



COMMISSION EUROPÉENNE

Brussels, 22.II.2008
C(2008)779

PUBLIC VERSION
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Subject: State aid N 778/2007 - Spain
Aid to "supramunicipal" cultural activities: Basque Country

1. PROCEDURE

1. By letter dated 28 December 2007, registered in the Commission on the same date, the Spanish authorities notified the scheme mentioned above. Additional information on the measure was provided on 31 January 2008.

2. DESCRIPTION OF THE AID MEASURE

Objective

2. The Basque authorities intend to support during the year 2008 the organisation of cultural programmes and activities in an extensive range of areas and with a higher level of dissemination than the municipality. The scheme does not aim at only one specific type of program or activity but at the cultural activity in general¹ as long as it forms part of the functions or falls within the domains covered by the Department of Culture of the Basque Government². According to the notification, the scheme is not intended to support the so-called "cultural industry"; i.e. publishing, phonographic, audiovisual and multimedia industry.

¹ The activities subsidized last year under a similar measure dealt with the dissemination, promotion or organization of theatre, choral music, readings, lectures on literature, traditional Basque folklore and dance, conferences on archaeology, scriptwriting workshops, photographic festivals, native musical instruments, Basque music festivals, inventory and cataloguing of historical properties, etc

² E.g. Sport; Youth and community development; Management and conservation of the artistic heritage; museums, libraries and archives; Language policy; Promotion of the Basque language; Artistic and cultural activities and its dissemination; etc

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Legal basis

3. The Spanish authorities submitted an order of 19 December 2007 of the Cultural Counsellor which regulates the award of financing for carrying-out particular supramunicipal cultural programmes and activities in the Basque Country during the year 2008 (hereafter "the order"³). This order constitutes the legal basis of the present scheme.
4. The order, which was approved on 18 December 2007, contains a provision which makes the granting of subsidies conditional upon the approval of the scheme by the European Commission.

Beneficiaries

5. The beneficiaries of these subsidies are 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 51 and 100.
6. Any legal person can apply for financing under the scheme, provided that it has its head office and registered office in any country of the EEA. It is foreseen that the majority of beneficiaries will be private legal persons and, to a minor extent, public bodies.

Eligible projects and selection criteria

7. The cultural programmes and activities to be subsidised must be performed in the Basque Country or, failing that, outside it, provided that the objective of them is the dissemination of the Basque culture.
8. The subsidised programmes and activities are characterised by the following: they will all be clearly loss-making, they will be originated by social initiative and the public subsidy under the present scheme may not finance more than 70% of the budget of any of them.
9. Cultural programmes or activities which, by their nature and objective, were eligible under a more specific call for application set up by the Department of Culture are excluded. Programmes or activities with a municipal or lower reach are also excluded. Finally, programmes or activities with contents that are not predominantly cultural or those with a deadline for execution going beyond 31 December 2008 will be excluded.
10. In principle, all costs, namely the direct costs of the programme or activity and the indirect and general costs allocated to them, are potentially eligible⁴. Nonetheless, programmes or activities dedicating more than 50% of their budget to finance internal operating costs of the organization or to finance acquisition of assets will be excluded.

³ Published in the Official Journal of the Basque Country (*Boletín Oficial del País Vasco*) on 7 January 2008.

⁴ With the exception of some kind of costs like, for example, those originated from the maintenance of data bases or the digital edition of magazines, books and newspapers.

11. Applications for subsidies will be subject to assessment by an Evaluation Committee on the basis of the following predefined selection criteria and score weighting for the evaluation:
- Interest of the programme or activity from a cultural point of view (50%);
 - Use of the Basque language in the different phases of the execution of the programme or activity (15%);
 - Level of self-financing (or of private financing) of the programme or activity (15%): For its calculation all sources of public financing, national or international, will have to be excluded;
 - Universe of potential users/spectators benefiting from the programme or activity (10%);
 - Geographical impact (10%).
12. Only those programmes and activities may be selected which obtain more than 50% of the maximum score.
13. In order to determine the individual aid amount that corresponds to each programme or activity, the global budget for the scheme will be divided proportionally to the score obtained by the different applications previously selected and their amount of aid requested. If the resulting sum of all individual amounts calculated surpasses the total budget available they would have to be reduced proportionally to the total budget available for the scheme.

Aid intensity and cumulation

14. The aid intensity is limited to 70% of the budget and will, under no circumstances, surpass the €60 000 ceiling per programme or activity. 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, to the extent that it does not exceed the costs of the activities or programmes carried out. Consequently, beneficiaries cannot be compensated directly or indirectly for more than the total programme costs

Budget

15. The global budget of the scheme is 725 thousand € granted out of the budget of the Government 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

16. Support under the notified scheme can be granted following the approval by the Commission until 31 December 2008.

Granting authority

17. The financing will be granted by the Directorate for Services (*Dirección de Servicios*) of the Cultural Department (*Departamento de Cultura*) of the Basque government.

Form of the aid

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

3. ASSESSMENT OF THE AID MEASURE

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

19. 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*".
20. In order to be classified as a state aid, a 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

21. 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

22. The direct grants awarded to the beneficiaries constitute payments that they would not receive under normal market conditions. Furthermore, these payments relieve the beneficiaries from part of the costs they should have borne in carrying out the cultural project selected. The beneficiaries are public or private legal persons which carry out activities in cultural areas.
23. The objectives covered by the present scheme have not been delimited a priori in a concrete manner due to its residual character. The programmes and activities selected will serve a wide variety of cultural objectives both, of economic or non-economic nature. To the extent that the beneficiaries of the measure carry out economic activities, then they qualify as undertakings in the sense of Art. 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 attending the cultural objectives covered by the present scheme. 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 majority of the programmes and activities to be supported and the scoring bonus given to those using the Basque language, it may be assumed that the aid will primarily benefit undertakings in the Basque country and, to a minor extent, benefit undertakings established in other areas where the Basque language is spoken.

25. In view of the relatively limited amount of individual aid and of the relatively high number of beneficiaries, the measure is unlikely to produce a significant distortion of competition. In particular in the case of programmes and activities taking place in Basque language, any such distortion would probably be very limited in view of the limited substitutability with similar ones in other languages. The fact that the financing is awarded on the basis of an open call for applications, with predetermined selection criteria and valuation weightings, 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 most programmes and activities to the territory of the Basque country – exceptionally they can be carried out outside of the Basque Country provided that their primary objective is the dissemination of any aspect of the Basque culture - 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 programmes and activities taking place in Basque language, the effect on trade between Member States would be very limited. Moreover, according to the notification the activities or programmes to be aided under this scheme will not belong to the "area of cultural industries"; i.e. publishing, phonographic, audiovisual and multimedia industry, which diminishes the probability that the measure affects the intra-Community trade. However, taking into account that the objectives of the scheme were not defined concretely, it can not be excluded that some programmes or activities subsidized have a potential effect in the market, and therefore, it cannot be excluded that the measure has a certain, albeit limited, 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. The Commission is of 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.

29. Article 3 (q) of the EC Treaty establishes as priority objective in the field of culture the "*contribution to education and training of quality and to the flowering of the cultures of the Member States*". In the same way, 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*".

30. 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 foreseen under the present

scheme serves the promotion of non-commercial, markedly loss-making activities and programmes with only and exclusive cultural content, brought about by the civil society that are addressed to a rather limited public".

31. Taking into account that the only objective of the scheme is promoting culture and the type of activities subsidized last year under a similar measure⁵, the Commission is of the opinion that this offers enough confirmation that aid will be directed towards activities and programmes with truly cultural content.
32. Moreover, the cultural character of the activities is also reflected in the criteria to be applied by the Evaluation Committee to select the different programmes and activities. Indeed, the cultural interest of the activity as well as the use of the Basque language account for a significant weight among the assessment criteria.
33. 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 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 heritage⁶.
34. There are no territorialisation requirements in the present scheme, meaning that beneficiaries are free to spend the budget of the production in any Member State.
35. 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

36. The Spanish authorities submit that the present measure, in the context of a general policy to support the Basque culture in general, is necessary to protect, foster and disseminate cultural activities mainly in the territory of the Basque country and to facilitate the access of the general public to them. Indeed, as demonstrated above, the measure promotes activities with cultural content, which would not be economically viable without public support.
37. The fact that aid is awarded through an open call for applications based on eligibility and selection criteria which are clearly defined and published in the order of the Cultural Counsellor acts as an incentive for the performing of programmes and activities falling under the scheme.
38. At the same time, the measure also aims at excluding from the public support, inter alia, those activities or programmes dedicating more than 50% of the budget to cover internal operating costs of the organization or to finance the acquisition of assets.
39. Although the financing received under the scheme may be cumulated with other forms of public or private support, the total financial support obtained by the beneficiary may not exceed the costs necessary to accomplish the programme or activity.

⁵ See footnote number 1

⁶ 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.

40. Moreover, as highlighted under paragraphs 24, 25 and 26 above, the distortion of competition arising from the measure and its effect on trade are likely to be limited. The overall aid amount is very low (725 thousand €) considering the expected number of beneficiaries (between 51 and 100) and the ceiling for individual aid is also very modest (60 000 €).
41. As mentioned previously, the maximum aid intensity can go up to 70%. In view of the fact that the activities and programmes under the scheme are expected to be unprofitable, this intensity is considered to be the minimum necessary to carry out them and, thus, is justified.
42. According to the notification submitted by the Spanish authorities, the activities and programmes eligible under the present scheme are so dispersed that the subsidies will be, with all probability, distributed over a wide number of small projects and thus are not liable to appreciably influence any of the hypothetical markets of any of the areas in which aid is granted.
43. The Community interest is also ensured by the eligibility and equal treatment of applicants based in other Member States.
44. 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 common interest.

4. CONCLUSION

45. On the basis of the foregoing assessment, the Commission has decided that the measure is compatible with the common market pursuant to Article 87(3)(d) of the EC Treaty.
46. The Commission takes note of the commitment from the Spanish authorities not to admit any application from any entity established in the Basque Country without a sworn statement signed by its representative in which is expressed that the entity has not received any illegal and incompatible aid in the context of one the state aid schemes mentioned below or, if the entity had received such kind of aid, that this , including 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).

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http://ec.europa.eu/community_law/state_aids/index.htm. Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission