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Subject: State aid N 368/2008- Spain

Aid for theatre, dance, music and audiovisual activities in the Basque country
Renewal of State aid N 340/2007

1. PROCEDURE

1. By letter dated 23 July 2008, registered in the Commission on the same date, the Spanish authorities notified the scheme mentioned above.

2. DESCRIPTION OF THE AID MEASURE

The present scheme is a renewal of the aid measure N 340/2007, approved by the Commission on 18 July 2007 until 31 December 2007.¹ The only substantial differences concern a slight decrease in the overall budget of the scheme and the introduction of additional elements for assessing the artistic quality of the activities.

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 2008.

¹ See under http://ec.europa.eu/comm/competition/state_aid/register/ii/by_case_nr_n2007_0330.html#340.

Excmo. Sr. Don Miguel Ángel MORATINOS
Ministro de Asuntos Exteriores
Plaza de la Provincia 1
E-28012 MADRID

Legal basis

3. The Spanish authorities submitted an order of 1 July 2008 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 2008 (hereafter "the order"²). This order constitutes the legal basis of the present scheme.
4. There is an additional provision which provides that the aid will not be effective until the European Commission has given its consent.

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. Any legal person can apply for financing under the scheme, independently from its place of establishment.

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:
 - Cultural interest and artistic quality of the activity (up to 45% of the maximum score):
 - Cultural interest: 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;
 - Artistic quality: artistic and technical teams, the works to be executed or projected, the adaptation of such works and the development of the project, the proposed staging of the project;³

² Published in the Official Journal of the Basque Country (*Boletín Oficial del País Vasco*) on 23 July 2008.

³ As compared to the 2007 scheme, the 2008 scheme divides up the first criterion into two parts, cultural interest and artistic quality, and defines additional elements for the assessment of the artistic quality of the activities.

- 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 €69.700 granted out of the general budget of the Basque country.⁴ 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 2008.

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.

⁴ In the 2007 scheme, the overall budget amounted to €1.1 million.

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.
22. As described in the decision of the Commission concerning the previous aid measure N 340/2007, the direct grants to the awarded under the present scheme constitute State aid in the meaning of Article 87(1) of the EC Treaty.
23. State resources are involved since the scheme is financed out of the general budget of the Basque country. Furthermore, the measure serves the promotion of the cultural industry and provides an economic advantage to beneficiaries which qualify as undertakings under Article 87 (1) of the EC Treaty. Moreover, the economic advantage is granted only to certain undertakings and is thus selective. In a number of cases, the effects of the measure on competition and trade are likely to be limited (in view of the limited budget, the types of beneficiaries concerned and in particular in the case of events in Basque language). However, such an effect cannot be excluded either, in particular in the case of music and audiovisual events which may attract an international audience. Thus, the measure may distort competition and affect intra-Community trade.

Compatibility

24. Article 151(4) of the 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*".
25. Article 87 (3) d) of the EC Treaty, the so-called "cultural derogation" 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*".
26. In line with the reasons set out in the Commission decision concerning the previous scheme N 340/2007, the Commission considers that the conditions for the application of

the cultural derogation are fulfilled 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. The cultural character of the activities is also reflected in the selection criteria referred to in paragraph 9 above. The cultural interest and the artistic 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 excluded from financing under the scheme. The new elements introduced in 2008 only concern a more detailed description of the aspects to be taken into account when assessing the artistic quality of the activities, and do not alter the cultural focus of the scheme. Taking also into account the general requirements of the scheme 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.

27. In line with the findings of the Commission decision concerning the 2007 scheme, the Commission takes the view that the measure is both necessary and proportionate to pursue the cultural objectives pursued.
28. 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. The scheme is based on open calls for applications and acts as an incentive for the organisation of cultural events falling under the scheme.
29. The measure also aims at limiting the amount of aid to the minimum necessary, and provides that it cannot exceed 50% of total costs. Moreover, as mentioned above, the distortion of competition arising from the measure and its effect on trade are likely to be limited. Both the overall aid amount and the individual aid grants are relatively low, given the expected number of beneficiaries (between 11 and 50). Therefore, the scheme is unlikely to distort intra-EU trade and competition to a significant extent. The Community interest is also ensured by the eligibility and equal treatment of applicants based in other Member States.

4. CONCLUSION

30. 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.
31. The Commission takes note that the scheme implements 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).

32. 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
State Aid Greffe
B-1049 Brussels
Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Androulla Vassiliou
Member of the Commission