EUROPEAN COMMISSION

Brussels, 3.1.2017

C(2016) 8748 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: SA.46556 (2016/N) – Finland

Aid to the central and regional trotting tracks in Finland

Sir,

1. PROCEDURE

(1) By letter dated 6 October 2016, following pre-notification discussions, the Finnish authorities notified to the Commission the proposed reform of the Lotteries Act (1047/2001) in Finland.

(2) By letter dated 23 August 2016, the Finnish authorities granted a language waiver to the Commission, agreeing to have the decision adopted and notified in English.

(3) Requests for information were sent by the Commission to the Finnish authorities by letters dated 17 October 2016 and 20 October 2016. The Finnish authorities sent their replies on 20 October 2016 and respectively on 26 October 2016.

2. DESCRIPTION OF THE MEASURE

Ulkoministeri Timo SOINI
Merikasarmi
PL 176,
FIN - 00161 Helsinki

2.1 Current legal framework

(4) Under the current Lotteries Act (1047/2001), three entities have exclusive gambling rights:

(5) The exclusive rights to operate money lotteries, pools and betting games are held by Veikkaus Oy, a State-owned limited liability company.

(6) The exclusive rights to operate slot machines, casino games and casino activities are held by the Finnish Slot Machine Association (RAY), an association governed by public law.

(7) The exclusive rights to operate totalisator betting activities is held by Fintoto Oy, a limited liability company wholly owned by Suomen Hippos ry, the Finnish national organisation for trotting and horse breeding.

(8) Given that Fintoto Oy is wholly owned by Suomen Hippos ry, the equine industry has direct access to betting proceeds, which is its essential source of income.

(9) In the recent years, the operating environment in the gambling sector has changed fundamentally, as for example games are offered through multiple channels, thus significantly increasing the range of gambling activities available. Simultaneously, this development has led to games becoming very similar to one another, particularly those offered in the online environment.

(10) The Finnish authorities explained that a well-established state monopoly combined with a systematic and consistent gambling policy is instrumental in combating the negative economic, social and health impacts of gaming, preventing fraudulent gambling operations and curbing black economy activities and organised crime connected with gambling. Regulation is also necessary in order to safeguard the legal rights of gaming participants.

(11) In order to reinforce the state control over the gambling sector following the recent evolutions, a reform of the gambling legislation was considered necessary.

2.2 The reform of the Lotteries Act (1047/2001)

(12) In January 2015, the Ministry of the Interior, on assignment from the Government, set up an investigation project to draw up a proposal for measures to reinforce the exclusive rights system.

(13) The draft for amending the Lotteries Act and certain related acts is based on the principal proposal contained in the report on alternative schemes for the Finnish gambling system, completed in March 2015[1]: that the gambling functions of the three licenced national gambling organisations be merged.

(14) The future gambling company wholly owned by the state would have the exclusive right to operate gambling activities in Finland, subsuming the functions of the present three gambling organisations.

[1] Ministry of the Interior publication 12/2015

(15) The purpose of the proposal is to maintain and strengthen the exclusive rights system for gambling, which has been tried and proven in sustaining Finland's gambling policy.

(16) Of the proceeds of the new company (about EUR 1 billion), 53% would be allocated to sports, science, arts and youth work, while 43% would be allocated to social welfare and 4% to horse breeding and equestrian sports. Under the new system it should be noted that the betting proceeds would no longer be under the control of the equine industry but under the control of the state and distributed in part to the equine industry as State aid. This notification concerns the amounts allocated for horse breeding and equestrian sports, more specifically the part of the amounts to be granted to the central trotting track, Vermo Oy, and the 19 regional trotting tracks where there are trotting-racing activities organised around the year.

2.3 Description of the equine industry in Finland

(17) There are currently about 74,200 horses in Finland. Of these, 34% (25,200) are thoroughbred trotting horses and 26% (19,200) are Finnish Horses, most of which are in racing use. The remainder comprises thoroughbred riding horses and ponies.

(18) The equine industry is a complex formation that involves competing, training, breeding and many related economic activities. There are approximately 200,000 actively engaged equestrian amateurs in Finland. It is estimated that the equine industry in Finland employs some 15,000 persons full-time and part-time.

(19) In Finland as in the rest of Europe, horse breeding is mainly undertaken in small units. Many such units operate on an amateur basis and have no great expectations regarding revenue. Many entrepreneurs engage in other equine activities alongside breeding in order to improve their financial performance, such as training or stabling.

(20) The distribution of proceeds from betting on horse races to the equine industry is the most significant source of income for the equine industry in Finland as all over Europe and crucial for safeguarding its operating potential.

(21) The equine industry plays an important role in the development of agriculture and other rural livelihoods, besides being important for the vitality of rural areas.

2.4 The notified measure

Beneficiaries

(22) This notification concerns Finland’s central trotting track, Vermo Oy, and 19 regional trotting tracks[2] where there are trotting-racing activities around the year.

Objectives of the measure

[2] Teivo, Lahti, Kouvola, Turku, Forssa, Pori, Jyväskylä, Lappeenranta, Seinäjoki, Vaasa, Mikkeli, Kuopio, Joensuu, Kaustinen, Ylivieska, Oulu, Tornio, Kajaani and Rovaniemi.

(23) The measure, generally aiming at supporting the equine industry (organisation of trotting track activities as well as horse breeding), is granted to trotting tracks and covers the following costs incurred by them: *(i)* prizes, *(ii)* organization of harness racing events and *(iii)* investments.

(i). Prizes

(24) The prizes paid at races are the most significant source of income for the equine industry. Sufficient prize money encourages horse owners to engage in long-term breeding, training and racing operations while helping to maintain the potential for the necessary investments and for a profitable business. The operating environments of trotting tracks differ from one another, and prizes help offer a more diverse range of races for horse owners in various parts of the country. Prize money paid to the central trotting track and regional trotting tracks forms part of their prize money pool. The prize money paid out by trotting tracks consists of the amounts received from the state through the notified measure, their own funds and possibly contributions from partners or other parties.

(ii). Organization of harness racing events

(25) It is important for horse owners and those employed in the equine industry to have racing opportunities available in various parts of the country, including sparsely populated areas, throughout the year. The related operating costs are not fully covered by the revenues of the trotting tracks, so that state support is necessary.

(iii). Investments

(26) In the northerly conditions of Finland, organising races requires permanent structures that require continuous maintenance and regular repairs, which also makes state support necessary.

Amount of aid and budget

(27) The grants would be issued according to the Act on Discretionary Government Transfers (688/2001) and to the Government Decree to be issued based on the Act. As per the Lotteries Act, government transfers for promoting horse breeding and equestrian sports are granted by the Ministry of Agriculture and Forestry. Transfers are only granted on application, and applications must list any other transfers granted to the same project.

(28) The Finnish authorities consider that the proposed legislative amendment would not have a significant impact on the turnover of the new gambling company as compared with the combined turnover of the current three gambling organisations. In 2015, the gambling organisations had a combined turnover of about EUR 3.1 billion and declared profits (proceeds) of about EUR 1.0 billion.

(29) The draft proposal states that the new Lotteries Act, as the current one, would stipulate that the proceeds of gambling operations shall be used for the public good. Of the proceeds of the new company (about EUR 1 billion), 53% would be allocated to sports, science, arts and youth work, while 43% would be allocated to social welfare and 4% to horse breeding and equestrian sports. The notification concerns the amounts allocated for horse breeding and equestrian sports, more specifically the part of the amounts to be granted to the central trotting track,

Vermo Oy, and the 19 regional trotting tracks where there are trotting-racing activities organised around the year .

(30) The total amount of aid to central and regional trotting tracks submitted for notification as per Article 108(3) of the TFEU is EUR 35 million per year, covering the costs described above: *(i)* prizes - estimated need about EUR 22 million yearly, *(ii)* organization of harness racing events - estimated need about EUR 12 million yearly, as well as *(iii)* investments - estimated need about EUR 1 million yearly.

Duration

(31) The duration of the notified measure is 5 (five) years.

3. ASSESSMENT OF THE MEASURE

3.1 Existence of state aid within the meaning of Article 107(1) TFEU

(32) Pursuant 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"*.

(33) A measure is qualified as State aid if the following cumulative conditions are met: (i) the measure has to be granted by Member States through state resources and be imputable to the state, (ii) it has to confer a selective economic advantage to certain undertakings, (iii) the advantage has to distort or threaten to distort competition, and (iv) the measure has to affect intra-EU trade.

3.1.1 State resources and imputability

(34) In order for a measure to be qualified as State aid, it has to be granted out of state resources and be imputable to the state.

(35) The financing in favour of the central and regional trotting tracks would be paid out to the trotting tracks as direct transfers from the Ministry of Agriculture and Forestry.

(36) The measure is therefore financed using state resources and is imputable to the state.

3.1.2 Advantage

(37) Furthermore, the measure should confer a financial advantage to the recipients.

(38) By way of the notified measure, public funding provides trotting tracks with a financial advantage insofar as the measure covers in part the prize costs, investment costs or operating costs that they would normally have had to finance themselves in order to implement their projects.

(39) Thus, implementing the measure provides a financial advantage to trotting tracks.

3.1.3 Selectivity

(40) To fall within the scope of Article 107(1) of the Treaty, a State measure must favour 'certain undertakings or the production of certain goods'.

(41) The public funding in the notified measure is to be awarded only to particular trotting tracks.

(42) The measure is therefore selective by nature.

3.1.4 Distortion of competition and effect on trade

(43) According to Article 107(1) TFEU, a measure qualifies as aid if it affects intra-community trade and distorts, or threatens to distort competition. In this regard, the Court of Justice has consistently held that the fact that a measure strengthens the position of undertakings in comparison to others is sufficient to establish this criterion.[3]

(44) The effect on trade and the distortion of competition must be assessed with regard to both the horse race organisation activity and the betting activity which will also benefit of any support granted to the equine industry.

(45) In the opinion of the Commission, given in Communication 97/C 163/03 on presumed aid granted to the horse racing companies and the PMU[4] there is a Community market for betting on horse races, there is trade between the Member States in the collection of bets on horse races, and the businesses that collect these bets are in competition with each other.

(46) Also for the case at hand, trotting tracks are in a competitive situation with similar operators in other Member States. Therefore financial aid granted by a Member State improves their status with regard to competing operators on the internal market.

(47) Thus, implementing the notified measure affects the trade between Member States and distorts competition.

3.1.5 Conclusion

(48) In light of the foregoing, the Commission concludes that all the conditions set out in Article 107(1) TFEU are fulfilled and that the notified measure constitutes State aid to Finland's central trotting track, Vermo Oy, and to the 19 regional trotting tracks.

3.2 Qualification of Notified Measure as Existing or New Aid

(49) Existing aid, as defined in Art. 1(b) of the Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the

[3] Case T-288/07, *Friuli Venezia Giulia*, [2001] ECR II-1619

[4] Page 4 of Communication 97/C 163/03 pertaining to Case C-4/97 (ex NN35/93): Communication of the Commission pursuant to Article 93(2) of the Treaty, addressed to the Member States and other interested parties, concerning the presumed aid granted by France to the horse racing companies, the PMU and the PMH

Functioning of the European Union[5], is either a measure that was in place before and is still applicable after the entry into force of the Treaty, a measure deemed to have been authorized in accordance with the tacit approval procedure, aid that was not object of a recovery ordered by the Commission after the expiry of a limitation period of ten years, or a measure that was not aid when it was put into effect but became aid due to the evolution of the common market. Any aid not falling under the definition of existing aid would be considered new aid pursuant to Article 1(c) of the Procedural Regulation.

(50) The programme of government transfers for promoting the equine industry was described in a notification to the European Union at the time of Finland's accession. The system remained unchanged until 2011. In 2012 (Act 575/2011), the system was changed, dividing the proceeds from totalisator betting into two items. The majority of the proceeds was distributed as the profits of Fintoto Oy (a company wholly owned by Suomen Hippos ry) to the equine industry. A smaller portion was allocated through government transfers to the equine industry granted by the Ministry of Agriculture and Forestry as of 2012 in accordance with the Commission Regulation on '*de minimis*' aid.

(51) According to the proposed reform of the Lotteries Act (1047/2001), only a single new gambling company wholly owned by the government would be licensed to operate gambling in Finland. This new company would thus also take control of betting on harness racing, which would change the income structure of the equine industry.

(52) Indeed, so far, the equine industry and therefore the trotting tracks had directly access to the betting proceeds and only a small amount of aid below the de-minimis threshold was granted to them through government transfers. Under the proposed reform, the link between the betting industry and the equine sector would be severed, and the State would gain full control over the betting proceeds. Then the State would allocate 4% of the proceeds of the new gambling company to the equine industry. This amount is to be entered first in full in the State budget, and then allocated to the promotion of horse breeding and equestrian sports.

(53) The aid system is thus changing so profoundly that it will no longer be possible to implement it as '*de minimis*' aid. The Commission agrees with the Finnish authorities that the measure can no longer be considered existing aid and that it is appropriate to subject it to notification pursuant to Article 107(3) of the Treaty on the Functioning of the European Union.

3.3 Compatibility of the Measure pursuant to Article 107(3) c TFEU

(54) In paragraphs (2) and (3) of Article 107, the Treaty on the Functioning of the European Union provides for rules under which certain aids shall be declared compatible with the internal market, or certain aids may be considered to be compatible with the internal market.

[5] OJ L 248, 24.9.2015

(55) The Commission considers that the measure at issue can be declared compatible with the internal market pursuant to the derogation provided in Article 107(3)(c) TFEU which authorises *"...aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest."*

(56) The Commission notes that the measure does not fall within the scope of existing guidelines for the application of Article 107(3)(c) of the TFEU. Thus, it should be assessed directly under this Treaty provision. In order to be compatible under Article 107(3)(c) TFEU, an aid measure must pursue an objective of common interest in a necessary and proportionate way.

(57) When assessing the compatibility of a measure, the Commission balances the positive impact of the measure in reaching an objective of common interest against its potentially negative side effects, such as effect on trade and distortion of competition. This test is based on a three-stage examination. The first two steps address the positive effects of the State aid measure. The third step addresses the negative effects and the resulting balance between the positive and negative effects. The balancing test is structured as follows:

1. Does the aid measure aim at a well-defined objective of common interest?

2. Is the aid measure appropriate to deliver this objective of common interest i.e. does the proposed aid address a market failure or other objective? In particular:

    a. is the aid measure an appropriate instrument, i.e. are there other, better placed instruments?

    b. is there an incentive effect, i.e. does the aid change the behaviour of potential beneficiaries?

    c. is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?

3. Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

3.3.1 Common interest objective

(58) The measure aims at covering costs incurred in the organisation of trotting activities by the central trotting track, Vermo Oy, and 19 regional trotting tracks.

(59) One of the core elements for assessing the compatibility of the aid measure is to ensure that the costs covered by the measure exclusively pursue an objective of common interest.

(60) The activity of organising horseraces contributes to the improvement of the performance of horses and therefore to the support of horse breeding activities in Finland. Council Directive 90/428/EEC of 26 June 1990 on trade in equidae intended for competitions and laying down the conditions for participation therein[6] acknowledges in its preamble the interest to ensure a rational development of

[6] OJ L 224, 18.8.1990, p. 60.

equidae production and to favour the safeguard, development and improvement of the breeding sector.

(61) Considering the above, the Commission considers, for the reasons stated in the preceding recitals, that the measure financing the costs incurred by the central trotting track, Vermo Oy, and 19 regional trotting tracks pursues objectives of common interest.

3.3.2 *Appropriateness of the measure*

(62) An aid measure is deemed to be necessary and balanced when it constitutes an appropriate instrument for achieving a defined common interest objective, acts as an incentive to the recipients of the aid and does not introduce unnecessary distortions of competition.

a. Appropriate instrument

(63) According to the Finnish authorities, there are no other instruments that would be more appropriate to attain the objectives pursued by the envisaged reform.

(64) Without State aid, not a single trotting track would be able to make the required investments or even cover their operating costs. This is due to the particular nature of the infrastructure. According to current estimates of the Finnish authorities, about 80% of the income of trotting tracks consists of proceedings from betting. Therefore the most feasible form of aid is represented by the grants to trotting track organisations.

(65) The Commission considers the measure to be appropriate to attain the objectives of common interest that it pursues.

b. Incentive effect

(66) In the case at hand, the measure has an incentive effect if it encourages trotting tracks to organise trotting-racing activities that they would not have organised otherwise.

(67) According to the Finnish authorities, in the absence of the notified measure, trotting tracks would not be able to cover the costs incurred in the organisation of trotting activities. This would have a negative impact on the organisation of trotting activities. Indeed, in absence of the measure, a smaller number or less attractive trotting activities would be organised in Finland, thereby reducing the volume of the related betting services offered by trotting tracks.

(68) The Commission considers that the aid measure is capable of modifying the behaviour of trotting-tracks by incentivising them to organise a larger number of more attractive trotting activities.

c. Proportionality of the aid

(69) State aid is considered to be proportionate only if the same change of behaviour could not be reached with less aid and less distortion. The amount of the aid must be limited to the minimum needed for the activity to take place. In the present case, the Commission considers that the Finnish authorities have designed the measure in

such a way as to minimise the amount of State aid involved and the distortions of competition arising from the measure.

c1. Volume of Aid

(70) The total amount of aid submitted for notification as per Article 108(3) of the TFEU is EUR 35 million per year, covering the following costs: *(i)* prizes – estimated need about EUR 22 million yearly, *(ii)* organization of harness racing events - estimated need about EUR 12 million yearly, as well as *(iii)* investments - estimated need about EUR 1 million yearly.

c2. No overcompensation

(71) In 2015 the total amount of operating revenues was EUR 37 348 274 (the largest part of which was represented by betting revenues to which the trotting tracks had direct access as they were considered operating revenues and not State aid, as shall be the case under the legal setup of the proposed reform) and the total amount of operating costs was EUR 37 361 376.

(72) The total amount of aid notified as per Article 108(3) TFEU (EUR 35 million per year) which will be granted under the new system is consistent with the 2015 figures.

(73) According to the Finnish authorities, in order to avoid overcompensation, all Government transfers are means-tested, as provided for in the Act on Discretionary Government Transfers:

- Article 6(1): The Government transfers (with certain exceptions) may not exceed the full amount of the total costs incurred from the activity or project.
- Article 6(3): The Government transfers together with other public aid may not exceed the maximum amount of State aid or other public assistance laid down in EU law or Finnish law.
- Article 7(1): The granting of a transfer must be necessary considering other public aid received by the applicant and the type and extent of the project or activity in question.

(74) The own revenue of the beneficiary is taken into account according to Article 11(4) of the Act on Discretionary Government Transfers. In the estimation of the need and the amount of the support, the revenue indicated in the applicant's budget is considered as a deductive element. If in the supervision it is found that the budget was not realized (revenues were considerably higher or cost were lower than anticipated), this is taken into account by reducing the amount of aid in the following year.

(75) According to the draft Government Decree on the use of gambling company proceeds for State aid to horse breeding and equestrian sports, State aid applications shall be submitted in writing to the Ministry of Agriculture and Forestry.

(76) The application shall contain specific details of the purpose of the aid, the amount of aid being applied for, the criteria for use and allocation of the aid, and the operating plan and budget for the year that the application concerns. If the aid being applied for is only intended to cover part of the applicant's operations, the

operating plan and budget shall be drawn up in such a way that the part of operations for which aid is being sought is clearly and separately described. The applicant shall also submit a declaration of other grants and aid applied for and received for the same purpose.

(77) In addition to the monitoring in connection with the government transfer system, the use of government transfers is supervised regularly in accordance with the supervision plan and the Act on Discretionary Government Transfers. The Act contains provisions on supervision as well as on the authorities' right of inspection, interruption of payment, and recovery of government transfers.

(78) Aid recipients shall submit to the Ministry of Agriculture and Forestry such documentation as is necessary for supervising the operations of the State aid recipients. For general State aid, reports shall include the annual report, financial statements and auditors' report. The auditors shall specify in their report whether the rules concerning State aid use have been complied with and whether the information submitted to the Ministry of Agriculture and Forestry concerning State aid use is consistent with the State aid recipient's accounting.

c3. Achievement of the objective with less aid

(79) According to the explanations given in the above recitals it does not seem possible to attain the objectives of the measure with less aid. The amount of the aid is limited and strictly necessary to cover the costs incurred by the organisation of trotting activities. Hence, a reduction of the amount of aid would have a direct impact on the number and quality of trotting activities and would affect horse breeding activities.

c4. Conclusion

(80) In view of the above, the Commission considers that the notified aid does not exceed what is necessary to ensure the attainment of the common interest objective as described in Section 3.3.1 above. Therefore, the aid measure meets the proportionality requirements set out in the case-law of the Court of Justice.

3.3.3 Balancing the positive with the negative effects

(81) The Finnish authorities explained that the expected positive effect of the measure is the organisation of a large number of public horseraces and also securing the operating potential for the equine industry and promoting the vitality of rural areas.

(82) The measure would have a negative effect on competition between European trotting tracks if it were not proportional. Given that the measure is proportional (see Section 3.3.2 c) above), the risk that it might confer a disproportionate advantage on Finnish trotting tracks can be ruled out.

3.3.4 Conclusion

(83) Accordingly, the Commission concludes that the measure notified by Finland can be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU.

4. CONCLUSION

(84) The Commission finds that the notified aid measure constitutes State aid within the meaning of Article 107(1) TFEU.

(85) However, the Commission has decided, on the basis of the foregoing assessment, not to raise objections to this aid, on the grounds that it is compatible with the internal market under Article 107(3)(c) TFEU.

(86) The Commission notes that for the sake of urgency, Finland exceptionally accepts the adoption and notification of the Decision in the English language.

If this decision 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 decision 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 for Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER

Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION