



EUROPEAN COMMISSION

Brussels, 18/07/2007
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Subject: **State aid N 340/2007 - Spain**
Aid for theatre, dance, music and audiovisual activities in the Basque country

1. PROCEDURE

1. By letter dated 19 June 2007 (A/35107), registered in the Commission on the same date, the Spanish authorities notified the scheme mentioned above.

2. DESCRIPTION OF THE AID MEASURE

Objective

2. The Basque authorities intend to support the organisation of festivals, competitions and other cultural events in the areas of theatre, dance, music and audiovisual activities in the Basque country in 2007.

Legal basis

3. The Spanish authorities submitted an order of 4 April 2007 of the Cultural Counsellor which regulates the award of financing for the organisation of festivals, competitions and other cultural events in the areas of theatre, dance, music and audiovisual activities in the Basque country in 2007 (hereafter "the order"¹). This order constitutes the legal basis of the present scheme.
4. The order, which has entered into force on 3 May 2007, contains a provision which makes the granting of subsidies conditional upon the approval of the scheme by the Commission.

Beneficiaries

5. The beneficiaries of these subsidies are small and medium-sized private or public legal persons which organise activities or programmes in the cultural areas covered by the scheme. The Spanish authorities estimate that the number of beneficiaries will be between 11 and 50. Any legal person can apply for financing under the scheme, independently from its place of establishment.

¹ Published in the Official Journal of the Basque Country (*Boletín Oficial del País Vasco*) on 2 May 2007.

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Eligible projects and selection criteria

6. The festivals, competitions and other cultural activities to be subsidised must be highly specialised or unique in the areas concerned and must be of particular interest to the cultural scene of the Basque country.
7. The subsidised programmes and activities must have a balanced budget with costs equalling revenues (after taking the public subsidy into account).
8. Cultural programmes of general character (including several activities) are excluded, since the subsidies are directed towards concrete events. Activities with a predominantly local or neighbourhood reach are also excluded. Finally, activities with contents that are not predominantly cultural will be excluded.
9. Applications for subsidies will be subject to assessment by an Evaluation Committee on the basis of the following selection criteria:
 - Artistic interest and quality of the activity (up to 45% of the maximum score): cultural relevance, number of previous editions and social roots of the activity, absence of similar activities in the cultural field concerned, thematic innovation, ability to reach new audiences (children and youth), contribution and professional participation of women and, in general, integration of the gender issue;
 - Level of self-financing (or of private financing) of the event (up to 30% of the maximum score): alternatives presented for financing the event (also from other public sources) in case the attributed subsidy falls short of the amount applied for and the presence of public financing in previous editions by other cultural institutions will be positively valued;
 - Use of the Basque language (up to 15% of the maximum score);
 - Geographical scope, impact and external diffusion (up to 10% of the maximum score): the geographical balance of the event will be positively valued.
10. Only those events may be selected which obtain more than 50% of the maximum score.
11. The individual aid amount awarded for each event will be proportional to the score obtained and will take into account the overall budget available for the scheme.
12. Only costs directly related to the organisation of the events will be eligible.

Aid intensity and cumulation

13. The aid intensity is limited to 50% of the budget of the event. The financing granted under the present scheme may be cumulated with other sources of financing awarded for the same purpose by any other public or private institution, provided that it does not exceed the costs of the activities falling under the present scheme.

Budget

14. The global budget of the scheme is €1.1 million, granted out of the general budget of the Basque country. Depending on the total amount of financing requested under this scheme

and the amounts eventually remaining after the execution of the other programmes of the Cultural Department, the budget of the present scheme may be increased.

Duration

15. Support under the notified scheme can be granted following the approval by the Commission until 31 December 2007.

Granting authority

16. The financing will be granted by the Directorate for the Promotion of Culture (*Dirección de Promoción de la Cultura*) of the Cultural Department (*Departamento de Cultura*) of the Basque government.

Form of the aid

17. Financing will be granted in the form of direct grants.

3. ASSESSMENT OF THE AID MEASURE

Notification requirement

18. The Spanish authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty by notifying the scheme before it is implemented.
19. The legal basis of the scheme has already entered into force but financing may only be granted once the Commission has approved the measure.

State aid in the sense of Article 87(1) of the EC Treaty

20. According to Article 87(1) of the EC Treaty, "*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 common market.*".
21. In order to be classified as a state aid, a national support measure must therefore fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Community trade.

Presence of State resources

22. In the case at hand there are state resources involved since the scheme is financed out of the general budget of the Basque country.

Economic advantage to an undertaking

23. The direct grants awarded to the beneficiaries constitute payments that they would not receive under normal market conditions. The beneficiaries are public or private legal persons which carry out activities in the cultural areas covered by the measure. Although

certain activities in these fields may be of non-economic nature, the events covered by the present measure serve the promotion of the cultural industry and thereby constitute economic activities. Therefore, the beneficiaries qualify as undertakings under Article 87(1) of the EC Treaty which receive an economic advantage under the scheme.

Selectivity and distortion of competition

24. The economic advantage granted under the scheme is selective in the sense that it will benefit certain undertakings active in the specific cultural sectors of theatre, dance, music and audiovisual activities. Moreover, although in principle, all public and private entities are entitled to apply for financing independently from their place of establishment, taking into account the geographical limitation of the events to be supported and the scoring bonus given to events using the Basque language, it may be assumed that the aid will primarily benefit undertakings in the Basque country.
25. In view of the relatively limited amount of aid and the type of beneficiaries concerned (small and medium-sized enterprises), the measure is unlikely to produce a significant distortion of competition. In particular in the case of events taking place in Basque language, any such distortion would probably be very limited in view of the limited substitutability with similar events in other languages. The fact that the financing is awarded on the basis of an open call for applications is also likely to reduce the distortion of competition caused by the measure. However, as the beneficiaries compete with other undertakings including those which do not qualify under the scheme, such a distortion cannot be excluded either.

Effect on intra-Community trade

26. Taking into account the geographic limitation of the events to the territory of the Basque country, the type of beneficiaries and the relatively low amount of aid, the measure is not likely to have a significant effect on trade. In particular in the case of events taking place in Basque language, the effect on trade between Member States would be very limited. However, the scheme explicitly excludes activities with mainly local or neighbourhood reach and external diffusion is mentioned among the criteria for selecting the project. Taking also into account the international competition in particular in music and audiovisual productions and the relatively large potential audience of the events (music festivals, for example, may attract an international audience), it cannot be excluded that the measure has nevertheless a certain effect on intra-Community trade.

Conclusion

27. Therefore, the Commission considers that the scheme may constitute state aid in the meaning of Article 87(1) of the EC Treaty and it is therefore necessary to assess its compatibility under the provisions of Article 87(3) of the EC Treaty.

Compatibility

28. Article 151 (4) of the EC Treaty provides that "*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*".
29. In the notification, the Spanish authorities argued that the scheme is compatible with the common market under Article 87(3)(d) of the EC Treaty which concerns "*aid to promote*

culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest". They submitted that the financing of festivals, competitions and other cultural events in the areas of theatre, dance, music and audiovisual activities under the scheme serves the promotion of products with cultural content.

30. The Commission is on the opinion that the cultural derogation provided for in Article 87(3)(d) of the EC Treaty, as any exception to the general rules of the Treaty, has to be interpreted restrictively. Accordingly, the Commission considers that the notion of culture must be applied to the content and nature of the product in question, and not to the medium or its distribution per se².
31. In the present case, the aim of the scheme is specifically to subsidise festivals, competitions and other events which are highly specialised or unique in the areas concerned and of particular interest to the cultural scene of the Basque country. Those activities which do not have a predominantly cultural content are explicitly excluded from financing under the scheme.
32. The cultural character of the activities is also reflected in the criteria for the selection of the activities to be financed by the Evaluation Committee. Indeed, the artistic interest and quality of the activity account for 45% of the maximum score, and 15% of the score is given for the use of the Basque language while events scoring less than 50% will be directly excluded from financing under the scheme. Taking also into account the general requirements for cultural significance and content, the Commission is of the opinion that this system ensures that aid is directed towards activities with truly cultural content. The proportionality of the funding to the outcome of the selection test creates an incentive to maximize the score under the different criteria including the cultural and language requirements. Moreover, by providing for a scoring bonus for the use of the Basque language, the measure also serves the promotion of a regional language which forms part of the national and European cultural heritage.³
33. Based on these considerations, the Commission is on the opinion that the measure falls within the scope of Article 87(3)(d) of the EC Treaty.

