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Subject: State aid N 192/2008 – Spain

Promotion of dubbing and subtitling of movies in Basque

1. PROCEDURE

1. By letter dated 10 April 2008, registered the same day, the Spanish authorities notified the scheme mentioned above.

2. DESCRIPTION OF THE AID MEASURE

Objective

2. The Basque authorities intend to support the commercial exhibition of feature movies dubbed and/or subtitled in Basque language.

Legal basis

3. The legal basis of the measure is the draft "Orden de XX de XXX de 2008, de la Consejera de Cultura, por la que se regula y se convoca la concesión de subvenciones para iniciativas destinadas a fomentar los estrenos de producciones audiovisuales dobladas y/o subtituladas al euskera".

Beneficiaries

4. The beneficiaries of these subsidies are legal persons which distribute cinema productions. The Spanish authorities estimate the number of beneficiaries to be between 11 and 50.

Eligible projects and selection criteria

5. The subsidies will take the form of direct grants to the beneficiary undertakings to support the costs incurred with subtitling and/or dubbing movies in Basque language.

6. The following costs are eligible for support:
- Dubbing costs and laboratory costs for feature movies in cinematographic format;
 - Subtitling costs for feature movies in cinematographic format;
 - Copying costs: up to 4 copies in Basque language in 35 mm format;
 - Costs of editing dubbed or subtitled feature movies;
 - Costs of promoting the dubbed and/or subtitled versions.
7. Applications for subsidies will be subject to assessment by an Evaluation Committee on the basis of the following selection criteria:
- Movies directed at a widespread public with a special focus on children: up to 15%;
 - Quality and interest of the movie (artistic value, relevance to cultural, social, linguistic or other values of the Basque country or its inhabitants): up to 30%;
 - Expected commercial success (commercial performance of the movie in the country of origin, simultaneous commercial premier in other parts of Spain and advertising campaign): up to 30%;
 - Proof of the ability of the applicant to cooperate with identified cinema exhibitors: up to 25%.
8. Applications scoring less than 50% according to the criteria above will be rejected.

Aid intensity

9. The aid intensity can cover up to 100% of the project's costs. The overall budget will be distributed in proportion to the score obtained by the selected projects.

Cumulation

10. Financing granted under the present scheme may be cumulated with other sources of financing awarded for the same purpose by any other entity, provided that the global amount does not exceed the total cost of the subsidised activity.

Budget

11. The global budget of the scheme is EUR 698 980, granted out of the general budget of the Basque autonomous region. Depending on the total amount of financing requested under this scheme and the amounts eventually remaining after the execution of the other programmes of the Cultural Department, this budget may be

increased. The Spanish authorities foresee that such an increase would not be higher than 20 % of the initial budget.

Duration

12. Subject to Commission approval, support under the notified scheme can be granted until 31 December 2008 for projects taking place in 2008 and 2009.

Granting authority

13. The financing will be granted by the Directorate for the Promotion of Culture of the Basque Government (*Dirección de Promoción de la Cultura*).
14. The scheme is intended to replace the similar scheme approved by the Commission on 13.11.2007 under case N 481/2007 ES, which covered applications in 2007, for projects taking place in 2007 and 2008. Projects subsidised with the previous scheme N 481/2007 ES will not be eligible for this scheme. The main modifications introduced in this scheme are that it no longer covers distribution of DVDs and a budget increase of EUR 20 980.

3. ASSESSMENT OF THE AID MEASURE

Notification requirement

15. The Spanish authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty by notifying the scheme before it is implemented.

State aid in the sense of Article 87(1) of the EC Treaty

16. According to Article 87(1) of the EC Treaty, "*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 common market.*".
17. In order to be classified as a state aid, a national support measure must therefore 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.

Presence of State resources

18. In the case at hand there are state resources involved since the scheme is financed out of the general budget of the Basque autonomous region.

Economic advantage to an undertaking

19. The direct grants awarded to the beneficiaries constitute payments that they would not receive under normal market conditions. The beneficiaries are undertakings

which carry out economic activities. Therefore, the scheme provides an economic advantage to undertakings.

Selectivity and distortion of competition

20. The economic advantage granted under the scheme is selective in the sense that it will benefit exclusively undertakings which distribute cinema productions and, amongst these, those that distribute films dubbed and/or subtitled in Basque. The Commission understands that the definition of beneficiaries set out in the legal basis referred to above at point 4 is met by legal persons from the EEA which distribute cinema productions, independently of their place of establishment.
21. According to the information provided by the Spanish authorities in case N-481/2007 ES, around 800 movies dubbed in Spanish are premiered every year in Spain, while only around 6 movies are dubbed in Basque per year. The latter are mostly the result of sporadic initiatives by public institutions, such as the *Disputación Foral de Gipuzkoa* or the *Ayuntamiento de Amorebieta*, or by cinema festivals, such as the *Festival de Cine de San Sebastián*.
22. There appears to be no viable commercial market for cinema products dubbed and/or subtitled in Basque. The Spanish authorities point out that in the Basque autonomous region the entire population speaks Spanish and mainly uses this language in social and work life, while only 25% of the population speaks Basque. Experience has shown that, when offered the same product in Spanish and Basque, a vast majority of the Basque population opts for the Spanish version. There appears to be limited substitutability between movies dubbed and/or subtitled in Basque and movies in Spanish or any other language.
23. Also, the financing will be awarded on the basis of an open call for applications.
24. Therefore, the distortion of competition arising from the measure is likely to be very limited. However, it cannot be excluded that undertakings distributing cinema productions in the Basque autonomous region will benefit from the measure to a greater extent than other distributors which are not active in the Basque autonomous region, thereby affecting their relative competitive positions. Therefore, a distortion of competition in the market for distribution of cinema products cannot be excluded either.

Effect on intra-Community trade

25. Taking into account that the use of the Basque language is confined to a limited linguistic and geographical area and in view of the limited substitutability referred to above, it can be argued that the measure is unlikely to have an appreciable effect on trade. However, in view of the presence of the Basque language in the territory of two Member States as well as of the international competition in the distribution of cinema products, it cannot be excluded that the measure has nevertheless a certain effect on intra-Community trade.

Conclusion

26. Therefore, the Commission considers that the scheme may constitute state aid in the meaning of Article 87(1) of the EC Treaty and it is therefore necessary to assess its compatibility under the provisions of Article 87(3) of the EC Treaty.

Compatibility

Applicability of article 87(3)(d) of the EC Treaty

27. The Commission considers that the "Cinema Communication"¹, which is based on the cultural derogation provided for in Article 87 (3)(d) of the EC Treaty, does not apply to the notified scheme as it concerns a specific post-production activity linked to the commercialisation of the works.
28. Besides promoting the use of the Basque language, the present scheme also directly supports a specific field of commercial activity, which is subject to international competition. While part of the activities financed under the scheme – in particular those having specifically cultural content – might fall under Article 87(3)(d) of the EC Treaty, the Commission considers that, as a whole, the measure might not satisfy the restrictive interpretation warranted for the application of Article 87 (3)(d)².

Compatibility under article 87(3)(c) of the EC Treaty

29. At present there are no frameworks or guidelines which can be applied to assess state aid measures such as the one under review. Hence, the Commission considers that it is more appropriate to examine the measure directly under Article 87(3)(c) of the EC Treaty concerning “*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*”, taking into account Article 151(4) of the EC Treaty, which requires that “*the Community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures*”.

Common interest

30. As referred to above, the promotion of the Basque language as a regional language which forms part of the national and European cultural heritage is considered to be in the common interest. Indeed, as provided in Article 151(1), “*the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore*”. The respect for the cultural, religious and linguistic diversity in Member States was reaffirmed in the Charter of Fundamental Rights of the European Union³ and the Commission adopted, in 2005, a Communication on a

¹ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534 final of 26.09.2001, OJ C 43 of 16.2.2002) and Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the follow-up of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works of 26.09.2001 (COM(2004)171 final of 16.3.2004, OJ C 123 of 30 April 2004).

² Commission decision of 13.11.2007 in case N481-2007, Promotion of movies and DVDs in Basque, paragraphs 30 to 33.

³ Article 22 of the Charter of Fundamental Rights of the European Union, signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission on 7 December 2000 in Nice (2000/C 364/1)

new framework strategy for multilingualism⁴. This latter instrument calls upon Member States to establish national plans to promote multilingualism, including increasing the use and presence of a variety of languages in daily life. The Communication also underlines the importance of promoting multilingualism in the information society.⁵

Necessity and proportionality

31. The Spanish authorities submit that the present measure, in the context of a general policy to support the Basque language in all possible supports, is necessary to safeguard this regional language by spreading its use and by promoting various means of communication. The scheme has an incentive effect as it is aimed at providing financing for activities which would not take place without public funding.
32. Given the absence of a viable commercial market for movies dubbed and/or subtitled in Basque, it is very likely that no commercial distributor would consider spending money on dubbing and/or subtitling movies in Basque, since the commercial value added to the product would be quite low.
33. Because of the relatively low commercial value of the aided activities, the maximum aid intensity of 100% can be accepted in the present case. Although the support received under the scheme may be cumulated with other forms of public or private support, there is no possibility for financing above costs.
34. Moreover, as already highlighted in paragraphs 20 to 25 above, the measure is unlikely to significantly distort competition and have an appreciable effect on trade in view of the limited linguistic and geographical zone concerned by the scheme and the limited substitutability between movies dubbed and/or subtitled in Basque and movies in other languages. Based on these considerations, the Commission considers that the measure is both necessary and proportionate to the objective of promoting the Basque language and does not affect trading conditions to an extent contrary to the public interest.
35. The Commission takes note of the commitment from the Spanish authorities not to pay any aid granted under the present scheme to a possible beneficiary that would not yet have reimbursed previous aids declared illegal and incompatible, in particular state aids no. CR 48/99, CR 49/99 and CR 58/00 in Alava, CR 50/99, CR 53/99 and CR 59/00 in Guipuzcoa and CR 52/99, CR 54/99 and CR 60/00 in Vizcaya. As a result, the problem of the potential cumulative effect of the unrecovered incompatible aid with the notified aid, in application of the Deggendorf jurisprudence⁶, does not arise.

⁴ COM(2005) 596 final

⁵ See section III.3 “Multilingualism in the information society” of the Communication.

⁶ Case C-355/95P, *Textilwerke Deggendorf GmbH (TWD) v. Commission* [1997] ECR I-2549, paragraphs 25-27.

4. CONCLUSION

36. On the basis of the foregoing assessment, the Commission decided that the measure is compatible with the common market pursuant to Articles 87(3)(c) of the EC Treaty, taking also into account Article 151.

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Yours faithfully,
For the Commission

Neelie KROES

Member of the Commission