



Brussels, 06.02.2019
C(2019) 912 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.52951 (2019/N) – Denmark
Prolongation and amendment of scheme for the development,
production and promotion of cultural and educational digital games**

Sir,

1. PROCEDURE

- (1) On 21 January 2019, following pre-notification contacts, Denmark notified the Commission of its intention to prolong and amend the scheme for the development, production and promotion of cultural and educational digital games (hereinafter "digital games scheme"), which was approved by the Commission in 2017 in State aid case SA.45735¹.
- (2) The Danish authorities have provided a language waiver and agreed that the decision be notified and adopted in English as the authentic language.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objectives of the measure

- (3) The purpose of the digital games scheme is to promote Danish video games as a culture-bearing medium and to strengthen the cultural qualities of video games for play and learning. The scheme aims to provide an incentive for the production of Danish cultural and educational games. According to the Danish authorities,

¹ http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45735

Udenrigsminister Anders SAMUELSEN
Asiatisk Plads 2
DK-1448 København K

there is a lack of private investments into such games. The support has the objective to improve the conditions for realising and disseminating original Danish games with the aim of contributing to the quality and diversity of the overall range of Danish digital games.

- (4) The Danish authorities point out the difficulties culturally significant games may have given the smaller markets and higher economic risks compared to games with a more globalised content. This is particularly true for Danish games in view of the small size of the country and its population² as well as the small reach of the Danish language. Indeed it is only spoken officially in Denmark itself.
- (5) The Danish gaming market is highly dominated by global titles, whereas the market for domestic games with a cultural and/or educational content in the individual Nordic countries is very small. The Danish authorities conclude that, in general, games developed in Denmark cannot achieve more than a marginal market share on a domestic market that is defined by international distribution channels.

2.2. Legal basis, transparency, organisation and duration of the scheme

- (6) The organisation and transparency requirements as laid out in recitals (5)–(12) of the Commission decision approving the aid SA.45735, remain unchanged for the prolongation period. The legal base continues to be the Danish Film Act, whereas the implementing provisions are found in the Danish Film Agreement 2019-2023. Support Terms and Conditions set out the details of the scheme.
- (7) The prolongation period runs from the date of the Commission approval to 31 December 2023. No aid will be granted for the prolongation period before approval of the scheme by the European Commission, unless in accordance with the *de minimis* regulation³.

2.3. Budget of the scheme, types and form of the aid

- (8) The notified scheme has a budget of DKK 15 million (approximately EUR 2 million) per year, in total DKK 75 million (approximately EUR 10 million) which is an increase as compared to the 2017 scheme which had an annual budget of DKK 10 million (approximately EUR 1.3 million)⁴.
- (9) The aid takes the form of direct grants. The types of aid consist of development support, production support, launch and distribution support and game advancement support, as laid out in recital (16) of the Commission decision approving the aid SA.45735, remain unchanged for the prolongation period.

² According to Eurostat data submitted by the Danish authorities, in terms of population the country is the 12th smallest of the EU28 and its population constitutes only 1.11% of the overall EU28 population.

³ 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.

⁴ See footnote 1.

2.4. Eligibility criteria and selection process

- (10) The general eligibility requirements and the selection process stay the same as for the previously approved scheme (see recitals (17) and (18) and (19)-(25), respectively) of the Commission decision approving the aid SA.45735.

2.5. Aid intensities

- (11) The different aid intensities stay the same as previously approved. For a detailed description, see recitals (26)-(33) of the Commission decision approving the aid SA.45735.
- (12) Aid granted under the digital games scheme can be cumulated with other support provided that the DFI ensures that the maximum aid intensity foreseen by the scheme is not exceeded and that there is no overcompensation.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (13) According to Article 107 (1) 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, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (14) The funds used to grant aid under this scheme are derived from the State budget. Consequently, State resources are involved in the scheme.
- (15) The scheme is selective in nature and independent games producers and production companies are the main targeted beneficiaries. Accordingly, the State favours certain undertakings and the production of certain goods. Therefore the scheme threatens to distort competition.
- (16) Since digital games are traded at an international level, the financial advantage granted to the beneficiaries affects trade between Member States.
- (17) The "game advancement support" available under the scheme (recital 16(d) of SA.45735) targets activities that are not directly related to games development, production and distribution and are developed on a non-commercial basis. This strand includes support for conference participation, networking events, training, research and education activities. These types of activities are unlikely to be economic activities in the Danish context. This means that support for these activities would not constitute State aid within the meaning of Article 107(1) of the TFEU. Nevertheless, even if some of the activities were considered economic, their support can be declared compatible with the internal market in analogy with the argumentation developed below, in section 3.2.
- (18) Therefore, the Commission considers that, with the possible exception of the support for certain activities under the "game advancement" sub-measure of the scheme, the scheme constitutes State aid within the meaning of Article 107 (1) of the TFEU.

3.2. Compatibility of the aid measure

3.2.1. General legality

- (19) Regarding the general legality of the scheme, the Commission notes that it is open to all applicants established in the EEA or in Switzerland. Only at the moment of the payment of the aid, a permanent branch or similar must be established in Denmark. There are no other provisions that discriminate on the basis of nationality or residence in the scheme. There are no territorial spending conditions, requiring the beneficiaries to spend a certain amount (of aid) in the Danish territory, attached to the scheme. The eligibility criteria that have been set to ensure the Danish cultural character of the scheme do not require team members to have the Danish nationality or residence.

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

- (20) According to the Danish authorities, the aid has a cultural objective and therefore can be considered compatible with the internal market under Article 107(3) (d) of the TFEU.
- (21) Article 107 paragraph 3 (d) of the TFEU states that “*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*”.
- (22) The Commission has not developed guidelines for the application of this provision on aid to games. Recital 24 of the 2013 Cinema Communication states that aid measures to support games are addressed on a case-by-case basis. Nevertheless, the Commission applies the aid intensity of the Cinema Communication by analogy to aid schemes for educational or cultural games of which the necessity can be demonstrated.
- (23) The assessment of video games support on the basis of Article 107 (3) (d) TFEU is in line with Commission practice⁵ in this sector.
- (24) The Danish digital games scheme has indeed been set up in order to foster cultural objectives. Only games with significant cultural or educational content can be supported under the scheme. The Danish authorities have set up a comprehensive selection system, with the final selection of games done by an expert committee on the basis of clear criteria and guiding elements. Moreover, the eligibility criteria ensure that the beneficiaries are experienced and that the game has a Danish cultural affiliation.
- (25) According to estimates provided by the Danish authorities, the pass rate of the digital games scheme is very low and amounts to 6 to 8% of the production

⁵ In the video games sector, the Commission has so far approved aid on the basis of the cultural derogation in cases C47/2006 – France – Crédit d'impôt pour la création de jeux vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C47_2006; SA.36139 (2013/C) – UK – Video games tax relief, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36139; SA.33943 – France – Prolongation du régime d'aide C 47/2006 – Crédit d'impôt en faveur de la création de jeux vidéo, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33943 ; SA.39299 (2014/N) – France – Crédit d'impôt en faveur de la création de jeux vidéo – modifications, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39299.

output (recital 22 of SA.45735). In comparison, in its 2007 Decision on the French video games tax incentive and its 2014 Decision on the UK video games tax relief⁶ the Commission found that an eligibility of around 30% of games indicated that the cultural test was sufficiently selective.

- (26) The Commission is therefore satisfied that Denmark applies a truly selective cultural test ensuring that the aid is granted only for the promotion of culture in line with Article 107 (3) d) TFEU.

3.2.3. Appropriateness, necessity and proportionality of the measure

Aid is the appropriate instrument

- (27) The characteristics of the Danish digital games market make it difficult for cultural and educational games to find sufficient funding. The direct grants that will be made available under the digital games scheme will contribute to the production of such games and hence will adequately ensure that the objective of the scheme is met.
- (28) The design of the scheme, in particular the eligibility and selection criteria, allow public support to be channelled to Danish cultural and educational games and it is therefore an appropriate tool to achieve the cultural objectives of the Danish authorities.
- (29) The Commission therefore considers aid to be an appropriate measure to reach the cultural objectives of the scheme.

Necessity

- (30) Cultural or educational games may have equal production costs but a significantly smaller market than the games that are popular on a global scale. Their production thus involves a higher economic risk. Danish cultural and educational games therefore are less commercially viable than those with more globalised content. The Danish authorities have underlined the difficulties for such games to attract private funding.
- (31) In this context, the Danish authorities have underlined the specificities of Denmark as a small Member State and the limited reach of the Danish language, and in SA.45735 provided available data on the Danish games market (recitals (5) and (5) of SA.45735) which confirm that the market is dominated by globalised games.
- (32) The scheme promotes the development, production, distribution and advancement of Danish digital games with a cultural and educational content as opposed to games that are purely for entertainment.
- (33) In light of the above, the Commission concludes that the necessity of the support in view of incentivising the production of Danish cultural or educational games is demonstrated.

Proportionality

⁶ See footnote 5 for concrete references.

- (34) The scheme has a limited budget and the estimated aid amounts are relatively small. The now notified budget increase is considered proportionate on the basis of what is set out in this section and in view of the fact that the overall budget increase enables aid to a larger number of market players, if need be. The scheme remains a support to a very small part of the total Danish game production output, aid intensities remain unaltered and low, apart from exceptional cases, which is in line with the provisions of the Cinema Communication.
- (35) As mentioned, the scheme will support only a very small part of the total Danish game production output (recitals 5, 22 and 23 of SA.45735).
- (36) The aid intensities available for specific games under the scheme (recitals 26-33 of SA.45735) are generally limited to 50% (production, launch and distribution support) and 60% (development support). The Danish authorities have underlined the exceptional nature of higher aid intensities when games have particularly high cultural and/or educational value and hence are likely to fail to attract other sources of finance.
- (37) The aid intensities are in line with the provisions of the Cinema Communication, which can be applied by analogy. Indeed, the Cinema Communication (in its paragraphs 52 (2) and 52 (4)) allows for production and distribution aid of 50%, with increased aid intensities possible for co-productions (60%) and for "difficult works"(up to 100%). In line with the subsidiarity principle, it is up to each Member State to establish a definition of difficult works according to national parameters.
- (38) The Commission notes that the Danish authorities have put forward relevant arguments and examples (recitals 28 and 29 of SA.45735) with regard to the exceptional allocation of higher production aid intensities for difficult works, by pointing to particular circumstances of distribution, production or content that may make such increased aid intensities necessary for the realisation of the project. The Cinema Communication in this regard refers to the limited territory of the original language in which a work is produced and, more generally, to the commercially difficult nature of supported works as possible indicators that a work can be considered difficult.
- (39) For development support, the Cinema Communication (in its paragraph 52 (3)) allows aid up to 100% of the aided project, provided that the aid is included in the overall aid intensity calculation when the project enters production. This is the case here.
- (40) Insofar as the aid for game advancement can be considered aid, the higher aid intensities (up to 100%) for these types of activities seem warranted as they have a broad supportive character that benefits the whole games sector.

3.2.4. Limited distortion of competition and effect on trade

- (41) Given the small overall budget, limited aid amounts and the low estimated number of supported projects, the distortive effects of the aid can be considered very small. The Danish authorities have emphasised the limited weight of the Danish games output in general and the support scheme in particular, compared to the overall Danish gaming market (recital 4 of SA.45735).

3.2.5. Conclusion

- (42) The Commission takes the view that the aid will not unduly strengthen the market power of beneficiary firms or hamper the dynamic incentives for market operators, but, on the contrary, will increase the diversity of supply on the market. The possible distortions of competition are outbalanced by the expected positive cultural results of the scheme. The Commission therefore concludes that the notified prolongation of the Danish digital games scheme can be considered compatible with the internal market pursuant to Article 107 (3) (d) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is 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:

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

