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**Subject: State aid SA.34328 (2012/N) – Spain
Aid for publishing books**

Sir,

1. SUMMARY

1. I am pleased to inform you that the European Commission has assessed the measure "aid for publishing books" (hereafter "the measure") and decided not to raise objections as the State aid contained therein is compatible with Article 107, paragraph 3 (d) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU'). The measure is approved until 31 December 2014.

2. PROCEDURE

2. On 6 February 2012, the Spanish Authorities notified to the Commission, pursuant to Article 108, paragraph 3 of the TFEU, an aid scheme consisting of direct grants for publication of books in Spanish (Castilian), Basque, Catalan, Galician or Valencian languages. On 8 March 2012 the Commission sent a request for information to the Spanish authorities who replied on 21 March 2012. Further information was supplied by letter dated 3 April 2012 and email dated 26 April 2012.

Excmo. Sr. D. José Manuel García-Margallo y Marfil
Ministro de Asuntos Exteriores y de Cooperación
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3. DESCRIPTION

3. The measure notified by the Spanish authorities finds its legal basis in the Royal Decree 257/2012 of 27 January 2012 on the basic organic structure of the Ministry of Education, Culture and Sport, which attributed to the Directorate General of Cultural Policy and Industries and the Book ("Dirección General de Política e Industrias Culturales y del Libro ") the task to promote books by supporting publication.
4. This scheme provides aid for publishing books in Spanish (Castilian), Basque, Catalan, Galician or Valencian languages (official languages of Spain and its Autonomous Communities) that enrich the Spanish bibliographic heritage. In particular, it supports the publication of fiction books for adults, youth and children; of reference and consultation books (such as encyclopedias, dictionaries, history books, bibliographies, etc); as well as of humanistic or scientific reflection works in so far as they are of significant cultural value. Both paper and electronic publications are supported, as long as the work concerned is – in the opinion of an Evaluation Committee - of outstanding cultural significance and it has never been published before (first edition), its publication in the language concerned dates back to more than 15 years (for paper works), or it concerns a project that incorporates in an existing work a novelty (e.g. a critical review, a translation etc.) that, in the opinion of the Evaluation Committee, has special cultural significance. For paper copies to be eligible for aid, it must be planned to publish a minimum volume of 1 000 copies of the book.
5. Explicitly excluded from the aid measure are, among others, works that have been rejected under previous schemes¹; works edited or co-edited by or on behalf of public sector bodies or non-profit organizations; works that are published with the financial support of one or more of its authors; textbooks for teaching; works in episodes, collectors' and limited number editions, exhibition catalogs, books that cannot be sold, yearbooks, journals and reprints or special issues of yearbooks or journals; loose parts of a complete work if these parts are not sold separately.
6. Potential beneficiaries of this measure are editors (natural or legal persons) that can prove uninterrupted publishing activity of at least 2 years, and that have their permanent establishment/residence in Spain or in any other EEA Member State at the time the aid is paid out.
7. The aid measure has a duration of three years (1 January 2012 to 31 December 2014) and a budget of 10 950 000 EUR (annual budget of 3 650 000 EUR). For the year 2012², it is financed from the budget of the Ministry of Culture, Education and Sports. No aid will be granted under the scheme until its approval by the Commission.
8. The subsidies awarded under this measure can be cumulated with any other type of aid granted by any other entity, provided that the cumulative aid intensity does not exceed

¹ Aid was already granted to the publishing sector in 2010 and 2011 under the *de minimis* rules.

² The budget is approved annually, but no significant changes are expected for the years 2013 and 2014.

50% of the total costs of publication of the project (i.e. costs of production³, distribution and marketing⁴) and does not exceed 100% of the costs of production. The maximum number of projects eligible for aid per editor is 10 and in any event not more than 50% of the editor's total number of publications in the previous year (reprints not being taken into account). The applicant must justify the necessity of the aid to publish the book with the proposed characteristics.

