



EUROPEAN COMMISSION

Brussels, 8.11.2018
C(2018) 7215 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: State Aid SA.43700 (2018/NN) – Spain
Alleged aid to the Fundació Privada Conservatori del Liceu

Sir,

1. PROCEDURE

- (1) On 19 November 2015, the Commission received a complaint from the Private Foundation of Taller de Músics ("the complainant"), alleging that the Spanish authorities, more specifically the Generalitat of Catalonia, would have granted State aid to the Fundació Privada Conservatori del Liceu ("Private Foundation of the Liceo Conservatorium" or "the alleged beneficiary") by means of a subsidy amounting to EUR 6 million to cover operating costs such as personnel costs as well as reducing the student fees ("the measure"). Both the complainant and the alleged beneficiary provide a Bachelor of Music degree (Titulación Superior de Enseñanzas Artísticas Superiores de Música).
- (2) The Commission services forwarded the non-confidential version of the complaint to the Spanish authorities on 23 February 2016 and asked for further information, to which the Spanish authorities replied on 13 April 2016. Additional clarifications were requested from the Spanish authorities by letter dated 13 July 2016. The information was provided by the Spanish authorities on 10 August 2016 and 6 October 2016. The Commission services requested further information from the Spanish authorities by letter dated 12 January 2017, to which the Spanish authorities replied on 27 February 2017.

Excmo. Sr. D. Josep Borrell Fontelles
Ministro de Asuntos Exteriores, Unión Europea y Cooperación
Plaza de la Provincia 1
E-28012 MADRID

- (3) By letter dated 10 April 2017, the Commission informed the complainant that, after review of the information submitted and taking into account the comments of the Spanish authorities, it had preliminarily concluded that the measure complained about did not amount to State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU") due to the preliminary finding that the alleged beneficiary did not seem to exercise an economic activity and was thus not an undertaking within the meaning of that provision. The complainant was given the opportunity to comment thereon.
- (4) The complainant objected to the Commission's preliminary assessment by letter of 10 May 2017.
- (5) By letter dated 12 February 2018, the Commission informed the complainant that, after review of the information and arguments submitted in its reply, it had come to the same preliminary conclusion that the measure complained about did not amount to State aid within the meaning of Article 107(1) TFEU, again due to the preliminary finding that the alleged beneficiary did not seem to exercise and economic activity and was thus not an undertaking within the meaning of that provision. The complainant was given the opportunity to comment thereon.
- (6) The complainant objected to the Commission's preliminary assessment by letter of 12 March 2018.

2. THE COMPLAINT

- (7) The complainant alleges that the measure constitutes unlawful State aid pursuant to Article 107(1) TFEU. In this context, the complainant explains that the Spanish authorities signed a Collaboration Agreement on 17 December 2008 with the alleged beneficiary whereby the latter would receive a subsidy in the form of a grant of EUR 6 million for the period 2008-2012, to be paid in annual instalments of EUR 1.5 million. The alleged aid would be intended for covering the alleged beneficiary's operating costs, such as personnel costs, as well as for reducing the fees paid by its students.
- (8) The complainant further argues that the measure was granted without any tender procedure and disregarding the principles of publicity, equal treatment and competition.
- (9) The complainant claims that the measure granted a selective advantage to the alleged beneficiary through the use of State resources. Moreover, the complainant argues that the measure has had the effect to distort competition since the subsidy strengthened the position of the alleged beneficiary in comparison with its own economic position.
- (10) According to the complainant, the measure would also affect intra-EU trade since both organizations are subject to competition within the EU as regards the mobility of teachers and students when it comes to choosing the institution for carrying out music studies.
- (11) The complainant further claims that the measure could not be declared compatible with the internal market pursuant to Article 107(3) TFEU, since this measure would neither be targeted at promoting the economic development of areas where the standard of living is abnormally low or where there is serious

underemployment, nor would it be targeted at promoting the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State. In addition the complainant states that even though the measure might facilitate to some extent the development of certain economic activities or of certain economic areas, it adversely affected trading conditions to an extent contrary to the common interest.

- (12) Moreover, the complainant argued that since the Commission services had limited their assessment to the analysis of the criterion of undertaking, that is, one of the criteria laid down in Article 107(1) TFEU for State aid to be present, it should be understood that the other criteria (i.e. advantage conferred to an undertaking, selectivity of the advantage, advantage granted through State resources, effect on competition and trade between Member States) were fulfilled by the measure.
- (13) Furthermore, the complainant argued that the activity of the alleged beneficiary, which is the provision of the Bachelor of Music degree to students against the payment of a tuition fee, constitutes an economic activity that consists of offering goods and services on a market.
- (14) In this context, the complainant claimed that the interpretative criteria laid down in paragraphs 34 and 35 of the Notice on the Notion of Aid¹, were not underpinned by Article 107(1) TFEU itself nor by the jurisprudence of the Union Courts. In the complainant's opinion, the concept of economic activity as explained in paragraphs 34 and 35 would be unjustifiably restrictive and not based on the objective notion of State aid.
- (15) The complainant also questioned the Commission services interpretation of the concept "*predominantly financed*" as the true costs of the cultural activity being financed by more than 50% from user fees (such as student fees).
- (16) In addition, the complainant argued that the calculation of the percentage of the costs that are financed by student fees was negatively influenced by the subsidy granted by the Generalitat of Catalonia since the amount of subsidy was included in the calculation leading to a much lower percentage of costs being financed by student fees (35%). As an example, the complainant provided its own 2015 profit and loss account and argued on this basis that the effective percentage of the total costs which was financed by student's fees was 82.13%.

3. POSITION OF THE SPANISH AUTHORITIES

- (17) The Spanish authorities are of the opinion that the measure does not involve unlawful aid.
- (18) The Spanish authorities confirmed that on 17 December 2008 the Generalitat of Catalonia signed a Collaboration Agreement with the alleged beneficiary whereby the latter would obtain a subsidy amounting to EUR 1.5 million for each academic year covered by the Collaboration Agreement (2008-2012). The subsidy granted by the Generalitat of Catalonia was to be distributed at the beginning of each academic year among the students registered in the Bachelor of Music Degree.

¹ See Communication from the Commission, Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, OJ C 262, 19.7.2016, p. 1–50.

- (19) To this end, they explained that purpose of the measure was to set the terms on which collaboration would occur between the signatories to support the Liceo Authorised Higher-Level Centre of Music educational establishment in the provision of higher level education in music for four academic years.
- (20) The contribution from the Department of Education, in the form of a grant, concerned a number of students, between a minimum of 200 and a maximum that would be the Centre's authorised capacity limit (which was 600). The agreement also stipulated that this contribution would be reduced when the number of students was less than 200 and in the same proportion by which the number of students fell.
- (21) According to the Spanish Authorities this grant did not confer any competitive advantage on the alleged beneficiary because at the time that the agreement governing this public funding was signed, and during the agreement's period of validity, there was no other private educational establishment in Catalonia authorised to provide regulated higher-level education in music. In addition, the Spanish Authorities considered the grant was no State aid within the meaning of Article 107(1) TFEU since the public contribution was directly related to the support of this school in order to provide this education.
- (22) The Spanish authorities also concluded that that the public funding concerned does not affect trade between Member States because its impact is strictly local in nature and the beneficiary of the public aid is an educational establishment located in Barcelona that provides specific regulated training that forms part of the Spanish national education system, the catchment area of which is geographically restricted. Moreover, given the nature of the aid, the Spanish authorities concluded that it has a negligible effect on the movement of potential students coming from other Member States to follow the regulated courses of study provided by this school. In addition, the Spanish authorities explained that any student who undertakes courses with the alleged beneficiary has to pay a regulatory fee previously determined by that institution. As established in Article 5(4) of the Collaboration Agreement, the subsidy would have to be justified by the alleged beneficiary. If the justified amount would be lower than the amount of the measure provided, the subsidy would be reduced accordingly.
- (23) According to the Spanish authorities, the alleged beneficiary is a non-profit foundation whose objective is purely cultural, consisting in the promotion and enhancement of musical and artistic education.
- (24) In addition, the Spanish authorities explained that the complainant, during the period in which the alleged measure was in place (i.e. 2008-2012), could not have been considered as a competitor of the alleged beneficiary since it was not in possession of an authorisation to operate but was only in possession of a provisional one, which, they claim, would have granted it only authorisation for a school project. The Spanish authorities further state that the complainant has received authorisation to open the Taller de Musics Authorised Centre for Higher-Level Artistic Education in Music only on 7 September 2012 for the academic year of 2012-2013.

4. EXISTENCE OF AID

- (25) Pursuant 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.
- (26) Therefore, a State measure must meet the following cumulative criteria in order to constitute aid within the meaning of Article 107(1) TFEU:
- i. the measure has to be addressed to an entity that is an undertaking within the meaning of EU competition rules;
 - ii. the measure must confer on the recipient an advantage which relieves it of charges that are normally borne by an undertaking,
 - iii. this advantage must be selective, insofar as the measure favours only certain undertakings or the production of certain goods,
 - iv. the advantage must be granted by the State or through State resources, and
 - v. the measure must affect competition and trade between Member States.
- (27) It is a result of the cumulative nature of these criteria that if any one of them is not fulfilled the measure does not constitute State aid within the meaning of Article 107(1) TFEU, without it being necessary for the Commission to take a view on whether the rest of criteria are fulfilled or not.

i. Undertaking

- (28) Since State aid rules can only apply if the beneficiary of a measure is an undertaking within the meaning of Article 107(1) TFEU, it is essential to analyse whether the alleged beneficiary can be considered as an undertaking in this sense.
- (29) The Court of Justice has stated that an undertaking within the meaning of Article 107(1) TFEU is any entity engaged in an economic activity, regardless of its status and the way in which it is financed². In addition, with reference to the field of public education, the Court of Justice has made clear that the State: *‘by establishing and maintaining such a system of public education and financed entirely or mainly by public funds and not by pupils or their parents [...] does not intend to become involved in activities for remuneration, but carries out its task towards its population in the social, cultural and educational areas’*³.
- (30) In order to define an economic activity in the field of education the Commission bases itself on established case law of the Court of Justice and on the

² Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 107.

³ Judgement of the Court of Justice of 11 September 2007, *Commission v Germany*, C-318/05, ECLI:EU:C:2007:495, paragraph 68.

Commission's own Case practice, respecting Member States' wide margin of discretion to design their education and cultural policies⁴.

- (31) In this regard, when assessing whether the beneficiary of a given measure is an undertaking in the sense of Article 107(1) TFEU in the area public education, a crucial criterion for qualifying an activity as non-economic is whether it is predominantly financed by public funds, or whether it is predominantly financed by user fees or other commercial means.
- (32) In the case at hand, the relevant activity of the alleged beneficiary is the provision of a Bachelor degree (or equivalent) focused on musical education. In paragraphs 28-32 of the Notice on the Notion of Aid, the Commission clarified under which circumstances it considers activities in the education sector to be economic or non-economic in nature, so that the entities performing these activities are either undertakings or not within the meaning of Article 107(1) TFEU.
- (33) To this end, it is important to point out that the alleged beneficiary is a registered non-university teaching centre⁵ which provides a Bachelor degree recognised by the State⁶ equivalent to a university degree. It is thus linked directly to the national education system and would thus fall within the system of public education⁷.
- (34) As explained in paragraph 29 of the Notice on the Notion of Aid, based on the relevant case law by the Court of Justice the Commission considers public education activities to be of non-economic nature even if "*pupils or their parents have to pay tuition or enrolment fees which contribute to the operating expenses of the system*".⁸
- (35) In contrast, as explained in paragraph 30 of the Notice on the Notion of Aid, the Commission considers public education to be economic in nature where it is "*financed predominantly by parents or pupils or commercial revenues*" (for example schools predominantly financed by tuition fees).

⁴ Judgment of the EFTA Court of 21 February 2008 in Case E-5/07 Private Barnehagers Landsforbund v EFTA Surveillance Authority EFTA Ct. Rep [2008] p. 62, paragraph 83; Judgment of the Court of Justice of 27 September 1988, Humbel, 263/86, ECLI:EU:C:1988:451, paragraph 18; Judgment of the Court of Justice of 11 September 2007, Commission v Germany, C-318/05, ECLI:EU:C:2007:495, paragraphs 65 to 71; Judgment of the Court of Justice of 11 September 2007, Schwarz, C-76/05, ECLI:EU:C:2007:492, paragraphs 37 to 47; Judgment of the EFTA Court of 21 February 2008 in Case E-5/07 Private Barnehagers Landsforbund v EFTA Surveillance Authority EFTA Ct. Rep [2008] p. 62; Judgment of the Court of Justice of 18 December 2007, Jundt, C-281/06, ECLI:EU:C:2007:816, paragraphs 28 to 39; Judgment of the Court of Justice of 7 December 1993, Wirth, C-109/92, ECLI:EU:C:1993:916, paragraphs 14 to 22.

⁵ Ministerio de Educacion, Cultura y Deporte, Registro Estatal de Centros Docentes No Universitarios, Codigo Centro: 08038405.

⁶ Decision of the Autonomous Government of Catalunya of 3 December 2001, DoCG 3530 of 10 December 2001.

⁷ Judgment of the Court of Justice of 7 December 1993, Wirth, C-109/92, ECLI:EU:C:1993:916, paragraphs 14 to 19.

⁸ Judgment of the Court of Justice of 27 September 1988, *Belgian State v Humbel*, 263/86, ECLI:EU:C:1988:451, paragraph 19.

- (36) It follows that the Commission considers an activity to be "*predominantly financed*" in the sense of paragraph 30 of the Notice on the Notion of Aid if the majority of the true costs of the educational activity are financed by user fees or other commercial means (thus making the activity economic in nature), while in turn activities for which user fees "*only cover[s] a fraction of the true costs*" in the sense of paragraph 29 of the Notice on the Notion of Aid catches all situations in which the minority of the true costs are financed by visitor or user fees (thus making the activity non-economic in nature).
- (37) As explained above, these distinguishing criteria of "*covering only a fraction of the true costs*" and "*predominantly financed*" are based on the case law of the Union Courts (see recital (29) above) in the area of public education.
- (38) The Commission's analysis of the revenues and costs of the alleged beneficiary reveals that the student fees finance on average 35% of the total annual costs incurred by the alleged beneficiary and that in no single year of the period in question (2008-2012) the student fees accounted for more than 50% of the total annual costs. However, from the information submitted by the Spanish authorities it appears that, at the same time, the costs were not financed by more than 50% by the State. As such, the Commission has doubts as to whether the Bachelor degree at the Liceo Conservatorium at stake was financed entirely or mainly by public funds and, as such, whether it would constitute a non-economic activity.

ii. Advantage

- (39) An advantage, within the meaning of Article 107(1) of the Treaty, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention⁹.
- (40) The Spanish authorities explained that (recital 21), during the four academic years from 2008 to 2012, in the Autonomous Government of Catalonia's geographical area of competence there were only two educational establishments authorised by the public system to provide higher-level education in music leading to the award of the corresponding degree. These were the Catalonia College of Music (ESMUC) and the Liceo Authorised Higher-Level Centre of Music of Barcelona.
- (41) In their opinion, at the time the agreement governing the measure subject of the complaint was signed, and during this agreement's period of validity, the complainant did not have a school authorised to provide this type of regulated education. It should be recalled that the complainant obtained the appropriate authorisation to open and operate in order to provide this type of education for the 2012-2013 academic year.
- (42) Furthermore, at the time when the grant was given to the Liceo Conservatorium these courses of study were very limited in supply and, more importantly, they were deemed to be part of the public education system (see recital 30). To this specific end, the Autonomous Government of Catalonia, through the Department of Education and within its sphere of competence, considered it necessary to encourage such courses.

⁹ Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

- (43) Notwithstanding the above reasoning from the Spanish authorities, the Commission cannot exclude that the measure targeted by the complaint does not confer an advantage to the Liceo Conservatorium. This is because, according to established case law, only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention¹⁰. Whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present. By receiving the grant at stake, the Liceo Conservatorium, could offer the courses that it would otherwise not have offered without additional financing and attract students. Hence, the measure led to an improvement of the financial situation of the Liceo.

iii. Selectivity

- (44) To fall within the scope of Article 107(1) of the Treaty, a State measure must favour ‘certain undertakings or the production of certain goods’. Hence, not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. Measures of purely general application which do not favour certain undertakings only or the production of certain goods only do not fall within the scope of Article 107(1) of the Treaty.
- (45) To this end, the Spanish authorities argued that the purpose of the measure was to support the Liceo Conservatorium educational establishment in the provision of higher level education in music for four academic years as part of a predetermined policy of the Spanish Authorities aimed at improving the public offering in this specific cultural education field, and, as a consequence, the measure should be considered a general measure.
- (46) However, the Commission considers the alleged aid to be selective even if the Spanish authorities claim that it forms part of a public policy aimed at improving the offering of a chosen cultural education activity which forms part of the public education system.
- (47) In fact, for the sake of the measure at hand, the Commission cannot exclude that the measure would fall into the category of measures which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. To this end, the Commission remarks that the measure was targeted to Liceo Conservatorium uniquely, whereas it was not available to other educational establishments, to the extent they are undertakings. Thus, it cannot be considered a general measure.

iv. State Resources and State imputability

- (48) It has not been contested by the Spanish Authorities that the contribution from the Department of Education, in the form of a grant, concerned a number of students, between a minimum of 200 and a maximum of 600. The agreement also stipulated that this contribution would be reduced when the number of students

¹⁰ Judgment of the Court of Justice of 2 July 1974, Italy v Commission, 173/73, ECLI:EU:C:1974:71, paragraph 13.

was less than 200 and in the same proportion by which the number of students fell.

- (49) The public contribution to the Liceo Conservatorium was directly related to the support of a policy aimed at a cultural education activity which was part of the public education system and originated in a Collaboration Agreement between the beneficiary and the public authorities of the Catalonia region.
- (50) In the case at hand, the Commission therefore concludes that the resources used to finance Liceo Conservatorium should be deemed as State resources within the meaning of Art. 107(1) TFEU and that the measure is imputable to the State.

v. *Affection of competition and trade*

- (51) Public support to undertakings only constitutes State aid under Article 107(1) of the Treaty if it ‘distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods’ and only insofar as it ‘affects trade between Member States’.
- (52) More specifically, public support is liable to distort competition even if it does not help the recipient undertaking to expand and gain market share. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations.
- (53) In addition, public support can be considered capable of having an effect on trade between Member States even if the recipient is not directly involved in cross-border trade.
- (54) According to the Spanish authorities, the measure does not affect trade between Member States because its impact is strictly local in nature. The Spanish authorities explained that the beneficiary of the public aid is an educational establishment located in Barcelona that provides specific regulated training that forms part of the Spanish national education system, the catchment area of which is geographically restricted. In addition, they claim that it has a negligible effect on the movement of potential students coming from other Member States to follow the regulated courses of study provided by this school.
- (55) Opposite to what the Spanish authorities claim, the complainant believes that the measure affects intra-EU trade since both organizations are subject to competition within the EU as regards the mobility of teachers and students when it comes to choosing the institution for carrying out music studies.
- (56) For the sake of the case at hand, the Commission reminds that the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected. In fact, a public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States where undertakings from other Member States could provide such services (also through the right of establishment) and that possibility is not merely hypothetical.

- (57) The Commission is of the opinion that the Bachelor of Music which was offered by Liceo Conservatorium and target of the grant from the Generalitat of Catalunya could not be deemed not to have been provided in other Member States.
- (58) Furthermore, the Commission cannot exclude that the measure would fall into what described above and therefore concludes that the public funding being assessed affects trade between Member States notwithstanding the claims the its impact is strictly local in nature.

vi. Conclusion

- (59) The Commission considers that, under the circumstances of the present case, the question whether the measure at stake would fulfil all the cumulative criteria which determine if a measure granted by a Member State constitutes State aid, to the extent the Liceo Conservatorium may not be considered undertaking within the meaning of Article 107(1) TFEU. Nevertheless, as will be explained in the following section, even if the measure would constitute State aid in the meaning of Article 107(1) TFEU, it would be compatible with the internal market.

5. COMPATIBILITY

- (60) The Commission considers that insofar as the measure would fulfil the criteria of Article 107(1) TFEU and constitute State aid, it is compatible with the internal market under Article 107(3)(c) TFEU and was exempted from the notification requirement under Article 108(3) TFEU pursuant to Commission Regulation (EU) No. 651/2014 of 17 June 2014¹¹ ("GBER").
- (61) Aid that fulfils the conditions laid down in Chapter I of the GBER as well as the specific conditions for the relevant category of aid under Chapter III of the GBER is compatible with the internal market and is exempted from the notification requirement laid down in Article 108(3) TFEU. In the case at hand, the Commission considers that the funding granted to Liceo Conservatorium fulfils all these conditions and, thus, is compatible with the internal market.

5.1. Chapter I of the GBER

- (62) The grant at stake falls, in principle and insofar as it constitutes State aid, within the scope of application of the GBER as defined in its Article 1. More specifically, the Commission considers that grant from the Generalitat of Catalunya falls under Article 1(1)(j) of the GBER (aid for culture and heritage conservation). In this regard the Commission notes that Article 53(2)(e) of the GBER specifies that aid for culture and heritage conservation includes cultural and artistic education activities, which was the aim of the grant at stake. In addition, the Commission notes that the grant to the Liceo Conservatorium is not excluded from the scope of the GBER under its Article 1(2)-(5) of the GBER.

¹¹ Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty as amended by Regulation (EU) 2017/1084 of 14 June 2017, OJ L 187 of 26.6.2014, p. 1-78

- (63) The Commission, further, points out that the funding granted to Liceo Conservatorium does not exceed the notification threshold laid down in Article 4, paragraph 1(z) of the GBER, since it amounted to EUR 1.5 million per year.
- (64) As regards transparency, the GBER explains in Article 5(2)(a) that aid comprised in grants and interest rate subsidies is considered to be transparent. This is clearly the case of the measure under assessment.
- (65) With regards to incentive effect, Article 6(5)(h) states that aid for culture and heritage conservation is not required to or is deemed to have an incentive effect.
- (66) The funding granted to the Liceo Conservatorium, furthermore, complies with Article 7 of the GBER, as it was granted in the form of a grant.
- (67) Concerning cumulation of aid (Article 8), the Commission notes that the Spanish authorities and the Liceo Conservatorium have provided assurances that the measure at stake was the only grant that the alleged beneficiary received from public funding and that it, therefore, was not cumulated with any other State aid.
- (68) Lastly, since the public funding at stake was granted to the Liceo Conservatorium on 17 December 2008, Article 9 of the GBER, which lays down that it needs to be complied with at the latest two years after its entry into force (i.e. as of 1 July 2016), is not applicable.

5.2. Specific provision for different categories of aid

- (69) As stated above, the Commission considers that the funding at stake constitutes funding for cultural and artistic education activities and, as such, falls under Article 53(2)(e) of the GBER.
- (70) The funding was intended to cover operating expenses of the Liceo Conservatorium and, as such, would constitute operating aid which is eligible under Article 53(3)(b) of the GBER. Article 53(5) of the GBER lays down which costs are eligible for operating aid. In the case at hand, the Commission concludes that the grant was awarded to cover the costs of an artistic educational activity (i.e. the provision of a Bachelor in Music) and that the costs were incurred directly as a result of the activity, as well as to cover part of the personnel working for the activity. As such, the costs are eligible for operating aid under Article 53(5)(b), (d) and (e) of the GBER.
- (71) In addition, the Commission, on the basis of the information provided by the Spanish authorities, considers that the conditions laid down in the Article 53(7) are fulfilled since:
 - (i) The aid does not exceed what was necessary to cover the losses; this was demonstrated by the fact that the Bachelor of Music was actually still operating at a loss during the grant by the Generalitat of Catalunya.
 - (ii) The Collaboration Agreement foresaw a clawback mechanism which foresaw that any unused amount of the awarded grant should be returned to the authorities.

5.3. Final provisions

- (72) Lastly, the Commission notes that the GBER is, according to its Article 58(1), applicable to measures granted before it has entered into force, which is the case here since the measure was granted on 17 December 2008.

6. CONCLUSION

- (73) On the basis of the foregoing assessment, the Commission has decided, in case there was aid in the present instance, not to raise objections to the grant awarded to Liceo Conservatorium, on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission