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Subject: NN 27/2009 (ex N25/2009) – Hungary
Aid for mobility of museum collections in Hungary

Madam,

I. PROCEDURE

- 1) By e-mail dated 16 January 2009, registered on the same day, the Hungarian authorities notified an aid scheme concerning aid to compensate in the case of loss and damage of art objects temporarily exhibited in the framework of international cooperation between Hungarian and foreign museum institutions.
- 2) The Commission requested additional information on 13 March 2009. The Hungarian authorities replied on 15 April 2009.
- 3) The case was initially registered as N 25/2009 but in view of the fact that the scheme was put into effect on 1 January 2006 by the introduction of the related legal act by Hungarian authorities' approval before a decision of the European Commission was obtained, the scheme became unlawful and the case was transferred to the NN 27/2009 register on 12 May 2009.

II. DESCRIPTION OF THE MEASURE

Objective

- 4) The objective of the scheme is to promote culture. The setting up of a state guarantee scheme for exhibitions facilitates the circulation of works of art.

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5) The scheme foresees two types of guarantee :

- Exhibition guarantee: the Hungarian government assumes liability for the loss or damage of exhibited objects borrowed by Hungarian museums from third parties. The beneficiaries do not pay any fee for the guarantee.
- Exhibition cross-guarantee: it allows the Hungarian government to undertake the exhibition guarantee in those cases as well when the exhibitor has an insurance agreement. In case of an occurrence of loss the Hungarian State would cover part of the damages. It is a common practice in cases when the lender only accepts insurance companies as partners.

Legal basis

6) The national legal basis for the aid is the Act XXXVIII of 1992 on Public Finance - PFA¹.

Beneficiary

7) The beneficiaries of the measure are museum-type institutions and exhibition centres maintained by the Hungarian State or local authorities, approximately over 500 institutions.

Form of financial support, budget, duration and granting authority

8) Any payments under the guarantee scheme will be charged on the general budget of the State. The precise amount of the budget of the aid is unknown as it depends on the value of art objects insured by the State guarantee. It equals the revenue foregone by not charging a premium for the guarantee where the State's exposure amounts to HUF 1 500 billion for the period 2008-2014, nearly HUF 250 billion per year. The granting authority is the Hungarian Ministry of Education and Culture.

Own contribution of the beneficiary

9) For the first category of aid, *exhibition guarantee*, the beneficiaries will not pay any fee. However, for the second type, *exhibition cross-guarantee*, the beneficiaries will have to pay, to the insurance company, a fee that equals to 11% of the total premium usually applied by the insurer.

The Hungarian scheme in the European context

10) The proposed scheme is in line with current legislation in other Member States in the area of museum activities when organising exhibitions².

III. ASSESSMENT OF THE MEASURE

State aid within the meaning of Article 87 (1) of the EC Treaty

¹Amendment of 1 January 2006.

² Study n° 2003-4879 – An inventory of national systems of public guarantees in 31 European countries (DG EAC – 2004) http://ec.europa.eu/culture/key-documents/doc915_en.htm

- 11) The Commission has first examined whether the notified measure can be characterised as State aid within the meaning of Article 87(1) EC, according to which "*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*".

Presence of state resources

- 12) The guarantee is granted by the national Act XXXVIII of 1992 on Public Finance ("PFA"). The granting authority is the Hungarian Ministry of Education and Culture. The resources involved are revenues foregone by the State as a result of not charging/ or charging a premium that is not in line with market conditions for the guarantee. The financial resources accumulated constitute public funds in the meaning of Article 87 (1) EC and, therefore, are State resources.

Selective economic advantage to an undertaking

- 13) The Hungarian aid scheme relieves the museum-type institutions and exhibition centres from insurance costs that they normally have to bear when they organise art exhibitions with objects borrowed from third parties and it thus constitutes an advantage. This coverage should normally be remunerated by an appropriate premium³ which would consist in the market price for the indemnity scheme. Consequently, relieving the museums and exhibition centres from the payment of the insurance premium constitutes an advantage. Furthermore, in line with previous Commission decisions and for similar reasons, Hungarian public museums should be considered as being engaged in an economic activity and therefore as undertakings when they organise exhibitions⁴. The measure is selective because it benefits only certain institutions maintained by the State or local authorities, while other private national institutions and international entities are excluded from the scheme.

Distortion of competition

- 14) Since by virtue of the aid measure in question the competitive position of a selected set of beneficiaries is strengthened vis-à-vis their competitors, competition is distorted.

Effect on intra-Community trade

- 15) The Hungarian museums and exhibition centres host exhibitions of international importance e.g. Van Gogh in Budapest (2 December 2006-1 April 2007); The Golden Age of the Medicis – Life and art in Renaissance Florence (9 September 2008-14 December 2008). As a consequence, the exhibitions can attract numerous visitors from other Member States, which can have an effect on the flow of tourists to Hungary. The museums can increase their revenues substantially from sources like entrance fees and merchandising, which provides them with an advantage vis-à-vis similar institutions in

³ According to the Hungarian authorities the insurance premium is generally one thousandth of the insured amount.

⁴ Commission decisions: PL 44/2004 "Indemnity scheme for Polish museums", OJ C 227 of 21 September 2006, p. 10 and NN 50/2007 "Indemnity scheme for federal museums" (Austria), OJ C 308 of 19 December 2007, p. 10.

other Member States. Therefore, an impact on intra-community trade of the measure under review cannot be excluded⁵.

- 16) Accordingly, the Commission takes the view that the notified scheme may distort or threaten to distort competition and trade between Member States and therefore does involve State aid within the meaning of Article 87 (1) of the EC Treaty.

COMPATIBILITY

- 17) Article 151 of the EC Treaty provides that "*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 Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.*"
- 18) According to Article 87(3) (d) of the EC Treaty, "*aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*" may be considered to be compatible with the common market.

Common interest: genuine cultural objective

- 19) Information submitted by Hungary shows that the Hungarian museums and exhibition centres carry out tasks aimed at promoting and making accessible to the public not only national but also international cultural goods and artworks of remarkable relevance.
- 20) The Hungarian museums and exhibition centres acquire, conserve, research, communicate and exhibit of art work, for purposes of study, education and enjoyment. Despite the importance of their permanent collections and in order to remain attractive to the public, they are also expected to organise temporary exhibitions of significant cultural interest. These exhibitions make it possible for a wide audience to see works of art that are usually based on objects borrowed from third parties either in Hungary or abroad.
- 21) The present scheme reduces the costs related to the exhibitions organisation by exempting them (either totally or partially) from paying the insurance premiums on certain borrowed artworks. These costs savings can be reflected not only in the price of entrance tickets but in organising more and larger exhibitions of higher quality. In this sense, the scheme improves the dissemination and knowledge of culture, as more people can see more and better exhibitions.
- 22) The measure at stake can therefore have the effect of preserving the cultural heritage and promoting cultural exchanges and cultural representation at local and national level.

⁵ Commission decisions: NN 136/A/2002 "Ecomusée d'Alsace" (France) section 3, OJ C 97 of 24 April 2003, p. 10; N 630/2003 "Local museums Region of Sardinia" (Italy) section 3, OJ C 275 of 8 November 2005, p. 3; N 106/2005 "Hala Ludowa in Wrocaw" (Poland), OJ C 265 of 26 October 2005, p. 6; NN 50/2007 "Indemnity scheme for federal museums" (Austria), OJ C 308 of 19 December 2007, p. 10.

The aid scheme for mobility of museum collections in Hungary does not affect trading conditions and competition to an extent that is contrary to the common interest

- 23) The Commission considers that the scheme is necessary for achieving the objective of promoting culture. In this line, the Action Plan for the EU Promotion of Museum Collections' Mobility and Loan Standards⁶ defines national systems of public guarantees as a priority need. Indeed, over the last years, the exhibition state guarantee has become an essential instrument for Member States to reduce expenses relating to works of art lent for temporary exhibitions.
- 24) The Commission also recalls that the aid beneficiaries, museums and exhibition centres, are entities which typically lack capital; their own resources and the aid that they currently receive without the notified aid is often not enough even for their maintenance. Thus, in order to reduce budgetary funding the existence of state guarantee is both necessary and justified.
- 25) Finally, whilst the effects of the scheme on competition and intra-community trade cannot be excluded, these effects can be considered to be limited. The objective of supporting culture is achieved with as little extra distortion as possible. The measure therefore does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

IV. CONCLUSION

- 26) Based on these considerations, the Commission considers that the measure at hand promotes culture without adversely affecting trading conditions and competition in the Community to an extent contrary to the common interest.

V. DECISION

- 27) The Commission regrets that Hungary has put the present aid scheme into effect in breach of Article 88(3) of the Treaty. However, the Commission has decided, on the basis of the preceding assessment, not to raise any objections to the above mentioned scheme, on the ground that it is compatible with Article 87(3)(d) of the EC Treaty.
- 28) 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/community_law/state_aids/index.htm. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
J-70 3/225
BE - 1049 Brussels
Fax No: +32 2 296 12 42

⁶ http://ec.europa.eu/culture/our-policy-development/doc1575_en.htm

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission