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**Subject: State Aid SA.47448 (2017/N) – Spain
Promotion of the Basque language in digital news media**

Sir,

1. PROCEDURE

- (1) By letter registered on 27 January 2017, the Spanish authorities notified a new measure with the objective to promote the Basque language in the media. On 1 March, 16 and 28 March 2017, the Spanish authorities submitted additional information.
- (2) Previously (since 2014), this measure had been implemented under the *de minimis* regulation¹.

2. DETAILED DESCRIPTION OF THE MEASURE

- (3) In the framework of its general programme for promoting the use of the Basque language, in particular in the field of media², the notified measure targets the reinforced presence of the Basque language in a) digital editions of newspapers

¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1, http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf.

² See e.g. Commission Decision on State aid SA.34606 (2013/N) – Spain – Promotion of the Basque language in the media – prolongation, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36406. Several of the submeasures covered by this Decision have since then been implemented under the General Block Exemption Regulation (GBER) (OJ L 187, 26.6.2014, pp. 1-78, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1404295693570&uri=CELEX:32014R0651>).

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mainly written in Spanish ("group a") and in b) the news agencies that also disseminate Basque language news via the internet ("group b").

- (4) This measure is very similar to a measure for local media published in the Basque language, for which the Commission concluded, in August 2016, that the measure concerned was not liable to affect trade between Member States³. Given some differences in the type of beneficiaries involved, the Spanish authorities have nevertheless notified the planned measure for reasons of legal certainty.
- (5) The Spanish authorities submitted a draft order *"del Consejero de Cultura y Política Lingüística, por la que se regula y convoca la concesión de subvenciones destinadas a incrementar la presencia del euskera en las ediciones digitales de los diarios escritos en papel que utilizan principalmente el castellano y en las agencias de noticias que también difunden noticias en euskera a través de Internet en el año 2017"* (hereinafter "the order"). This order, which is based on Law 10/1982 on the Standardisation of the use of the Basque language (Ley 10/1982, Básica de Normalización del Uso del Euskera) and on the Action Plan for the Promotion of the Basque Language (Plan de Acción para la Promoción del Euskera – ESEP) approved by the Basque Parliament on 11 September 2013, constitutes the legal basis of the measure.
- (6) The specific cultural aim of the measure is to gradually increase the presence and the use of the Basque language in Spanish-language media. By doing this, the Basque authorities aim to promote a bilingual society, a more cohesive society and a higher level of well-being.
- (7) The granting authority is the Directorate for the Promotion of the Basque language (Dirección de Promoción del Euskera) of the Linguistic Policy Secretariat (Viceconsejería de Política Lingüística) within the Basque Cultural and Linguistic Department (Departamento de Cultura y Política Lingüística del Gobierno Vasco).
- (8) The beneficiaries of the scheme can be natural or legal persons, established or with a registered office in any Member State of the European Union or of the European Economic Area. Public entities are excluded from the scheme.
- (9) The following specific eligibility criteria have been set for group a (digital newspapers):
 - (a) The written news medium must have been assigned a number of Legal Deposit or ISSN, or its application to receive one must have been processed.
 - (b) The benefiting projects must meet certain minimum quality standards (related to the image, design and use of the Basque language).
 - (c) The written news medium concerned must have a clear and transparent distribution system (it cannot be a newspaper that is distributed only to subscribers and associates).

³ State aid SA.44942 (2016/N) – Spain. Aid to local media published in the Basque language. http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44942.

- (d) The written news medium must be edited (i.e. have an editorial office) within the geographical area of the Basque language.
 - (e) The written and digital editions have to be published under the same heading. Only free news articles published under the same heading on an "open access" basis can be supported.
 - (f) The written news medium cannot be offered for free.
 - (g) The written news medium is published at least 310 times per year.
 - (h) In relation to the use of the Basque language, the following requirements are set:
 - The articles in the Basque language must be published on an "open access" basis in open digital editions (i.e. not subject to a subscription).
 - A minimum of six new articles in the Basque language must be offered daily.
 - All the sections of the news medium have to be covered (culture, politics, sports, etc.).
 - The articles must be original.
 - At least once a week, a report on a selected topic must be realised.
 - At least once a week a video in the Basque language must be published.
 - Social networks will have a visible presence alongside the Basque language.
 - (i) Only the number of articles in the Basque language that exceed the number published before the entry into force (under the *de minimis* regulation) in 2014, are taken into account for support.
- (10) The following specific eligibility criteria have been set for group b (news agencies):
- (a) The benefiting projects must meet certain minimum quality standards (related to the image, design and use of the Basque language).
 - (b) At least 12 new articles in the Basque language must be disseminated on a daily basis throughout the year.
 - (c) Google Analytics must be used to create statistics on the number of visitors.
- (11) An evaluation committee will assess the applications for support. All projects will receive a score, on the basis of which the level of aid will be established. The evaluation committee may consult external experts.
- (12) For group a, the evaluation committee takes into account the following selection criteria:

- (a) own financial contribution (up to 15 points);
 - (b) audience numbers for the newspaper (up to 60 points);
 - (c) degree of presence of the Basque language, visibility of the Basque language articles, availability, heterogeneity of the topics and types of media (up to 15 points);
 - (d) presence of local information, corresponding to the diffusion area of the medium (up to 10 points).
- (13) For group b, the evaluation committee takes into account the following selection criteria:
- (a) own financial contribution (up to 15 points);
 - (b) number of articles created and disseminated as well as their quality (diversity, level of depth, availability, diversity of themes etc.) (up to 55 points);
 - (c) number of visitors and "unique" visits (up to 30 points).
- (14) The aid takes the form of direct grants.
- (15) The eligible costs are those directly and exclusively related to the project, i.e. the creation, production and dissemination of the news articles in the Basque language.
- (16) The aid measure has a budget of EUR 400 000.
- (17) Some limits are set with regard to the project's budget and aid amounts. The maximum budget per project cannot exceed EUR 150 000. The minimum aid amount is EUR 2000.
- (18) A minimum own financial contribution of at least 40% is required from the beneficiaries under the scheme. In other words, the maximum aid intensity is 60%.
- (19) The aid can be cumulated with other aid measures, within the set aid intensity limits (maximum 60%).
- (20) Subject to Commission approval, support under the notified scheme can be granted until 31 December 2017.

3. ASSESSMENT OF THE MEASURES

3.1. Existence of aid

- (21) According to Article 107(1) of the Treaty on the Functioning of the European Union (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".

- (22) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: 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 distort or threaten to distort competition, and 4) the measure has to affect trade between Member States.

State resources and selective advantage

- (23) As the measure is financed out of the general budget of the Basque Country and finds its national legal basis in the order, it is financed through State resources and is imputable to the State.
- (24) The direct grants awarded to the beneficiaries under the scheme constitute a payment that they would not receive under normal market conditions. The beneficiaries are private entities carrying out economic activities in the media sector. Therefore, the measure confers a selective advantage to undertakings.

Effect on trade between Member States

- (25) With regard to the criterion of effect on trade between Member States, the Commission notes that such an effect cannot be 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.⁴ 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.⁵ In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade. It must however be explained how and on what market competition is affected or likely to be affected by the aid,⁶ based on the *foreseeable effects of the measure*.⁷
- (26) In that respect, the Commission has in several cases⁸ 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

⁴ 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.

⁵ 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.

⁶ Case T-34/02 *Le Levant 001 and others v Commission* ECLI:EU:T:2006:59, para 123.

⁷ 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.

⁸ 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.

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.

- (27) In the present case, with regard to the geographical zone within which the beneficiary supplies goods or services, the Commission takes the view that the products provided cater to a local or regional market.
- (28) In support of this position, the Commission notes that the use of the Basque language is confined to a rather limited linguistic and geographical area. The granting of small aid amounts is limited to very specific activities related to the promotion of linguistic and cultural values, which have an inherently small audience.
- (29) Even if the media outlets concerned also offer content in the Spanish language, the aid is strictly limited to the costs directly associated with the publication of Basque language content. As such the support measure is unlikely to have any impact on the attraction of users or visitors outside of the Basque language sphere of influence, which is regionally limited.
- (30) The Commission considers that public support to economic activities in the field of culture 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 States⁹. 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. The Commission considers that the supported news media content are a cultural product which, for linguistic and geographical reasons, has a locally restricted audience and is not liable to affect trade between Member States¹⁰.
- (31) With regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that there is at most a negligible impact on trade-flows between Member States.
- (32) The expected increase in the beneficiaries' operations generated by the public funding is extremely small. It is unlikely that the revenue of online newspaper editions or news agencies is affected by the presence (or not) of a limited number of Basque language news articles on their websites.
- (33) Furthermore, the characteristics of the aid ensure that the support does not have a wider impact. In this regard the Commission notes in particular the limited support amounts and the annual budget of EUR 400 000. Taken together with the limited ambit of the market involved, it does not appear reasonably foreseeable

⁹ 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.

¹⁰ 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.

that the notified measure could have more than a marginal impact on the conditions that determine cross-border investments or establishment.

- (34) Therefore the Commission considers, in light of the available information, that the measure cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
- (35) Based on an overall assessment of the above indications, the Commission takes the view that the alleged aid measure is not liable to affect trade between Member States.

3.2. Compatibility of the aid

- (36) As explained above, the measure at stake does 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.

3.2.1. General legality

- (37) Regarding the general legality of the scheme, the Commission notes that in order to be eligible, beneficiaries of the scheme can be established or have a registered office in any Member State of the European Union or of the European Economic Area.

3.2.2. Promotion of culture in line with Article 107(3) (d) TFEU

- (38) The notified measure is one of several similar measures that aim to promote the use of the Basque language in the media (see also paragraph (3)) and that were previously considered compatible by the Commission on the basis of Article 107 (3) (d) TFEU, which concerns aid to promote culture and heritage conservation.
- (39) The objective of the measure, i.e. to promote the use of the Basque language in the media, is a cultural objective. In doing this, the scheme will contribute to the promotion of linguistic diversity in Spain.
- (40) The promotion of cultural and linguistic 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.
- (41) The objective of the measure is also in line with Article 22 of the Charter of Fundamental Rights of the European Union, which reaffirms the principle that the EU respects cultural, religious and linguistic diversity.

- (42) The measure furthermore fits within the objectives set out by the Commission with regard to multilingualism, for instance in the 2008 Communication on multilingualism: an asset for Europe and a shared commitment¹¹.

3.2.3. Appropriateness, necessity and proportionality of the measure

Aid is the appropriate instrument

- (43) The market for Basque language content has a very limited reach that is inherent to the geographically limited use of the language.
- (44) By providing direct grants to beneficiaries, the level of which is established by an evaluation committee on the basis of specified criteria and taking into account the budget and own financial means available, the beneficiaries are incentivised to increase the presence of Basque language content in their digital editions.
- (45) As such, the aid measure can be considered an appropriate instrument to achieve the stated objectives of the Spanish authorities.

Incentive effect

- (46) The scheme has an incentive effect as it is aimed at providing financing for projects which could not take place without public funding. Its objective is to gradually increase the presence and the use of the Basque language in Spanish-language media and hence it encourages the development of new projects in the Basque language.
- (47) Specifically for the support granted to "group a" beneficiaries, the Commission notes that only the number of articles in the Basque language that exceed the number published before the entry into force of the measure, are taken into account.

Proportionality

- (48) The scheme has a limited budget and the maximum aid amount per project is also relatively small (see paragraphs (16) and (17)).
- (49) Only the costs directly related to the supported activity are considered eligible for support.
- (50) The Spanish authorities moreover require a substantial own financial investment from the beneficiaries. The maximum (cumulative) aid intensity is limited to 60%.
- (51) Furthermore, the beneficiaries are encouraged to maximise their financial contribution as this is one of the selection criteria under the scheme (see paragraphs (12) and (13)).

3.2.4. Limited distortion of competition and effect on trade

- (52) As already highlighted in section 3.1, the measure is unlikely to significantly distort competition and have an appreciable effect on trade in view of the limited amounts of aid and the linguistic and geographic area concerned by the scheme.

¹¹ Commission of the European Communities, 18.09.2008, COM(2008) 566 final, 15 p.

The potential audience for the content is restricted due to the limited reach of the Basque language.

3.2.5. *Conclusion*

- (53) Based on the above considerations, the Commission considers that the measure is adequate, necessary and proportionate to the objective of promoting the use of the Basque language in the media and does not affect trading conditions to an extent contrary to the common interest.

4. CONCLUSION

- (54) In light of the foregoing assessment, the Commission has accordingly decided that the measure described does not constitute State aid pursuant to Article 107 (1) TFEU. However, even if one assumed that the measure constitutes aid, it would be State aid compatible with the internal market pursuant to Article 107 (3) (d) of the Treaty on the Functioning of the European Union.

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/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
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