⁽³⁾ 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.

⁽⁴⁾ 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. ⁽⁵⁾ 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

⁽⁵⁾ 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⁽⁶⁾. 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⁽⁷⁾ 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⁽⁸⁾

- (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.⁽⁹⁾ 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.

⁽⁶⁾ 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 %.

⁽⁷⁾ 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).

⁽⁸⁾ 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.

⁽⁹⁾ 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.⁽¹⁰⁾

- (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

⁽¹⁰⁾ 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.⁽¹¹⁾ 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."

⁽¹¹⁾ 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.