Necessity and proportionality

34. The Spanish authorities submit that the present measure, in the context of a general policy to support the Basque language and culture in all possible supports, is necessary to foster the organisation of festivals, competitions and other events with cultural content in the territory of the Basque country and to facilitate the access of the general public to cultural activities. Indeed, as demonstrated above, the measure promotes activities with truly cultural content, which may not be economically viable without public support. This is particularly the case for events taking place in Basque language, which are unlikely to attract international audiences. The fact that aid is awarded through an open call for applications based on eligibility and selection criteria which are clearly defined and

² See, for example, N 458/2004; Spain, State aid to Espacio Editorial Andaluza Holding sl.

³ The respect for the cultural, religious and linguistic diversity in Member States was reaffirmed in the Charter of Fundamental Rights of the European Union (2000/C 364/1) and the Commission adopted, in 2005, a Communication on a new framework strategy for multilingualism (COM(2005) 596 final). This latter instrument calls upon Member States to establish national plans to promote multilingualism, including increasing the use and presence of a variety of languages in daily life.

published in the order of the Cultural Counsellor acts as an incentive for the organisation of events falling under the scheme.

35. At the same time, the measure also aims at limiting the amount of aid to the minimum necessary by capping the aid intensity to 50% of the eligible costs and by imposing strict requirements for justifying the use of the public support. Although the financing received under the scheme may be cumulated with other forms of public or private support, there is no possibility for financing above costs.
36. Moreover, as highlighted under paragraphs 25 and 26 above, the distortion of competition arising from the measure and its effect on trade are likely to be limited. The duration of the scheme is very limited (until the end of 2007), the overall aid amount is very low (€1.1 million) and the individual aid grants are also very low, given the expected number of beneficiaries (between 11 and 50). In this respect, the Commission also notes the existence of linguistic and cultural barriers limiting competition and cross-border trade between Member States in the relevant cultural sectors, which further reduce the impact of the measure in this respect.
37. The Spanish authorities did not invoke the provisions of Commission Regulation no. 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid⁴, notably because of the possible cumulation with aid for other purposes. However, the facts mentioned above are sufficient to establish that the scheme is unlikely to distort intra-EU trade and competition to any significant extent. The Community interest is also ensured by the eligibility and equal treatment of applicants based in other Member States.
38. Based on these considerations, the Commission considers that the measure is both necessary and proportionate to the objective of promoting culture in the Basque country and the Basque language and does not affect trading conditions to an extent contrary to the public interest.

4. CONCLUSION

39. On the basis of the foregoing assessment, the Commission decided that the measure is compatible with the common market pursuant to Article 87(3)(d) of the EC Treaty.
40. The Commission takes note of the commitment from the Spanish authorities to suspend the payment of any aid granted under the present scheme to an undertaking having received illegal and incompatible aid in the context of one of the state aid schemes mentioned below until such aid, including principal and interests, has been fully recovered or has been deposited in a blocked account:
 - Fiscal aid - Alava I, Alava II and Alava III (cases CR 48/99, CR 49/99 and CR 58/00);
 - Fiscal aid - Guipuzcoa I, Guipuzcoa II and Guipuzcoa III (cases CR 50/99, CR 53/99 and CR 59/00);
 - Fiscal aid - Vizcaya I, Vizcaya II and Vizcaya III (cases CR 52/99, CR 54/99 and CR 60/00).

⁴ OJ L 379 of 28 December 2006.

41. 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/community_law/state_aids/index.htm. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate State Aid II
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Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission