

(English version)

**Question for written answer E-001553/24
to the Commission
Angelika Niebler (PPE)
(26 August 2024)**

Subject: Investment cost funding in the hospital sector

The German hospital sector has long been receiving substantial public funding to promote investment. This aid is distorting competition in the outpatient sector to the detriment of independent private doctors. This public funding of investment costs is already the subject of EU State aid concerns. On 15 May 2024, the German Federal Government approved a draft law for a hospital reform that would exacerbate the existing competitive disadvantage of independent private doctors vis-à-vis hospitals. Notably, it would afford hospitals new possibilities with regard to performing outpatient medical services and establish a new transformation fund offering generous support to the outpatient sector in particular.

1. It is our understanding that the current system has not yet been approved by the Commission and therefore constitutes non-notified aid. Is the Commission in contact with the German authorities with regard to this matter?
2. Have the German authorities already notified the Commission of the planned reform or discussed it in pre-notification talks with the Commission?
3. For independent private doctors, it is essential that all market players have a fair, just and level playing field. There have therefore already been reports of complaints filed with the Commission against the current system and the planned reform. Will the Commission investigate this issue in order to create a level playing field for all?

Submitted: 26.8.2024

**Answer given by Executive Vice-President Vestager on behalf of the European Commission
(2 October 2024)**

The Commission notes that, in general, it is primarily the responsibility of the Member State to assess whether a measure constitutes state aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) and, if it reaches the conclusion that the measure constitutes aid, to notify the measure to the Commission.

Regarding the health sector in particular, Article 168(7) TFEU states that Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States include the management of health services and medical care and the allocation of the resources assigned to them.

According to the recent case-law of the European Court of Justice ⁽¹⁾ and the Commission's decisional practice ⁽²⁾, activities in the health sector may in certain cases be qualified as being of a non-economic nature and, in such circumstances compensation for these activities would not constitute state aid. Each case, however, must be analysed on its merits.

⁽¹⁾ See for example judgment of the European Court of Justice of 11 June 2020, *Commission v. Dôvera*, joined cases C-262/18 P and C-271/18 P, paragraphs 30-31.

⁽²⁾ See for example decision of the Commission of 10 June 2024, *Slovenian healthcare system*, C (2024) 3755, SA.45844.