9. The selection of eligible projects is conducted on a competitive basis and complies with the Spanish laws *Ley 38/2003, de 17 de noviembre, General de Subvenciones; el Real Decreto 887/2006, de 21 de julio, por el que se aprueba el Reglamento de la citada Ley; la Orden CUL/2912/2010, de 10 de noviembre, por la que se establecen las bases reguladoras para la concesión de subvenciones públicas en régimen de concurrencia competitiva del Ministerio de Cultura y sus organismos públicos;* and in addition, for issues not covered by those laws, by the *Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.*
10. The General Subdirectorate for the Promotion of Books, Reading and Spanish Literature ("*Subdirección General de Promoción del Libro, la Lectura y las Letras Españolas*") is responsible for managing the applications made under this measure. An Evaluation Committee examines the applications and their conformity with the eligibility conditions. This Committee is composed of the Director General of Cultural Policy and Industries and the Book; the Assistant Director General ("*Subdirectora General*") for the Promotion of Books, Reading and Spanish Literature; two other officials of the same directorate; one representative proposed by the Federation of Publishers' Guilds of Spain; four experts appointed by the Director General of Cultural Policy and Industries and the Book; and a Director of Public State Library. These participants will comprise up to three representatives of the Autonomous Communities.
11. The aid is granted as a result of a selection process, whereby the Evaluation Committee allocates points to all submitted editorial projects on the basis of pre-determined cultural criteria (such as the project's contribution to the dissemination of the Spanish cultural heritage; the cultural background of the editor and the author; the attention to cultural celebration and to the cultural cohesion between the Autonomous Communities; the recovery of "off-print" work; the publishing of complete works; the fact that the edition contains an expert review of the work; and (to a lesser extent) the presentation of the work). On the basis of this evaluation, the General Subdirectorate for the Promotion of Books, Reading and Spanish Literature makes a short-list ranking all projects according to their score. The projects with the highest scores are successively selected from this list, until exhaustion of the budget. This short-list is published on the website <http://www.mcu.es/libro/index.html>. Once the individual amount to be granted to each

³ Production costs are defined as comprising, among others, costs of design and layout, prepress, printing, handling, administration, personnel (management, editorial staff, translation, documentation and photography), copyright (only the portion paid in advance), rental and equipment (only depreciation cost).

⁴ Distribution and marketing costs are defined as comprising, among others, expenses of warehousing, shipping (mail and courier), promotion, communication and personnel dedicated to these tasks as well as expenses related to professional association fees when they perform tasks related to the distribution and/or marketing. Expressly excluded are financial expenses, legal or financial advice, notary and registration costs, expert expenses and costs of bank guarantees.

project is determined on the basis of the level of the score, a motivated resolution is adopted, mentioning all selected beneficiaries, the aid amount granted as well as the dismissal of the remaining applications. The granting resolution is published on the same website as the short-list as well as in the Spanish official journal. It can be appealed at the granting authority and at the Administrative Court (Sala de lo Contencioso-Administrativo).

12. The subsidized project must be published within 18 months from the publication in the Spanish official journal of the order granting the aid. Within 3 months of the publication of the subsidized project, the beneficiary must submit proof of the publication as well as of the related costs incurred and of the income and aid received. In case the beneficiary did not use the total sum of the aid, it must repay the part not used. It must also submit to controls to that effect.

4. ASSESSMENT

4.1 State Aid within the meaning of Article 107(1) of the TFEU

13. Pursuant to Article 107, paragraph 1 of TFEU, *“Save as otherwise provided in the Treaties, 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, insofar as it affects trade between Member States, be incompatible with the internal market”*.
14. The measure is a subsidy granted directly by the Ministerio de Educación, Cultura y Deporte (Dirección General de Política e Industrias Culturales y del Libro) from its own resources. Therefore, it is granted through State resources. The measure gives an advantage to some publishing houses since it covers a cost that they would have to bear in normal market circumstances. The measure may allow publishing companies receiving aid to increase their sales and hence their profits. In this sense, the aid is capable of affecting competition in markets which are open to competition and trade. The aid measure thus also affects or may affect intra-EU trade of publishing products.
15. The Commission has therefore come to the conclusion that the measure in question constitutes State aid within the meaning of Article 107 paragraph 1 of the TFEU.

4.2 Compatibility

16. Insofar as the measure constitutes aid, the Commission has to verify whether any of the derogations provided for in Article 107, paragraph 3 of the TFEU could apply and the measure may thus be considered to be compatible with the Treaty. According to the Spanish authorities, the aid has a cultural objective, i.e., favoring the publication of works in Spanish (Castilian), Basque, Catalan, Galician or Valencian languages that are of significant cultural importance and enrich the Spanish bibliographic heritage, thus indicating that the cultural derogation under Article 107 paragraph 3 (d) of the TFEU could be applied.

17. According to Article 107 paragraph 3 (d) of the TFEU “*aid to promote culture and heritage conservation may be considered to be compatible with the common market where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*”.

18. In order to be compatible under article 107, paragraph 3 of the TFEU, an aid must pursue an objective of common interest in a necessary and proportionate way. In particular, the measure shall be assessed with respect to the following questions:

- (1) Is the aid measure aimed at a well-defined objective of common interest?
- (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate instrument?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

4.2.1. The measure is in line with an objective of common interest

19. The aid measure aims at promoting works of great cultural value in one of the official languages of Spain and its Autonomous Communities that enrich the Spanish cultural (bibliographic) heritage. Consequently, it supports a well-defined cultural objective.

20. The promotion of cultural diversity is considered a common interest goal. Article 167, paragraph 1 TFEU, 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*”. Moreover, according to Article 167, paragraph 4 TFEU, 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. Further, the objective of the measure is also in line with Article 22 of the Charter of Fundamental Rights of the European Union⁵, which reaffirms the principle that the EU respects cultural, religious and linguistic diversity.

4.2.2. The measure is well designed to deliver the objective of common interest

Aid is the appropriate instrument

21. The aid is destined to works of significant cultural value that haven't been published in the same language in the last 15 years, or that bring an important cultural novelty to an existing work. Hence, the aid is destined to works contributing to Spanish cultural (bibliographic) heritage, that, because of the investment risk, might not be published in the same form without the aid (see recital 8). A condition for the granting of the aid (for paper copies) is moreover that at least 1 000 copies of the work be published. The aid is

⁵ O.J. C 364 of 18.12.2000, p. 1.

therefore an appropriate measure to reach the objective of common interest of promoting the publication of culturally valuable works.

Incentive effect

22. The aid is granted to help reducing publication costs of culturally significant works that, because of the investment risk, might not be published in the same form without the aid. With the aid, an editor is ensured a return of up to 50% of the publication costs for the work, thus encouraging the editor to publish it, despite the investment risk. Hence, editors that are informed about the state support measure are encouraged to increase or maintain the amount of publications of such cultural works, which they would not be in the absence of the aid. The work must moreover be published within a limited period of time (18 months from the publication in the Spanish official journal of the order granting the aid), thus potentially speeding up its publication⁶.

Proportionality

23. The aid is proportionate to the stated objective since the level of financing is kept to the minimum necessary. Although the subsidies received by the recipients may be cumulated with other forms of public or private support, there is no possibility of over-financing. The maximum intensity of all aid cumulated is 50% of the total costs of publication of the book and cannot exceed 100% of its production costs. Aid granted by other authorities (such as the Autonomous Communities), are also taken into account.⁷ Moreover, the aid not used for the publication of the work concerned must be reimbursed. The beneficiary must submit to controls to that effect. Furthermore, the aid is granted on the basis of an open and public selection procedure, ensuring that the available budget for the aid is distributed fairly according to the cultural significance of the submitted projects. Also the total number of works supported per editor cannot exceed half of the number of publications of that editor in the previous year, and in any event, not more than 10 works per year (see recitals 8, 11 and 12 above).

4.2.3. Limited distortion of competition and effect on trade

24. The aid is granted on the basis of an open selection procedure and is not discriminatory against foreign publishers, the scheme having ensured the eligibility and equal treatment of applicants based in other Member States. Foreign editors (physical or legal persons) may equally benefit from the aid, independently of their legal form or place of establishment or residence, provided that they have been conducting publishing activities

⁶ The same incentive effect exists for digital works of significant cultural value because, according to the Spanish authorities, the main costs of publication do not derive from the material production, but from the work of the editor, copyright, translation, design, layout, correction etc. (see footnotes 3 and 4). In any event, even assuming savings in printing and related costs for digital works compared to paper works, this is reflected in the (reduced) maximum aid amount, as this is limited to 50% of total costs of publication of the project (see recital 8).

⁷ The ministry therefore takes into account the following maxima: the aid may not be higher than (i) 100% of the production costs and (ii) 50 % of the total costs of publication of the project and (iii) aid under this measure plus aid granted by the Autonomous Communities may not be higher than 100% of the production costs of the project and 50% of the total cost of publication.

uninterruptedly since at least two years and the work concerned is published in one of the official languages of Spain and its Autonomous Communities.

25. Moreover, since the aid is primarily aimed at publications of works (in the languages of Spain and its Autonomous Communities) of cultural significance that, because of the investment risk, might not be published in the same form without the aid, it is unlikely that publications of other works would be real substitutes and in turn that subscribers and/or advertisers would switch between them due to the subsidy.
26. In light of these considerations, the Commission considers that the scheme has a limited effect on competition and intra-EU trade as compared to its aim of promoting the Spanish cultural (bibliographic) heritage.
27. Moreover, the Spanish authorities suspend payment of aid under the present scheme to any undertaking that has received illegal and incompatible aid subject to a recovery decision until the undertaking concerned has paid back the incompatible aid with the recovery interest due. Further, no aid will be granted or attributed under the scheme until approval by the European Commission.
28. For these reasons, the Commission considers that the distortion of competition created by the aid would not adversely affect intra-Community trade and competition to an extent contrary to the common interest. Therefore, the aid under review is considered compatible with Article 107, paragraph 3 (d) of the TFEU.

5. DECISION

In view of the above, the Commission finds that the notified aid scheme is compatible with the internal market in accordance with Article 107 paragraph 3 (d) of the TFEU and has accordingly decided not to raise objections to the notified measure.

The Spanish authorities are reminded that, pursuant to Article 108 paragraph 3 of the TFEU, they are obliged to inform the Commission of any plan to extend or amend the aid scheme.

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
State Aid Registry
Rue Joseph II 70
B-1049 Brussels
Fax +32 22961242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President