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**Subject: State aid SA.34138 (2012/N) – Spain
Aid for publishing cultural magazines**

Sir,

1. SUMMARY

1. I am pleased to inform you that the European Commission has assessed the measure "aid for publishing cultural magazines " (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 October 2015.

2. PROCEDURE

2. On 15 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 cultural magazines in Spanish (Castilian), Basque, Catalan, Galician or Valencian languages. On 29 March 2012 the Commission sent to the Spanish authorities a request for delay extension until 31 May 2012, which they approved on 2 April 2012.

3. DESCRIPTION

3. **Objective:** The scheme promotes the publication of periodicals which have an outstanding cultural significance, but with a limited commercial potential.

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4. **Eligible works:** This scheme provides aid for publishing cultural magazines in Spanish (Castilian), Basque, Catalan, Galician or Valencian languages (official languages of Autonomous Communities) that enrich the Spanish bibliographic heritage. In particular, it supports the publications of outstanding cultural significance (in the field of literature and linguistics; fine arts, performing arts, music; design and photography, audiovisual arts; history, geography and architecture; philosophy, social sciences, cultural critics). 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. The eligible publications need to have a periodic character, set price and the minimum volume of 1 500 copies published (or having at least 1500 subscribers in case of electronic publications).
5. Explicitly excluded from the aid measure are: cultural bulletins, entertainment guides, yearbooks, catalogues; publications distributed for free; works edited with less than 48 pages; works edited or co-edited by or on behalf of public sector bodies; works containing more than 30% of advertisement; works dedicated to professionals within a particular cultural sector, describing mostly materials and technical means used for the realization of the creation or of the cultural object; works having mostly local content or referring to one Autonomous Community; publications which are distributed as supplements/inserts of the magazine, special issues or sold together with another publication; publications which do not remain active at the time of the application for subsidy; works which are only edition projects at the time of submission of the application for subsidy; publications having ISBN number as those are not considered to have a periodic character.
6. **Legal basis:** 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 and reading by supporting publication.
7. **Beneficiaries** of this measure are enterprises (mostly small and medium size), including non-profit making institutions, whose main activity is publication of cultural magazines. They have to have permanent establishment in Spain, or in any EU Member State or in any other EEA Member State at the time the aid is paid out.
8. **Duration:** The aid measure notified for the duration of four years (1 January 2012 to 31 October 2015). No aid will be granted under the scheme until its approval by the Commission.
9. **Budget:** The overall budget is 8 760 000 EUR and annual budget amounts to 2 190 000 EUR. For the year 2012¹, it is financed from the budget of the Ministry of Culture, Education and Sports.
10. **The aid intensity:** The maximum aid intensity is 50% of the total cost of publication of the magazine (i.e. costs of production², distribution and marketing³).

¹ The budget is approved annually, but no significant changes are expected for the years 2013, 2014 and 2015.

11. **Cumulation:** 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 100% of the magazines' costs of production. In order to prevent overcompensation, the beneficiary has to declare in the application all subsidies granted for the same purpose. This information can be further verified in the national database of grants.
12. **Selection procedure/evaluation:** 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 from the Association of Cultural Magazines of Spain; one representative from one association of cultural magazines published in co-official languages of the Autonomous Communities; five 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.
13. 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 quality of the content, the sociocultural influence; the presentation of the work: quality of the design and formal structure; the history of the magazine and its age, the periodicity in which it is published and number of pages). Moreover, the applicant must justify the necessity of the aid to publish the cultural magazine with the proposed characteristics. The projects with highest scores are successively selected for a short list, until exhaustion of the budget.⁴ The individual amount to be granted to each project is determined on the basis of the level of the score respecting the ceiling of maximum aid intensity.
14. **Monitoring:** The beneficiary has to submit during the whole year 6 copies of each magazine issue. Within 3 months from the publication of the last number of the subsidized magazine, the beneficiary must submit a presentation resuming the activity and description of the project, justification of the costs incurred; and summary of the income

² Production costs are defined as comprising, among others, costs of design and layout, translation, prepress, printing, handling, administration, personnel (management, editorial staff, translation, documentation and photography), rental and equipment.

³ 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.

⁴ The short list as well as the granting resolution are published on the website <http://www.mcu.es/libro/index.html> and can be appealed at the granting authority and at the Administrative Court (Sala de lo Contencioso-Administrativo).

and subsidy which have financed the project. 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

15. 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”*.

16. 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 publishers of magazines since it covers a cost that they would have to bear in normal market circumstances. The measure may allow those publishers 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.

17. 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

18. 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 cultural magazines 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.

19. 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”*.

20. 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

21. The aid measure aims at promoting magazines 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.
22. 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, and in doing so fulfil its obligations under the 2005 UNESCO Convention on the promotion and the protection of the diversity of cultural expression, which the European Community ratified in 2006⁵. Further, the objective of the measure is also in line with Article 22 of the Charter of Fundamental Rights of the European Union⁶, 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

23. The aid is destined to existing magazines of significant cultural value that have only limited commercial potential. Hence, the aid is destined to cultural magazines contributing to Spanish cultural (bibliographic) heritage, which due to their poor economic viability would not be published in the same volume, periodicity or form without the aid (see recital 13). A condition for the granting of the aid (for paper copies) is moreover that at least 1 500 copies of the work be published. The aid is therefore an appropriate measure to reach the objective of common interest of promoting the publication of culturally valuable magazines.

Incentive effect

24. The aid is granted to help reducing publication costs of culturally significant magazines that, because of the poor economic viability, would not be published in the same form without the aid. Indeed, with the aid, an editor is ensured a return of up to 50% of the publication costs for the magazine, thus encouraging the editor to publish it, despite the

⁵ Decision 2006/515/EC of 18 May on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (JO L 201, 25.7.2006, p.15)

⁶ O.J. C 364 of 18.12.2000, p. 1.

low commercial interest. Hence, editors that are informed about the state support measure are encouraged to increase or maintain the periodicity and volume of publications of such cultural magazines, which they would not be in the absence of the aid.

Proportionality

25. 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 magazine and cannot exceed 100% of its production costs. Aid granted by other authorities (such as the Autonomous Communities), are also taken into account. Moreover, the aid not used for the publication of the magazine 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.

4.2.3. Limited distortion of competition and effect on trade

26. 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 may equally benefit from the aid, independently of their place of establishment, provided that they have been active in publishing of cultural magazines and that the magazine concerned is published in one of the official languages of Spain and its Autonomous Communities.

27. Moreover, since the aid is primarily aimed at publications of magazines (in the languages of Spain and its Autonomous Communities) of cultural significance that, because of the low commercial potential, would not be published in the same periodicity, volume or form without the aid, it is unlikely that publications of other magazines would be real substitutes and in turn that subscribers and/or advertisers would switch between them due to the subsidy.

28. 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.

29. 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.

30. 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