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Subject: **State aid SA.45512 (2016/N) Spain - Aid to support the Valencian language in the press**

Dear Sir,

1. PROCEDURE

- (1) On 30 May 2016, the Spanish authorities notified the above-mentioned measure to the Commission under Article 108(3) TFEU.

2. DESCRIPTION OF THE MEASURE

- (2) The measure aims to promote the use of the Valencian language in the printed and digital press situated in the Community of Valencia or targeting the Valencian public.
- (3) According to the Spanish authorities, the objective of the notified scheme is to promote cultural and linguistic diversity, in particular with a view to foster the use of the Valencian language, which, as a variation of Catalan, is one of the minority languages in Spain.
- (4) The measure covers the time period from the Commission approval until 31.12.2020, which is the last date on which aid can be granted under the notified measure.
- (5) As legal basis serves the planned "*Orden de la Conselleria de Educaci3n, Investigaci3n, Cultura y Deporte, por la que se aprueban las bases reguladoras del procedimiento de subvenciones para el fomento del valenciano para medios de comunicaci3n social: empresas de televisi3n, radio y prensa escrita y digital*", of which Spain provided a draft.
- (6) The support takes the form of direct grants from the budget of the Community of Valencia. The overall budget is EUR 12 million and the annual budget is

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EUR 2.4 million. Spain expects that between 50 and 100 undertakings will be eligible for support under the scheme.

- (7) Beneficiaries of the support will be undertakings which are professionally active in the publication of written press in the area of the Community of Valencia or which are professionally active in digital publication which target at least part of their publications to the Community of Valencia. To qualify for financial support, the publishers need to publish entirely in the Valencian language or do at least increase the share of their offer in Valencian compared to the period before applying for a grant.
- (8) The eligible costs are the costs directly related to producing, editing and distributing content in the Valencian language, with the exception of the acquisition of authors' rights. The intensity of the support may be up to 100 % of the eligible costs.
- (9) The support will be awarded and granted by the Direcció General de Política Lingüística i Gestió del Multilingüisme of the Valencian Government (Generalitat Valenciana).

3. ASSESSMENT OF THE MEASURE

3.1. Presence of aid within the meaning of Article 107(1) TFEU

- (10) 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". It follows that in order for a measure to qualify as State aid, 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States. The conditions laid down by that provision for a finding of State aid are cumulative. Only insofar as all these criteria of Article 107(1) TFEU are met could the alleged measures constitute State aid within the meaning of Article 107(1) TFEU.
- (11) With regard to the criterion of effect on trade between Member States, the Commission notes that it is not sufficient that such effect is only hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and has an effect on trade between Member States.¹ It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States.² The Commission must be able to explain how and on what market competition is affected or at least likely to be affected by the aid,³ based on the foreseeable effects of the measure.⁴

¹ See for instance Joined Cases T-304/04 and T-316/04 *Italy and Wam v Commission* ECLI:EU:T:2006:239, para 63; confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57.

² See for instance Case T-177/07 *Mediaset v Commission* ECLI:EU:T:2010:233, paras 145-146, confirmed by Case C-403/10 P *Mediaset v Commission* ECLI:EU:C:2011:533, paras 111, 113 and 115; Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, para 131.

³ Case T-34/02 *Le Levant 001 and others v Commission* ECLI:EU:T:2006:59, para 123.

- (12) In that respect, the Commission has in several cases⁵ considered that certain activities, due to their specific circumstances, have a purely local impact and consequently no such effect if the following criteria are met. First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.
- (13) In the present case, with regard to the geographical zone within which the alleged beneficiaries' products compete, the Commission takes the view that the products provided cater to a local or regional market.
- (14) In support of this position, the Commission notes that the use of the Valencian language is confined to a limited linguistic and geographical area. Although it is a variation of Catalan, which is spoken in a much wider geographical range in Spain as the Valencian, that dialect has its own specificities which distinguishes it from the other variations of Catalan and therefore limits its geographical coverage.
- (15) Furthermore, the notified measure aims at promoting linguistic values to a regionally restricted audience through the support of beneficiaries from the media sector with only local or regional reach. The Commission considers that public support to economic activities in the field of culture, which would also include the promotion of the use of minority languages, is not liable to affect trade between Member States where it concerns events and entities which are unlikely to attract users or visitors away from similar offers in other Member States.⁶ The Commission considers that only funding granted to large and renowned cultural institutions and events which are widely promoted outside their home region has the potential to affect trade between Member States. News media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience are not liable to affect trade between Member States.⁷
- (16) Moreover, with regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that cross-border investments into in periodicals in Valencian, a language which is used in a

⁴ See for instance confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57; Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, para 141.

⁵ See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 034, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

⁶ See, for instance, the Commission decisions in State aid cases N 630/2003 *Local Museums Sardinia*, OJ C 275, 8.11.2005, p. 3; SA.34466 *Cyprus — Center for Visual Arts and Research*, OJ C 1, 4.1.2013, p. 10; SA.36581 *Greece – Construction of Archaeological Museum, Messara, Crete*; OJ C 353, 3.12.2013, p. 4; SA.35909 (2012/N) – *Czech Republic - Infrastructure for tourism (NUTS II region Southeast)*, OJ C 306, 22.10.2013, p. 4; SA.34891 (2012/N) - *Poland - State support to Związek Gmin Fortecznych Twierdzy Przemysł* OJ C 293, 9.10.2013, p. 1.

⁷ See, for instance, Commission Decisions in State aid cases N 257/2007 *Subsidies for theatre productions in the Basque country*, OJ C 173, 26.07.2007, p. 1; N 458/2004 *Editorial Andaluza Holding*; SA.33243 *Jornal da Madeira*, OJ C 16, 19.01.2013, p. 1.

limited regional area within Spain, are unlikely. It is also unlikely that the market for foreign language national newspapers from other Member States, which may be sold in the Community of Valencia, would be affected in any appreciable way by the sale of local or regional media in the regional language. Given, in addition to those considerations, the limited ambit of the market involved and the low amounts of public support at stake, with an annual aid budget of EUR 2.4 million, corresponding to an average of 48,000 EUR per year per expected beneficiary, the Commission is of the opinion that the notified scheme is not liable to affect trade between Member States.

- (17) In light of the above, in the present case, the Commission considers that the public grants to support the Valencian language in the press are not liable to affect trade between Member States, as specifically detailed in the paragraphs above. As a result, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The Commission has therefore reached the conclusion that the measures in question do not constitute State aid pursuant to Article 107(1) TFEU.

3.2. Compatibility of the aid

- (18) As explained above, the measures at stake do not qualify as State aid in the sense of Article 107 (1) TFEU. Nevertheless, and only for the sake of completeness, the Commission decided to carry out a compatibility assessment under Article 107(3)(d) TFEU.
- (19) In the notification, the Spanish authorities argued that the scheme is compatible with the internal market under Article 107(3)(d) TFEU which concerns aid to promote culture and heritage conservation. They refer to the need for the European Union to promote the development of the national cultures of the Member States while respecting their regional diversity, in particular in cases concerning a limited linguistic area.
- (20) The Commission recognises the importance of promoting the Valencian language from the point of view of the conservation of the national and European cultural heritage. At the same time, it considers that the cultural derogation provided for in Article 107(3)(d) TFEU, as any exception to the general rules of the Treaty, has to be interpreted restrictively. Accordingly, the Commission is of the opinion that the notions of culture and heritage conservation must be applied to the content and nature of the product in question, and not to the medium or its distribution per se. Besides promoting the use of the Valencian language, the present scheme also directly supports a specific field of commercial activity, which is subject to international competition. While part of the activities financed under the scheme – in particular those having specifically cultural content – might fall under Article 107(3)(d) TFEU, the Commission considers that, as a whole, the measure might not satisfy the restrictive interpretation warranted for the application of that Article.
- (21) Hence, the Commission considers that it is more appropriate to examine the measure directly under Article 107(3)(c) TFEU concerning aid to facilitate the development of certain economic activities or of certain economic areas⁸.

⁸ Cf., in that respect, Commission Decision of 13 June 2007 on the promotion of the Basque language in the media (Case N 132/2007), summary notice in OJ C 172, 25.07.2007, p. 1, http://ec.europa.eu/competition/state_aid/cases/219243/219243_688852_10_1.pdf.

- (22) In applying Article 107(3)(c) TFEU, the Commission takes into account Article 167(4) TFEU which requires that the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. Furthermore, Article 167(1) TFEU states that the Union shall contribute to the flowering of the cultures of the Member States and respecting their national and regional diversity.
- (23) The Valencian language as a regional language belonging to the Catalan language group forms part of the national and European cultural heritage. Therefore, its promotion can be considered to be in the common interest.
- (24) The Spanish authorities submit that the present measure is necessary to safeguard the Valencian language by spreading its use and by promoting it in the various means of communication. The scheme has an incentive effect as it is aimed at providing financing for media services in that language which could not take place without public funding.
- (25) Also, the measure is designed to keep the level of financing at the minimum necessary by limiting the support to those costs directly incurred in the collection, production and distribution of the relevant content. Although the support received under the scheme may be cumulated with other forms of public or private support, there is no possibility for financing above costs.
- (26) Moreover, as already highlighted under paragraph 12 above, the measure is unlikely to significantly distort competition and have an appreciable effect on trade in view of the limited linguistic and geographical zone concerned by the scheme and the limited substitutability with media content in other languages. The measure aims at promoting linguistic values to a regionally restricted audience through the support of beneficiaries from the media sector with only local or regional reach. Based on these considerations, the Commission considers that the measure is proportionate to the objective of promoting the Valencian language and does not affect trading conditions to an extent contrary to the public interest.

4. CONCLUSION

- (27) In light of the foregoing assessment, the Commission has accordingly decided that the measures described in the complaint do not constitute State aid pursuant to Article 107(1) TFEU. However, even if one assumed that the measures constituted aid, they would be State aid compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission