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**Subject: State aid 32643 (2011/N) – Spain
State aid to Basque museums in 2011**

Madam,

1. SUMMARY

1) I am pleased to inform you that the Commission has decided to approve the above scheme until 31 December 2011.

2. PROCEDURE

2) By electronic notification of 1 March 2011, registered by the Commission on the same day, the Spanish authorities notified to the Commission the above mentioned aid scheme.

3) On 9 March 2011 the Commission requested additional information which was provided by the Spanish authorities on 11 March 2011.

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DESCRIPTION OF THE MEASURE

Objective

- 4) The notified scheme provides aid for the protection and promotion of museums and the dissemination of culture within the Basque region.

Legal basis

- 5) The scheme is based on a draft Order of the Cultural Counsellor of the Basque Country which regulates the award of financing for the protection and promotion of museums and the development of museums activities related to cultural heritage and dissemination of culture.

Beneficiaries

- 6) Aid beneficiaries can be natural or legal persons governed by public or private law that currently manage a museum in the Basque region as well as those committed to supporting and promoting new museums. The Spanish authorities estimate that the number of beneficiaries will be between 11 – 50. As confirmed by the Spanish authorities, the aid scheme is open to any natural or legal person established in the European Economic Area and, therefore, the beneficiaries' selection process will not discriminate on the basis of nationality or place of establishment.

Form of financial support and granting authority

- 7) The financing will be granted in the form of direct grants by the Directorate for Cultural Heritage of the Basque government.

Budget

- 8) The total budget is estimated at EUR 700 000 for 2011 and it will be granted out of the general budget of the Basque Country.

Duration

- 9) The Spanish authorities confirmed that, upon Commission approval, the aid will be granted until 31 December 2011.

Intensity

- 10) The aid intensity is limited to 75% of the costs incurred by the beneficiaries. The maximum amount of aid foreseen per project or activity is EUR 45 000. Nevertheless, the same beneficiary could be subsidized for a maximum of two different projects or activities, in such a case the ceiling for individual aid would amount to EUR 90 000¹.

¹ The Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 107 and 108 of the TFEU to *de minimis* aid, published on 28.12.2006, OJ L 379/5, which exempts from the notification

Eligible projects, selection criteria and their weighting

11) The granted assistance will be allocated to the following activities:

- a) art exhibitions and publications: renovation of the permanent exhibition; new temporary exhibitions; publications in different forms, e.g. online and print art publications.
- b) education and cultural action: development of programs and didactic materials; organisation of conferences and seminars; website creation and development projects.
- c) documentation: inventory and cataloguing of artistic work; digitalization of Basque museums collections in a common system, namely EMSIME.
- d) surveys and reports: preparation of business plan, quality plan, viability plan, market reports and client analysis.

12) Applications for subsidies will be subject to assessment by an Evaluation Committee on the basis of the following selection criteria:

Selection criteria	Score
quality and cultural interest of the project; budget adjustment; level of economic viability and feasibility of the project; level of self-financing	60
stability, continuity, and professional trajectories of the applicants; activities performed in 2010; activities foreseen in the 2011 budget; level of originality and rigor of surveys and reports	40

13) The aid is awarded through an open call for applications. The Evaluation Committee will examine the applications in accordance with the eligibility conditions, all the projects will be ranked on the basis of the scores obtained in each criterion. In the same context, the Evaluation Committee will guarantee respect for the principles of equality, transparency and non-discrimination. The Directorate for Cultural Heritage of the Basque government is the responsible entity for managing the awards provided under the notified scheme.

Eligible costs

14) Only costs directly and exclusively related to the protection and promotion of museums and the dissemination of culture within the Basque region can be subsidised under the present scheme. Furthermore, the costs incurred cannot exceed the fair market value.

requirement of aid measures granted to undertakings that do not exceed the value of EUR 200 000 over a period of three fiscal years, does not seem to be applicable since similar aid measures were awarded to Basque museums in 2010, i.e. *N 1/2010 – State aid to Basque museums (Spain)*, adopted on 21.04.2010, OJ C/140/2010 of 29.05.2010, p.18. http://ec.europa.eu/competition/state_aid/register/ii/doc/N-1-2010-WLWL-en-21.04.2010.pdf

Cumulation

- 15) 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.

3. ASSESSMENT OF THE MEASURE

4.1 Notification requirement

- 16) The Spanish authorities have complied with the procedural requirements of Article 108(3) TFEU by notifying the measure for the project before putting it into effect.

4.2 Existence of aid within the meaning of Article 107 (1) of the TFEU²

- 17) The Commission has first examined whether the notified measure can be characterised as State aid within the meaning of Article 107(1) TFEU 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 internal market...*".
- 18) 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.
- 19) Moreover, the aid beneficiaries are natural and/or legal persons active in the cultural sector, more particularly in the management of existing museums and promotion of new museums. Nevertheless, these museum activities are carried out at the local and regional level and, consequently, it can be argued that the public support is unlikely to have an appreciable effect on trade between Member States.
- 20) The notified scheme may also have indirect economic effects on the commercial touristic activities. In the case of certain art exhibitions, interests may arise among cross-border tourists, and so potentially creating an impact on the internal market. The subsidies may contribute to increase the number of visitors to the Basque country, which would also have a

² 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.

beneficial impact on tourism and hospitality services of the region. However, the distortion that the aid might produce and its impact on intra-Union trade appear to be very limited, in view of the budget foreseen (€700 000) and the small number of beneficiaries (min. 11 – max. 50).

21) In view of the above, while the assistance granted under the scheme is unlikely to significantly affect intra-Union trade, the presence of State aid within the meaning of Article 107(1) TFEU cannot be completely excluded. Under these circumstances, it is therefore necessary to assess its compatibility under the provisions of Article 107 (3) (d) TFEU.

4.3 Compatibility of the aid

22) According to Article 107 (3) (d) 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 to the common interest.

23) The Commission's compatibility assessment of the notified measure did not imply any serious difficulties. The Commission has also duly taken into account Article 167 TFEU³ and the UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions⁴.

24) 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 decisions⁵. The Commission's analysis confirmed that the notified scheme fulfils the substantive requirements laid down in the mentioned precedents.

Common interest: genuine cultural objective

³ 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...".

⁴ 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...".

⁵ N 1/2010 – State aid to Basque museums (Spain), adopted on 21.04.2010, OJ C/140/2010 of 29.05.2010, p.18; NN 50/2007- Indemnity scheme for federal museums (Hungary), adopted on 10.10.2007, OJ C 308 of 19.12.2007, p. 7; N 471/2008 – Lipica Horses (Slovenia), adopted on 11.02.2009, OJ C 25 of 02.02.2010, p. 7; NN 27/2009 - Aid for mobility of museum collections (Hungary), adopted on 13.07.2009, OJ C206 of 01.09.2009, p. 2.

- 25) The information submitted by the Spanish authorities shows the cultural character of the projects to be subsidized. To this regard, it should be noted that the primary objective of the aid measure in question is the protection and promotion of museums and the dissemination of culture within the Basque region.
- 26) Moreover, the cultural character of the subsidized activities was also reflected in the selection criteria of the Evaluation Committee⁶.
- 27) In addition, it should be noted that the Basque museums acquire, conserve, research, communicate and exhibit cultural goods for purposes of study, education and enjoyment. Therefore, in order to remain attractive to the public, they are also expected to invest in new projects and technologies making culture accessible for a wide audience.
- 28) In view of the above, the Commission considers that the cultural purpose of the notified scheme, the protection and promotion of museums and the dissemination of culture within the Basque region, would be compatible under provisions of Article 107 (3) (d) TFEU.

The Basque museums do not affect trading conditions and competition to an extent that is contrary to the common interest

- 29) The Commission accepts the view of the Spanish authorities that the public funding is necessary for achieving the objective of culture promotion and spreading. In this respect, the sources provided by the scheme seem to be indispensable in order to preserve and promote museums and disseminate culture within the Basque region.
- 30) The Commission also recalls that the activities covered by the present scheme are usually not profit-seeking and revenues often do not cover the costs related to such activities⁷. Indeed, the targeted beneficiaries are generally micro enterprises and/or SMEs, which typically lack capital; their own resources are often insufficient even for their maintenance. Therefore, the resources provided by the measure are indispensable in order to ensure a proper quantity and diversity of cultural offer and make it available for the general public. Consequently, the aid appears to be both necessary and justified.
- 31) 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. 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

⁶ See paragraph 12.

⁷ E.g. entry ticket sales.

necessary and over-compensation is explicitly avoided. The scheme aims at keeping the level of financing at the minimum necessary by demanding a minimum own financing of 25% 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.

32) Moreover, 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, estimated at EUR 700 000, is relatively low. Taking into account that a maximum of 50 beneficiaries are foreseen, the average individual aid would be considered quite moderate. In addition, 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. Furthermore, the control mechanism foreseen offers an additional guarantee that only cultural activities falling under Article 107 (3) (d) of the TFEU will be supported.

4. CONCLUSION

33) 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.

34) 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).

35) 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:

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Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission