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WORKING LANGUAGE

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**Subject: SA.32585 (2011/N) – Spain- Basque film support scheme -
prolongation**

Dear Madam,

1. PROCEDURE

- (1) On 16 February 2011, Spain notified to the Commission, in accordance with Article 4 of Commission Regulation (EC) N° 794/2004¹, the prolongation until 31 March 2012 and respective annual budget increase of the scheme approved by the Commission N102/2010² ("initial scheme").

2. DESCRIPTION OF THE MEASURE

- (2) Apart from the budget and duration, the Spanish authorities have also notified minor changes to the scheme. These include tightening of the criteria for the quality and viability of the script, the extension of the territoriality criteria and redistributing the budget between the different sub-measures. Not all of those

¹ Commission Regulation (EC) N° 794/2004 of 21 April 2004 implementing Council Regulation (EC) N° 659/1999 laying down detailed rules for the application of Article [113] of the TFEU.

² State aid N 102/2010; C(2010) 2437 final of 14 April 2010;
http://ec.europa.eu/competition/state_aid/cases/235557/235557_1134291_20_1.pdf

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changes fall within the simplified notification procedure laid down in Article 4 of Commission Regulation (EC) N° 794/2004. However the scheme remains essentially the same as the scheme approved by the Commission in State aid case N102/2010 until 31 March 2011.

- (3) The scheme supports the audiovisual sector in the Basque country by awarding direct grants for the creation, development (pre-production phase) and film production, including cinema fiction, cinema animation and newly created sub-category for the production of television movies, as well as documentaries and short films.
- (4) The extension of the previously approved scheme by one year foresees the corresponding additional budget of € 1.920.000. An amount of € 200.000 is foreseen for the development of projects for cinema, television and/or multimedia and the resting €1.720.000 is aimed for the production of fiction and animation feature films, documentaries and short films.
- (5) The Basque authorities have notified a modification in the distribution of the budget within the category of film production. As a result, a budget of € 1.060.000 is allocated for fiction feature films (the new distribution is the following: €740.000 are designated for the production of cinema fiction films, €380.000 for television movies, €240.000 for animation feature films, €200.000 for documentaries and €160.000 for the short films).
- (6) The aid intensity³ in each category remains unchanged.
- (7) Aid beneficiaries can be private, independent physical or legal persons from any EEA country. By the date the subsidies are paid, they must have a permanent seat in the Basque country and be registered in the Administrative register of Cinematographic and Audiovisual Enterprises (*Registro Administrativo de Empresas Cinematográficas y Audiovisuales*) of the Institute for Cinematography and Audiovisual Arts (*Instituto de la Cinematografía y de las Artes Audiovisuales*). Between 11 and 50 companies are expected to benefit from the scheme.
- (8) Projects are evaluated and selected by two evaluation committees, one for the production of short films and the other for project development and production of feature films and documentaries.
- (9) The Spanish authorities have notified minor changes to the weighting of certain evaluation criteria.
 - a) The following criteria will be applied to evaluate the applications in the sub-measure on the project development:
 - Valuation of the production project, namely financial viability and quality and experience of the human resources and undertakings involved: 40%;
 - Quality of the script: 30%;

³ The subsidy can cover up to 50% of the budget for the feature films and 60% for the short films.

- Interest of the project, namely artistic potential and relevance to the cultural, social, linguistic or other dimension of the Basque country and its citizens: 20% (previously 15%);
 - Original version in Basque: 10% (previously 15%).
- b) Film production subsidy applications will be evaluated in two phases, in each phase the applicant for the subsidy can receive 50 points (except the sub measure for documentaries where the split is 45% first phase and 55% second phase).

The criteria and their weighting for the production scheme are resumed in the table below:

| Type of the measure | Cine ma fictio n | TV movi es | Ani mati on featu re films | Docu ment aries |
|---|---------------------------|------------------|---|-----------------------|
| First phase | | | | |
| Financing of the project, namely percentage of production budget covered by proven financial resources | 25 | 20 | 25 | 25 |
| Hiring of creative, artistic and technical personnel with a permanent residence in the Basque country or from undertakings with a permanent establishment in the Basque country | 10 | 10 | 20 ⁴ | 15 |
| Financial situation and experience of the applicant ⁵ | 5 | 5 | 5 | 5 |
| Shooting taking place in the Basque country | 10 | 10 | N/A | N/A |
| Participation of new directors | N/A | 5 | N/A | N/A |
| Second phase | | | | |
| Quality and viability of the script | 30 ⁶ | 30 | 30 | 30 |
| Artistic value and relevance of the project to the cultural, social, linguistic or other dimension of the Basque country and its citizens | 15 | 15 | 20 | 25 |
| Original version filmed in Basque | 5 | 5 | N/A | N/A |

⁴ 10 points in the initial scheme

⁵ In the initial scheme it was 10 points for fiction and animation films and up to 15 points for documentaries

⁶ 20 points in the initial scheme

- c) The new evaluation of the applications for short films will be done based on these criteria:
- General interest of the project, in particular its relevance to the cultural, social, linguistic or other dimension of the Basque country and its citizens: up to 20% (previously 40%);
 - Value of the production project, in particular budget and financing plan, quality of the human and enterprise resources involved and the development of the short film in the Basque country: up to 30%;
 - Degree of own financing or of private financing: up to 20% (previously 15%);
 - Quality of the script: up to 20% (previously 15%)
 - The Spanish authorities have created a separate criterion for the participation of Basque artists, technical staff and other professionals with permanent residence or headquarters in the Basque country (previously included in the general interest criterion): up to 10%.
- (10) The Spanish authorities have extended the territorial requirement to spend at least 40% of the project budget in goods or services provided by individual or legal persons with a permanent residence or establishment in the Basque country also for the sub-measure for production of cinema, TV and animation feature films and documentaries. This condition was previously required only for the sub-measure for development of projects.
- (11) The legal basis of the scheme consists of draft *Orden de 2011, de la Consejera de Cultura de País Vasco, por la que se convoca la concesión de ayudas a la creación, desarrollo y producción audiovisual*. The financing will be granted by the Directorate for the Promotion of Culture of the Basque Government (*Dirección de Promoción de la Cultura*).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU⁷

- (12) The changes introduced to the notified measure do not alter the prior conclusion of the Commission in the case N 102/2010 that the measure constitutes State aid within the meaning of Article 107(1) TFEU, as moreover confirmed by the notifying Member State during the notification.

3.2. Compatibility of the aid

- (13) The Commission's analysis did not imply any serious difficulties and confirms that the prolongation and increase of the budget, as well as the minor modifications of the measure do not modify the original compatibility assessment

⁷ 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.

regarding the approved measure N 102/2010 since they are in line with the Cinema Communication 2001⁸. Indeed, there are no other significant amendments to the scheme; therefore the Commission sees no reason to depart from its previous positive compatibility assessment in N102/2010.

4. CONCLUSION

- (14) The Commission therefore finds that the existing measure N 102/2010 as amended by means of the measure notified in case SA.32585 is compatible with the Internal market in accordance with Article 107 (3) (d) of the TFEU and has accordingly decided not to raise objections to the notified measure.

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/eu_law/state_aids/state_aids_texts_en.htm.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate State Aid II
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Joaquín Almunia
Vice-president of the Commission

⁸ 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 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04), 2007 (OJ C 134 p5, 16/6/07) and 2009 (OJ C 31 p. 1, 7/2/09).