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**Subject: State aid SA.32119 (2011/N) – Spain
State aid to activities in the theatre and circus sectors**

Madam,

1 SUMMARY

1) I am pleased to inform you that the Commission has decided to approve the above aid scheme until 31 December 2013.

2 PROCEDURE

2) By electronic notification of 28 February 2011, registered by the Commission on the following day, the Spanish authorities notified to the Commission, under the Notice on the simplified procedure, in particular point 5 (b) (ii) of the Notice¹, a State aid scheme in favour of cultural activities in the theatre and circus sectors.

¹ OJ C136, 16.06.2009, p. 3-12.

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3 DESCRIPTION OF THE MEASURE

- 3) The scheme aims at supporting the promotion and preservation of culture through direct grants provided by the National Institute of Music and Performing Arts (INAEM) to natural or legal persons active in the theatre and circus sectors. In this respect, the scope of the supporting aid scheme is basically restricted to performances of significant artistic value².
- 4) Aid beneficiaries can be natural or legal persons governed by public or private law. The Spanish authorities estimate that the number of beneficiaries will be between 101 – 500. The beneficiaries' selection process will not discriminate on the basis of nationality or place of establishment. Thus, as confirmed by the Spanish authorities, the aid scheme is open to any natural or legal person established in the European Economic Area.
- 5) The scheme is based on a draft Resolution of the National Institute of Music and Performing Arts (INAEM) which regulates subsidies for the promotion and spreading of theatre and circus.
- 6) The Spanish authorities indicated that, upon Commission approval, the aid will be granted until 31 December 2013.
- 7) The total budget is estimated at EUR 22 290 000 for the three years period 2011-2013, whereas the annual budget amounts approximately to EUR 7 430 000. The aid scheme is financed through the general budget of Spain.
- 8) The aid will be distributed as follows:

	2011	2012	2013
Production, promotion and dissemination of theatre and circus spectacles in Spain	EUR 6 730 000	EUR 6 730 000	EUR 6 730 000
Public support for cultural cooperation, promotion and spreading of theatre and circus performances abroad ³	EUR 700 000	EUR 700 000	EUR 700 000
Annual Budget	EUR 7 430 000	EUR 7 430 000	EUR 7 430 000
TOTAL BUDGET	EUR 22 290 000		

- 9) Eligible costs will be transparent and directly and exclusively related to the promotion and dissemination of theatre and circus shows⁴. Furthermore, only incurred costs based on the fair market value will be subsidised.

² E.g. Spectacles financed in 2010: "A Midsummer Night's Dream", performed by Ur theatre company; "Urtain", by Animalario company; "The Miser (L'Avare)", play by Molière, performed by Galiardo productions; "For the Pleasure of Seeing Her Again", play by Michel Tremblay, performed by Concha Busto Productions, etc.

³ E.g. Participation in international cultural events such as festivals, fairs, and congresses.

⁴ E.g. a) aid for national tours of theatre and circus companies; b) aid for international tours of theatre and circus companies; c) aid for mobile infrastructure equipment to circus companies; d) aid for setting up stable programmes

- 10) The intensity of the aid is limited to 65% of the costs incurred by the beneficiaries. The maximum amount of aid foreseen per project or activity is EUR 120 000/per year. The financing granted under the present scheme may be cumulated with other sources of financing awarded for the same purpose by any other public or private entity. However, the overall aid granted may not exceed 100% of the eligible costs, independently of the financing source.
- 11) Applications for subsidies will be subject to assessment by an Evaluation Committee that will guarantee respect for the principles of equality, transparency and non-discrimination.
- 12) An additional description of the relevant features of this measure can be also found in the summary of the notification, as published on the website of the Commission and annexed to the present decision⁵.

4 ASSESSMENT OF THE MEASURE

4.1 Existence of aid within the meaning of Article 107 (1) of the TFEU⁶

- 13) The notified scheme allows only a selected number of natural and/or legal persons to be relieved, by means of State resources, of a part of their costs linked to their core activities which they would normally have to bear themselves. Consequently, the support from the Spanish authorities may strengthen the position of the aid beneficiaries in relation to their competitors in the Union and therefore may have the potential of distorting competition. Since the aid beneficiaries are active in the cultural sector, more particularly in the dissemination of theatre and circus spectacles among the general public which are, at least potentially, subject to intra-Union trade, these aids would appear to be likely to affect trade between Member States.
- 14) The Commission therefore concludes that the notified scheme may constitute State aid within the meaning of Article 107 (1) of the TFEU. In these circumstances, it is therefore necessary to assess its compatibility under the provisions of Article 107 (3) (d) of the TFEU.

4.2 Compatibility of the aid

- 15) According to Article 107 (3) (d) of the TFEU, aid to promote culture and heritage conservation may be considered to be compatible with the Internal market, where such an aid does not affect trading conditions and competition in the Union to the extent that is contrary

in national theatres; e) aid for national tours of inter-regional projects in the theatre sector; f) aid for organization of festivals, fairs, and congresses focused on the theatre and circus sectors, etc.

⁵ http://ec.europa.eu/competition/state_aid/cases/239784/239784_1190300_19_1.pdf

⁶ 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.

to the common interest. The Commission's compatibility assessment of the notified measure did not imply any serious difficulties.

- 16) The Commission has taken into account Article 167 TFEU⁷ and the UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions⁸.
- 17) The principles laid down in Article 107 (3) (d) of the TFEU have been applied to cases similar to the case at stake in a series of precedent decisions⁹.
- 18) It should be noticed that the main objective of the subsidies in question is to encourage and support theatre and circus performances of notable artistic significance. According to Spain, the aid scheme aims at supporting cultural activities and to improve access to them. Moreover, amongst other features:
- 19) The cultural character of the activities to be subsidized was reflected in the selection criteria to be applied by the Evaluation Committee¹⁰.
- 20) Furthermore, the Commission accepts the view of the Spanish authorities that the public funding is necessary for achieving the objective of culture promotion. Indeed, the activities covered by the present scheme are usually not profit-seeking and revenues often do not cover the costs related to such activities. Moreover, according to the available information, the involvement of private capital in the Spanish cultural sector is rather minimal. Furthermore,

⁷ According to Article 167 TFEU " *...the Union 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...Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas: improvement of the knowledge and dissemination of the culture and history of the European peoples, conservation and safeguarding of cultural heritage of European significance, non-commercial cultural exchanges, artistic and literary creation, including in the audiovisual sector...* ".

⁸ Approved by the Council on behalf of the Community by means of Decision 2006/515/EC (18/5/2006). With respect to Article 167 (4) TFEU (ex-151(4)EC), Council Decision 2006/515/EC stipulates that "*...the UNESCO Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which both the Community, as reflected in Article 151(4) of the Treaty, and its Member States attach the greatest importance...* ".

⁹ N 704/2007 - *State aid to activities in the theatre and circus sector - Region of Valencia (Spain)* decision on 30.04.2008, decision text: http://ec.europa.eu/competition/state_aid/register/ii/by_case_nr_n2007_0690.html#704 ; N 340/2007 - *Aid for theatre, dance, music and audiovisual activities in the Basque country (Spain)*, OJ C 206, 5.9.2007, p. 1; N 257/2007 - *Subsidies for theatre productions in the Basque Country (Spain)*, OJ C 173, 26.7.2007, p. 2.; N 577/2008 - *Aid for production of theatre, music and dance (Spain)*, OJ C 94, 14.4.2010, p.8.; N 336/2008 - *Aid to experimental theatre, music and dance performances in Andalusia for the period 2009 – 2013 (Spain)*, OJ C/25/2010, 2.2.2010, p. 6.

¹⁰ I.e. a) expected impact of the project at national level; b) expected impact of the project abroad as well as spreading of the Spanish cultural heritage; c) artistic and technical quality of the project; d) level of contribution to the preservation and dissemination of the Spanish theatre and circus heritage; e) degree of innovation; f) social impact of the project; g) professional trajectory of the applicants; h) cultural interest and consistency of the project; i) consistency with the proposed budget.

the Commission recalls that the targeted beneficiaries are natural persons, micro enterprises and/or SMEs, which typically lack capital; their own resources are often insufficient even for their maintenance. In addition, it seems particularly difficult to prolong this kind of cultural shows for enough time to recover the initial costs. Therefore, it would appear that the resources provided by the measure are indispensable in order to ensure a diversified and quality offer of theatre and circus productions to the general public.

21) The Commission also accepts the argument of the Spanish authorities concerning the proportionality of the measure. The information submitted by Spain shows that, only costs essential for the preservation of culture are subsidized under the scheme. Spain indicated that the National Institute of Music and Performing Arts aims to promote exclusively cultural events and performances which would not be realised without aid. The Spanish authorities confirmed that the scheme under review does not promote commercial, profit-making activities which are viable without State aid. Accordingly, in order to justify the use of public support, the aid beneficiaries are obliged to present a financial and professional report providing detailed information on revenues and expenditures related to the activities financed, detailed invoices, budgets, supporting documents for expenses, list of grants received from other entities for the project, etc. In this way, the aid is limited to the minimum necessary and over-compensation is explicitly avoided. The scheme aims at keeping the level of financing at the minimum necessary by demanding a minimum self-financing of 35% of the project costs, except in the particular circumstances of cumulation of aid. The monitoring of the aid granted is aimed at ensuring the realisation of the cultural objective and compliance with the conditions set out in the legal basis.

22) The Commission notes that there are a number of conditions for the grant of aid which ensure the compatibility of the scheme with Article 107 (3) (d) of the TFEU, in so far as it promotes culture and does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest. The overall budget of the scheme for the three-year period, estimated at EUR 22 290 000, is quite moderate whereas the annual budget of the scheme, approximately EUR 7 430 000, is also reasonably low. Furthermore, the maximum amount of aid foreseen per project or activity is EUR 120 000/per year. In addition, the Spanish authorities confirmed that the aid scheme is open to any natural or legal person established in the European Economic Area, therefore the Union interest is ensured by the eligibility and equal treatment of applicants. Furthermore, the fact that the aid is awarded through an open call for applications based on eligibility and selection criteria which are clearly defined and published, acts as an incentive for the performing of activities falling under the scheme as well as limiting the potential distortion produced. Moreover, the control mechanism foreseen offers an additional guarantee that only cultural activities falling under Article 107 (3) (d) of the TFEU will be supported.

5 CONCLUSION

23) In the view of the above, the Commission finds that the aid granted on the basis of the measure in question 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.

24) The Commission takes note of the commitment from the Spanish authorities not to admit any application from any entity established in the Basque Country having received illegal and incompatible aid in the context of one of the State aid schemes mentioned below or, if the entity had received such kind of aid, that this, including interests, has been fully recovered or has been deposited in a blocked account:

- Fiscal aid - Alava I, Alava II and Alava III (cases CR 48/99, CR 49/99 and CR 58/00);
- Fiscal aid - Guipuzcoa I, Guipuzcoa II and Guipuzcoa III (cases CR 50/99, CR 53/99 and CR 59/00);
- Fiscal aid - Vizcaya I, Vizcaya II and Vizcaya III (cases CR 52/99, CR 54/99 and CR 60/00).

25) The Commission reminds Spain to submit annual reports on the application of the aid measure. The Commission moreover reminds Spain to inform the Commission pursuant to Art 108(3) TFEU on all plans to approve anew or to modify this aid 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_es.htm

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

European Commission
Directorate-General for Competition
State Aid Greffe
J-70 3/232
BE - 1049 Brussels

Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission

Annex: Summary of the notification based on the information provided by the Member State according to the standard form provided in Annex to the Notice on simplified procedure.