



EUROPEAN COMMISSION

Brussels, 04.09.2012

C(2012) 5931 final

**Subject: State aid SA.33997 (2011/N) – Czech Republic  
Cultural support programme in the Zlín region**

Sir,

## **1. PROCEDURE**

1. On 5 December 2011, the Czech authorities notified to the Commission the above-mentioned scheme. The Commission requested additional information on 26 January 2012 and on 27 March 2012, which was provided on 23 February 2012, 15 May 2012 and 18 July 2012. The Czech authorities accept that the decision be adopted in the English language<sup>1</sup>.

## **2. DESCRIPTION OF THE SCHEME**

### **2.1. Main features**

#### ***General objective***

2. The objective of the proposed aid scheme is to promote culture and preserve cultural heritage in the Zlín Region.

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<sup>1</sup> As stated by letter of 30 July 2012.

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### ***Granting authority***

3. The granting authority is the Zlín Region. The Zlín Region is an administrative unit of the Czech Republic, located in the region CZ07 Middle Moravia, a NUTS-II region eligible for regional aid under Article 107(3)(a) TFEU<sup>2</sup>.

### ***Legal basis***

4. The relevant legal basis for the notified scheme is the "*Programme for promoting culture in the Zlín Region*" (hereinafter "the Programme").
5. The general acts approved by the Parliament of the Czech Republic, on which basis the scheme was elaborated are namely "*Act No. 129/2000 Coll. on Regions, as amended*", "*Act No. 250/2000 Coll. on budget rules of territorial budgets, as amended*", "*Act no 320/2001 Coll. on financial control in public administration and on alteration of certain legal regulations, as amended*" and "*Act no 563/1991 Coll. on accounting, as amended*".

### ***Beneficiaries***

6. Beneficiaries may be either individuals or legal entities, provided that they engage in activities, organise events and implement activities and projects with a demonstrably cultural content<sup>3</sup> and that they serve to fulfill the objective set out in paragraph 2. The Czech authorities estimate that the number of beneficiaries will be between 101 and 500 annually.

### ***Duration***

7. The aid will be granted from the date of the Commission's approval for a period of 5 years.

### ***Budget of the scheme and annual breakdown***

8. The overall budget of the scheme is CZK 1,122 million (around €44 million<sup>4</sup>), split as follows:

<b>Budget/Year</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>TOTAL</b>
<b>Million CZK</b>	204	218	218	233	249	1,122
<b>Equivalent in Million €</b>	8	8.5	8.5	9	10	44

### ***Types of support***

9. The scheme is divided into four different types of support:
  - a) Contributions for operations, refundable financial aid and direct grants to subsidised organisations established by the Zlín Region in the sphere of culture ("Support (a)");
  - b) Grants to entities active in the sphere of culture ("Support (b)");

<sup>2</sup> N 510/2006 – *Czech regional aid map 2007-2013*, adopted on 24.10.2006, OJ C 280 of 18.11.2006, p.7.

<sup>3</sup> Audiovisual arts are not supported under the Programme.

<sup>4</sup> Exchange rate used : 1 € = 25.460 CZK (average rate from 31 July 2007 to 31 July 2012, Source ECB).

c) Grants from the Cultural Fund ("Support (c)");

d) Grants provided to the Bohuslav Martinů Philharmonic Orchestra ("Support (d)").

### ***Cumulation of aid***

10. As a general rule, a single beneficiary cannot receive different types of support under the Programme. However, in exceptional cases, the same beneficiary may obtain Supports (b) and (c) simultaneously, provided that it has submitted two separate applications.
11. The financing granted under the present scheme may be cumulated with other sources of financing awarded for the same purpose and in relation to the same eligible costs, to the extent that the aid received does not exceed the maximum aid intensity applicable to the given type of support under the Programme, as described below.

### **2.2. Contributions for operations, refundable financial aid and direct grants to subsidised organisations established by the Zlín Region in the sphere of culture ("Support (a)")**

#### ***Beneficiaries:***

12. Beneficiaries of Support (a) are subsidised organisations (or so-called contributory organisations) founded by the Zlín Region in the sphere of culture, namely:
  - The František Bartoš Regional Library in Zlín;
  - The Regional Gallery of Fine Arts in Zlín;
  - The Museum of the South-Eastern Moravia in Zlín;
  - The Museum of the Wallachia Region;
  - The Museum of Moravian Slovakia, Uherské Hradiště;
  - The Museum of Kroměříž;
  - The Observatory Valašské Meziříčí;
  - The 14|15 Bata institute.
13. These organisations engage in activities that are beneficial to the public and, as a rule, not profit making and primarily focus on the following areas:
  - Museum and gallery operations;
  - Formation of collections;
  - Library activities associated with the acquisition, expert processing, protection, and presentation of the collections of domestic and foreign literature as well as other types of documents (books, periodicals, audio and multi-media documents, maps, musical scores, and normative documents);
  - Astronomical activities;
  - Archaeological activities;
  - Cultural and educational activities and the organisation of events for the public as well as specialised conferences and symposia;
  - Preservation of cultural heritage;

- Presentation of the outputs of these activities, in particular through exhibitions, publications, lectures and articles as well as through electronic and information technologies, promoting them in the region, the country, and abroad.

***Form of the aid:***

14. Aid will be granted in the form of contribution for operations, refundable financial aid and direct grants.
15. Contribution for operations is a specific term defined by law and used exclusively in association with the funding of subsidised organisations. Provided to subsidised organisations depending on their performance, it ensures that they can pursue the activities beneficial to the public for which they have been established.
16. Refundable financial aid consists of funds provided interest-free for a specific purpose, which must be returned by the beneficiary.
17. Direct grants must always be dedicated and used to fund a specific project. Before granting such direct grants, the Region's relevant authorities always assess and approve the investment plan of the project, including its rationale (the reasons why the project in question should be implemented), a detailed description, an expected duration and estimated costs.

***Budget:***

18. The budget for Support (a) is estimated at CZK 962 million (around €38 million), split as follows:

<b>Budget\Year (Million CZK)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>TOTAL</b>
Contributions for operations	134	143	143	158	171	<b>749</b>
Refundable financial aid	15	11	15	15	18	<b>74</b>
Subsidies	23	32	28	28	28	<b>139</b>
<b>Total Support (a)</b>	<b>172</b>	<b>186</b>	<b>186</b>	<b>201</b>	<b>217</b>	<b>962</b>

***Eligible costs:***

19. Concerning contributions for operations, all costs associated with the typical activities of a subsidised organisation are eligible. The typical activities are specified in the respective founding charters. Contributions for operations are mostly used to cover costs of activities beneficial to the public, salaries, costs for electricity, heating, gas, repairs of used property, presentation/promotion costs, etc.
20. Concerning refundable financial aids, funds are provided to bridge the beneficiary's cash flow and cover expenses where revenues are delayed, particularly when implementing projects where costs must be paid before they are refunded (e.g., EU funds).
21. Concerning direct grants, the costs incurred during the implementation of a specific project are eligible. The funds may only be used for funding the project for which they have been granted.
22. The Czech authorities confirmed that any aid provided would not be used to finance non-cultural activities.

***Aid intensity:***

23. A contribution for operations may amount to as much as 100% of the overall operating costs of a subsidised organisation. However, if the income of the subsidised organisation, including the contribution for operations received, exceeds the operating costs over a calendar year, the resulting profit has to be used for the further development of the activity for which the subsidised organisation has been established.
24. The total amount of refundable financial aid depends exclusively on the current needs of a given subsidised organisation and, in most cases, is used for the pre-financing of extra projects, as such aid is intended to bridge a temporary imbalance between revenues and expenses. This aid must be refunded by 31 March of the following year at the latest.
25. A direct grant may amount to a maximum of 100% of the costs of the subsidised project.
26. The same subsidised organisation can get simultaneously the 3 forms of aid.

***Approval procedure:***

27. The specific amount of the contribution for operations for a subsidised organisation is authorised, for a single calendar year, as part of the budget of the Zlín Region approved by the regional Assembly. Subsidised organisations are entitled by status to this contribution granted by their founder. One twelfth of the total annual support is paid each month.
28. The specific amount of refundable financial aid is approved by the Assembly of the Zlín Region. The specific amount of direct grants is approved by the Council or Assembly of the Zlín Region depending on the amount of aid granted. Both the direct grants and the refundable financial aid are paid ex-ante.

***Monitoring:***

29. Subsidised organisations must regularly submit reports and documents to the Zlín Region, such as accounting documents or the analysis of their economic performance.
30. The Region checks, on an ongoing basis, whether the subsidised organisation uses the funds for the purpose for which they were provided. Whenever a breach is detected, the beneficiary has to repay the improperly used funds to the Region without any delay.

**2.3. Direct grants to entities active in the sphere of culture ("Support (b)"):**

***Beneficiaries:***

31. Under Support (b), grants are provided to entities, either legal entities or individuals, active in the sphere of culture. There is no restriction on the nationality or seat of residence of beneficiaries.
32. Support is provided to entities pursuing professional or amateur artistic activities aimed at maintaining cultural heritage and promoting the Region, both in the Czech Republic and abroad. Artistic activities shall mean, in particular, staging musical

works, concerts, theatrical production, publishing and literary activities, organising festivals, reviews, exhibitions, cultural and educational events and presentations in the Region, at national level, and abroad. Political parties and movements are excluded from the scope of the Programme.

33. The Czech authorities estimate that the number of beneficiaries of Support (b) will be 60 to 70 annually.

***Form of the aid:***

34. Financing will be granted in the form of direct grants from the Zlín Region's budget.

***Budget:***

35. The budget for Support (b) is estimated at CZK 25 million (around €1 million) in total and at CZK 5 million (around €0.2 million) per year.

***Eligible costs:***

36. Eligible costs are costs directly associated with the implementation of a specific project, incurred and paid by the beneficiary during the implementation of the project.
37. Eligible costs are specified in the grant agreement between the Region and the beneficiary, based on the nature of the event, project, or activity subsidised. The agreement expressly identifies a scope of costs that are not eligible. As a general rule, these are salaries and wages, rewards and bonuses paid to the beneficiary's board members, costs and expenses that cannot be proven, taxes, loans and credits, repayments under loans, credits and financial lease, fines and penalties, damages, shortfalls, court fees, etc.

***Aid intensity:***

38. The grant may amount to a maximum of 100% of all of the costs of the event, activity, project, or operations of the beneficiary.

***Selection procedure:***

39. The aid is granted on the basis of an application from the entity for the provision of support for a cultural event or activity organised or co-organised by it. The selection process is open throughout the year and entities may submit their applications at any time. An application shall include the identification data of the applicant, a description of the project, a cost calculation or complete budget, and information about the amount of grant requested. Under Support (b), the Programme will only cover grants over CZK 300,000 (around €12,000).

40. The selection criteria are the following:

<b>Selection criteria</b>	<b>Evaluation</b>	<b>Weighting</b>
1. Evaluation of the past activities / new innovative activity / project  <i>(emphasis is put on the applicant's past activities and record; the Region supports</i>	0 – 10 points	25 %

<i>traditional events and innovative activities)</i>		
2. Importance of the project for the cultural development of the Region  <i>(cultural aspect of the project, promotion and preservation of traditions, importance for the Region and/or parts of it, innovativeness)</i>	0 – 10 points	50 %
3. Economic criteria  <i>(absence of indebtedness of the applicant towards the Region, quality and feasibility of the budget)</i>	0 – 10 points	25 %
Total points	30 points maximum	100 % maximum

41. The evaluation criteria and their respective weighting are published on the Region's website.
42. Eligible projects are projects which obtained over 16 points, including a minimum of 8 points for the second selection criterion, i.e., the importance of the project for the cultural development of the Region.
43. The selection procedure is administered by the Office of the Governor of the Region. The decision as to the provision of a subsidy, its specific amount, and the purpose for which it is to be provided is made by the regional Council or Assembly. Information about granted subsidies is published on the Region's website.
44. The grant is further provided on the basis of a written agreement between the Zlín Region and the beneficiary, which sets out the specific purpose of the funds.

#### ***Procedure of appeal***

45. Following an amendment made on 11 June 2012, the Programme now includes an option to appeal against a decision from the regional authorities. An applicant is entitled to file an appeal within fifteen days from the receipt of a written confirmation that the grant in question has or has not been approved. The Governor will decide within 30 days from the receipt of the appeal whether it should be rejected or subject to further discussion and, further, will inform the Zlín Region's Council or Assembly of all appeals filed under a single call for proposals and of subsequent decisions.

#### ***Monitoring***

46. Beneficiaries must submit a detailed statement of accounts and copies of all relevant documents (the original documents must have a clause "Aid granted by the Zlín Region" printed on them) proving that the costs to be covered by the aid have actually been spent (i.e., invoices, bills, tax documents, proofs of payment, statements of bank accounts, receipts etc.), and the budget of the project.

47. The aid is not paid before the documentation of costs, invoices and receipts is submitted and checked. However, it is paid continuously in case of projects that run all year round.
48. In the grant agreement, the Zlín Region reserves the right to carry out financial checks on the use of the grant.
49. In case of a breach of the conditions of the agreement, in particular the use of the grant in violation of the purpose for which it was provided, or should over-financing occur, the beneficiary must return all or part of the grant.

#### **2.4. Grants from the Cultural Fund ("Support (c)"):**

##### ***Beneficiaries:***

50. The beneficiary may be an individual or a legal entity. In the case of the renovation of a cultural monument, the beneficiary must be its owner or co-owner. There is no restriction on the nationality or seat of residence of beneficiaries.
51. Subsidies from the Cultural Fund cannot be provided to political parties and movements, subsidised organisations established by the Zlín Region, organisational units of the State; State establishments that are in a similar position to that of the organisational units of the State, subsidised organisations established by the organisational units of the State, and State enterprises.
52. Subsidies from the Cultural Fund may be provided for the following purposes:
  - a) Support to cultural activities and events, i.e., organising special cultural events of a local, regional, and supra-regional importance, primarily for the cultural and artistic education of children and youth, promoting the development of amateur and local culture, leisure-time artistic activities, supporting professional cultural activities, as well as folk traditions, crafts, and exhibitions;
  - b) Restoration of the cultural monuments of the Zlín Region that are of particular interest to the Region in terms of preservation of the Region's cultural heritage, in particular, restoration of immovable cultural monuments, both sacred and profane, folk architectural treasures and small sacral structures, restoration of movable cultural monuments, and pre-project and project preparation for the renovation of cultural treasures, including the necessary survey works;
  - c) Support to publishing, in particular of non-commercial and lasting publications promoting the culture of the Zlín Region, specifically those focused on the culture, history, and geography of the Zlín Region, as well as literary works by local authors that are either of a supra-regional importance or deal with the Zlín Region and its life.
53. The Czech authorities estimate that the number of beneficiaries of Support (c) will be up to 410 annually.

##### ***Form of the aid:***

54. Financing will be granted in the form of direct grants from the Cultural Fund of the Zlín Region.

##### ***Budget:***

55. The budget for Support (c) is estimated at CZK 40 million (around €1.6 million) in total and at CZK 8 million (around €0.3 million) per year.

***Eligible costs:***

56. Eligible costs are costs directly associated with the implementation of a specific project, incurred and paid by the beneficiary during the implementation of the project.
57. Eligible costs may be of non-capital nature (in case of cultural and publishing activities) and of capital nature (investments and capital constructions, renovation of historical monuments).

***Aid intensity:***

58. The amount of grant from the Cultural Fund may amount to a maximum of 100% of the overall costs of a given project.

***Selection procedure:***

59. Aid will be granted on the basis of calls for applications published on the official notice board and on the website of the Zlín Region.
60. The selection procedure, i.e., the collection and evaluation of applications and rendering of decisions on the provision of grants from the Cultural Fund, will be carried out at least once per year.
61. Applications will be assessed by the Region's Cultural Commission which will make recommendations, taking into account the following selection criteria:
- a) Applicant's Credibility: Integrity and credibility of the applicant; in case of restoration of historical monuments, the past record and experience in this field will be considered and, where applicable, past projects and activities in the same field evaluated – *20 points maximum*;
  - b) Quality of the submitted project: Artistic value (creativity, originality and significance) or heritage value; local significance and uniqueness of the project or level of impairment of a given historical monument; project readiness, level of excellence of the application; compliance with adopted strategic documents of the Zlín Region and rules of heritage conservation; participation of specific groups of the Region's inhabitants in artistic and cultural activities; level of excellence of the project; ability to articulate objectives and visions of the project in an understandable, definite and credible way, including its sustainability – *40 points maximum*;
  - c) Economic parameters of the project: Acceptability of the project costs and rationale of the application; general clarity and persuasiveness of the project; costs and revenues assessment; transparency and clarity of the project budget; adequacy, efficiency and financial prudence of costs; ability to secure further funding when a call for application provides for less than 100% of the eligible costs – *40 points maximum*.

62. Taking into account the amount of approved funding earmarked for each call for applications, the Region's Cultural Commission will select the best projects according to their final ranking.
63. The decision as to the provision of a grant, its specific amount, and the purpose for which it is to be provided will then be made by the regional Council or Assembly. Information about granted subsidies is then made public.

#### ***Procedure of appeal***

64. Following amendments made on 11 June 2012 and 13 June 2012, the Programme now includes an option to appeal against a decision from the regional authorities. An applicant is entitled to file an appeal within fifteen days from the date the relevant decision of the Zlín Region's Council or Assembly relating to a specific grant has been published on the Region's website. A Zlín Region Councilor will decide within 30 days from the receipt of the appeal whether it should be rejected or submitted to the regional authorities for further discussion and, further, will inform the Zlín Region's Council or Assembly of all appeals filed under a single call for proposals and of subsequent decisions.

#### ***Monitoring***

65. Beneficiaries must submit a detailed statement of accounts and copies of all relevant documents (the original documents must have a clause "Aid granted by the Zlín Region" printed on them) proving that the costs that should be covered by the aid have actually been spent (i.e., invoices, bills, tax documents, proofs of payment, statements of bank accounts, receipts etc.), and the budget of the project.
66. The aid is not paid before the documentation of costs, invoices and receipts is submitted and checked.
67. In the grant agreement, the Zlín Region reserves the right to carry out financial checks on the use of the grant.
68. In case of a breach of the conditions of the agreement, in particular the use of the grant in violation of the purpose for which it was provided, or should over-financing occur, the beneficiary must return all or part of the grant.

#### **2.5. Subsidies provided to the Bohuslav Martinů Philharmonic Orchestra ("Support (d)"):**

##### ***Beneficiary:***

69. The beneficiary is the Bohuslav Martinů Philharmonic Orchestra Public Benefit Society ("BMPO"). The BMPO is a non-profit organization founded by the Zlín Region and the City of Zlín that engages in the following public benefit services:
  - Staging musical productions in the premises used by the BMPO;
  - Publishing of promotional materials and publications related to the BMPO and to musical life in general;
  - Supporting the making of new orchestral music recordings;
  - Arranging educational and awareness activities for the public;
  - Cooperating with schools and other educational and training institutions; and

- Purchasing and selling musical instruments, musical scores, and musical accessories for and to the members of the philharmonic orchestra.

***Form of the aid:***

70. Financing will be granted in the form of direct grants.

***Budget:***

71. The budget for Support (d) is estimated at CZK 95 million (around €4 million) in total and at CZK 19 million (around €0.8 million) per year.

***Eligible costs and aid intensity:***

72. The Zlín Region subsidises the activities of the BMPO in order to support culture in the Region, to bring culture to the general public, and in particular that of the Region, and to promote the culture of the Region outside the Region (as well as outside the Czech Republic). The scope of the support shall be determined by what is required for the development of culture and preservation of cultural heritage.

73. The amount of the grant may be up to 100% of the overall costs of the BMPO's public benefit services, less its income generated both by its public benefit activities (concerts) and its additional activities (advertising). All of the income generated by its additional activities is to be used to cover public benefit activities.

***Approval procedure:***

74. The grant is provided on the basis of a written agreement between the Zlín Region and the BMPO, which sets out the specific purpose of the use of the funds.

75. The amount of the grant is approved by the Council or the Assembly of the Zlín Region. The BMPO is entitled by status to receive funding from the Zlín Region. One twelfth of the total annual support is paid each month.

***Monitoring***

76. For the settlement of the aid, the BMPO has to submit several documents on a regular basis, including amendments to the budget, financial statements, the annual report and a draft of the budget for the following calendar year.

77. In the grant agreement, the Zlín Region reserves the right to carry out financial checks on the use of the grant.

78. In the case of any breach of the conditions of the agreement, in particular the use of the subsidy in violation of the purpose for which it was provided, or should over-financing occur, the BMPO must return all or part of the subsidy. Any undrawn funds shall be returned by the BMPO to the Region.

**3. ASSESSMENT OF THE AID MEASURE**

**3.1. State aid in the sense of Article 107(1) TFEU**

79. According to Article 107(1) TFEU, "*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".*

80. In order to be classified as a State aid, a support measure must therefore fulfill 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-Union trade.

***Presence of State resources***

81. The notified scheme clearly involves State resources, since it is financed from the budget of the Zlín Region.

***Economic advantage to an undertaking***

82. The beneficiaries get an advantage through the measure, since they would not receive the direct grants, contributions for operations and repayable financial aid under normal market conditions. Furthermore, these payments relieve the beneficiaries from part of the costs they should have borne in carrying out the cultural project selected or in performing their activities.
83. It cannot be excluded that the beneficiaries, which can have different legal forms, may engage in activities of an economic nature, as the organisation of cultural events, concerts and festivals, the performance of cultural activities, and publishing activities may be considered economic activities on a competitive market<sup>5</sup>. Indeed, there may be entities other than the beneficiaries offering the same or substitutable goods and services on the same market. In the case of renovation of monuments, a beneficiary may use the building for the operation of economic activities.
84. Therefore, to the extent that the beneficiaries carry out economic activities, they qualify as undertakings in the sense of article 107(1) TFEU which receive an economic advantage under the scheme.

***Selectivity and distortion of competition***

85. The economic advantage granted under the scheme is selective in the sense that it benefits certain undertakings that are involved in the cultural activities supported by the present scheme. The beneficiaries may compete with other undertakings that carry out the same cultural activities as those specified in the scheme, including those which do not benefit from the scheme. Consequently, the notified aid scheme may distort competition.
86. Moreover, the aid under Supports (a) and (d) will only benefit certain undertakings established in the Zlín Region. For the aid under Supports (b) and (c), although in principle, all natural and legal persons are entitled to apply for financing independently from their place of establishment, taking into account the geographical limitation of the majority of the activities to be supported, it may be assumed that the aid will primarily benefit undertakings established in the Zlín Region.

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<sup>5</sup> Under EU competition law, an undertaking is "(...) any entity engaged in an economic activity, in particular an activity consisting in offering goods and services on a given market, regardless of its legal status and the way in which it is financed"; see Case C-118/85 Commission v. Italy [1987] ECR 2599, para. 7.

87. Nonetheless, in view of the relatively limited budget of the scheme and of the relatively high number of beneficiaries, the measure is unlikely to produce a significant distortion of competition. In particular in the case of activities taking place in the Czech language, any such distortion would probably be very limited in view of the limited substitutability with similar activities in other languages.

### ***Effect on intra-Union trade***

88. Even if the geographic limitation of most activities is the Zlín region and most activities will be performed locally, it cannot be excluded that the measure may affect intra-Union trade.

89. In particular, the Zlín region is a border region neighbouring with another European Union Member State (Slovakia) and is not far from another two Member States (Poland and Austria). Also, attendance at the supported events and activities by foreign visitors is very likely.

90. Furthermore, taking into account that the scheme also supports cultural activities abroad<sup>6</sup>, it can neither be excluded that some activities supported have a potential effect in the market nor that the beneficiary companies may be active in several EU Member States and, therefore, it cannot be ruled out that the measure has a certain, albeit limited, effect on intra-Union trade.

91. Some of the activities supported by the scheme may also have a relative small capacity to affect intra-Union trade due to linguistic barriers, such as theatrical, publishing and literary activities. However, other activities such as music and dance, or the renovation of monuments, have no such linguistic barriers and bear more risk to affect intra-Union trade.

### ***Conclusion***

92. Taking into consideration all the above, the Commission considers that the scheme may constitute State aid in the meaning of Article 107(1) TFEU. Therefore, it is necessary to assess its compatibility under the provisions of Article 107(3) TFEU.

### **3.2. Compatibility**

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

94. The Commission has assessed the compatibility of the notified measure with the Internal market also in the light of Article 167 TFEU which provides that "*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*".

95. The principles laid down in Article 107(3)(d) TFEU and Article 167 TFEU have been applied to cases similar to the case at stake in a series of precedent decisions<sup>7</sup>. The

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<sup>6</sup> Organisation of international festivals and cultural events, performance at concerts abroad, presentation of the Region abroad.

<sup>7</sup> SA.32599 (2011/NN) - *Cultural grant system of the city of Prague 2010-2015*, adopted on 15.6.2011, OJ C 196 of 5.7.2011, p.4; N 293/2008 - *Cultural aid for multifunctional community cultural centres*,

Commission's analysis confirmed that the notified measure would fulfill the substantive requirements laid down in the mentioned precedents.

### ***Genuine cultural objective***

96. The present scheme is aimed at the promotion of culture and heritage conservation in the Zlín Region. It is designed primarily for assisting the cultural institutions established by the Region, supporting cultural activities, developing the cultural and artistic education of children and youth, protecting cultural treasures, and supporting publishing activities.
97. The information submitted by the Czech authorities shows the cultural aspect of the activities and projects to be subsidized under the scheme.
98. In particular, the beneficiaries of Supports (a) and (d) are entities which engage in activities with a truly cultural content, such as museums, regional libraries and a philharmonic orchestra. The activities and projects eligible for aid under Supports (b) and (c) concentrate on culture, since they cover artistic activities aimed at maintaining cultural heritage and promoting the Region, cultural activities and events, restoration of cultural monuments and publishing activities promoting the culture of the Region.
99. The Commission is therefore of the opinion that the notified aid is directed towards activities with a truly cultural content and, therefore, falls within the scope of Article 107(3)(d) TFEU.

### ***Necessity and proportionality***

100. The Czech authorities consider that the present measure is necessary to protect, foster and disseminate cultural activities, which will mainly take place in the Zlín Region, and to facilitate the access of the general public to them as well as to preserve the Region's cultural heritage.
101. According to the Czech authorities the Zlín Region is a fairly remote and outlying region within the Czech Republic, located far from major cultural centres, with a rather low local purchasing power for cultural activities. It should be recalled that the Zlín Region is located in the region CZ07 Middle Moravia, a NUTS-II region eligible for regional aid under Art. 107(3)(a) TFEU.
102. The activities to be financed under the scheme are mostly unprofitable so one could ascertain that many of them would not be carried out or could not be achieved, at least in the situation prevailing today in the Zlín Region, in a desirable quality without external support. Moreover, a lower amount of aid would result in a narrower portfolio of cultural events and activities or a substantial rise in admission fees, which would make such events less affordable for a major part of the Region's population. In particular,
  - The activities carried out by the subsidised organisations under Support (a) are beneficial to the public, non-commercial, not profit-making, and thus not suitable

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*museums, public libraries and complementary higher education centres* adopted on 26.11.2008, OJ C 66 of 20.3.2009, p.22; *N 357/2007 - Appropriations of the Ministry of Education and Culture and the National Cultural Fund*, adopted on 30.1.2008, OJ C 87 of 8.4.2008, p.1; *N 704/2007 - Aid to theatre and circus sector: Region of Valencia* adopted on 30.4.2008.

for profit-oriented entities. Therefore public aid is necessary so that these activities can be pursued and, if possible, at a desirable level.

- All the projects supported under Supports (b) and (c) are non-commercial, and hence not feasible without public aid. The aid provided to such projects will enable the Zlín Region to make a wide portfolio of cultural events affordable for all local inhabitants, sustain local traditions, and mediate contemporary art and latest cultural trends.

- The BMPO under Support (d) is the only orchestra of this kind active in the Region; it provides the local population with first-rate musical experiences. Due to the general economic situation and standard of living in the region, the orchestra would not be able to pursue such many of its activities and the total number of outstanding concerts and performances would substantially decrease without the aid.

103. The overall budget of around €44 million seems limited considering the numerous activities and the significant number of beneficiaries expected (between 101 and 500 per year) to be supported during the 5-year period of validity of the scheme.

104. Appropriate arrangements are put in place to guarantee that aid is actually used for the pursued objectives and is proportional. Beneficiaries are obliged to submit financial statements. The Region's authorities check the documents provided periodically by the beneficiaries and, in addition to the correctness and completeness of such documents, verify whether the granted aid has been used for the intended purpose. Both the costs and revenues related to the subsidised activities are checked. Further, the Region's authorities are authorised to perform on-site inspections of all beneficiaries, in which case they check original documents to make sure that the granted aid has not been spent contrary to the terms on which the grant was made. If the authorities find out that it has been spent contrary to the agreement terms, the beneficiary will have to pay the money that has been spent on unauthorised items or activities back to the Zlín Region. Moreover, if the aid received exceeds the maximum aid intensities foreseen in the Programme, the beneficiary will have to return the proportionate part of the aid to the Region or, in the case of subsidised organisations, use it to fund their principal activity.

105. Although the financing received under the scheme may be cumulated with other forms of public support, the total financial support obtained by the beneficiary may not exceed the costs necessary to accomplish the project or activity.

106. Based on these considerations, the Commission considers that the measure is both necessary and proportionate to achieve the objective of culture conservation and promotion in the Zlín Region.

#### ***Effect on trading conditions and competition***

107. As highlighted above, the distortion of competition arising from the measure and its effect on trade are likely to be limited for most of the activities. The Commission notes that in view of the often local character of the assisted undertakings and the geographic limitation of most activities in the Zlín Region, the aid is unlikely to produce a disproportionate negative effect on intra-Union trade. For the activities carried out in the Czech language, the impact on intra-Union trade would be even more limited.

108. Any possible impacts on competition and intra-Union trade will further be minimized by the fact that any processes associated with funding are clearly defined and are fully under the public eye, as all information concerning the decision-making processes undertaken by the Zlín Region's authorities is transparent. Moreover, based on the information provided by the Czech authorities, for Supports (b) and (c) the range of potential applicants is not restricted and equal access through a transparent and objective selection process is ensured to all applicants, including those from other Member States.

109. Based on these considerations, the Commission considers that the measure is both necessary and proportionate to the objective of promoting culture in the Zlín Region and does not affect trading conditions and competition in the Union to an extent contrary to the common interest.

#### 4. CONCLUSION

110. On the basis of the foregoing assessment, the Commission has decided that the measure is compatible with the internal market pursuant to Article 107(3)(d) TFEU.

111. The Czech authorities accept that the decision be adopted in the English language.

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:

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

European Commission  
Directorate-General for Competition  
State Aid Registry  
J-70 3/225  
B-1049 Brussels

Fax No: +32 2 296 12 42

*Yours faithfully,  
For the Commission*

*Joaquin ALMUNIA  
Vice-President*