Subject: Case SA.34462 (2012/NN) – Latvia
Programme "Culture"

I. Procedure

1. On 8 March 2012, the Latvian authorities notified a conglomerate of aid measures under Article 108(3) of the TFEU¹ to promote culture and cultural heritage conservation in Latvia. On 22 November 2012, the Commission reclassified the case as a non-notified aid measure.² The Commission requested additional information by letters dated 26 April 2012, 22 August 2012 and 8 February 2013 which was provided by the Latvian authorities by letters dated 25 June 2012, 31 October 2012 and 25 February 2013 and by mail dated 26 March 2013.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty became Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU); the two sets of provisions are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate.
² See footnote labelled 9 below.

Edgars RINKĖVIČS
Ārlietu Ministru K.Valdemāra iela 3,
Rīga LV-1395
II. DESCRIPTION OF THE MEASURE

2. **Legal basis**: The numerous legal basis references are listed in the annex of this decision.

3. **Objective**: The support is primarily aimed at development of the sector of culture, while its secondary objective is preservation of cultural infrastructure and heritage.

4. **Granting authority**: The main granting authority is the Latvian Ministry of Culture. In addition to the Ministry of culture the following authorities in Latvia are also involved in the granting procedure:
   - State Cultural Monuments Protection Inspection
   - State culture capital foundation
   - Ministry of environment protection and regional development
   - Local authorities

5. **Financing of the aid**: The aid is to be financed by the central State budget of Latvia; municipalities' budgets; foreign financial instruments, such as the European Regional Development Fund (ERDF), the European Economic Area Financial instrument and the Climate Change Financial Mechanism.

6. **Content of the aid scheme**: The scheme is intended to cover a wide range of activities including in particular construction, improvement, renewal, restoration and conservation of the cultural infrastructure, as well as the provision of maintenance of cultural institutions, the organisation of various cultural events and the digitisation of cultural heritage.

7. The aid is split according to its objectives into the following 4 sub-programmes:
   a) Cultural infrastructure
   b) Culture institutions
   c) Cultural events
   d) Cultural heritage digitisation

8. The Latvian authorities specified that the present notification will replace the measure "Support for private owners of cultural monuments in the restoration and preservation of cultural heritage" approved by the Commission in 2010\(^3\). This modification will allow for higher aid intensities (previously 50%) and the possibility to combine aid from different financial sources (which was not allowed in the past scheme)\(^4\). All other provisions of this measure remain unchanged. This

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\(^4\) The Latvian authorities explained that this change will give equal opportunity for development and for provision of qualitative cultural services to all cultural institutions/objects in Latvia. Indeed the experience gained during the implementation of the scheme SA. 29624 (ex N 564/2009) showed that private bodies have insufficient financial means to implement such large scale infrastructure projects of non-commercial character. During the two open calls some of the agreements had to be terminated in the course of the implementation due to insufficient co-financing of the final beneficiaries. Therefore the Latvian authorities find it necessary, in order to ensure effective administration of public funding (including EU funds) to cover the financial gap caused by the additional costs by public funds.
includes the safeguard that no financing shall be awarded to activities which the final beneficiary has paid for before the agreement on the project implementation was entered into. This safeguard applies to the whole sub-programme of cultural infrastructure, with the exception of the expenses of preparation of construction plans, as these necessarily form part of the project application.

9. The sub-programme Cultural Infrastructure (point 7a above) provides support for building, improvement, renewal and conservation of cultural infrastructure objects which are in use or possession of natural or legal persons ensuring their accessibility to the public, their socio economic use and facilitating their cultural functions. Cultural infrastructure is specified as an object of heritage of national or local significance according to the Cultural Monuments Protection Law e.g. castles, estates, churches as well as objects of cultural institutions according to the Culture Agencies Law providing public service in any of the cultural spheres (libraries, archives, museums, theatres etc.). Some of the objects are of international significance, e.g. Rundale Castle, Riga historic centre panorama and silhouette and Kuldiga old town. Cultural monuments must be listed as protected cultural monuments in order to be eligible for support under this scheme. The Cultural Monuments Protection Law establishes priorities of use of the cultural monument (i.e. culture, science and education) and allows it to be used for economic activity only under the condition that its exploitation does not harm the monument and it does not diminish its historical, scientific and artistic value.

10. The objectives under 7.b for Cultural Institutions are targeted in particular at supporting their operational activities (maintenance costs of cultural institutions\(^5\), including improvement of their personnel competences (through exchange of experience with other institutions or work placement of employees in other institutions, continuous education) with the purpose to provide access to the public, to provide a high qualitative cultural service and to facilitate the mobility and international communications of the cultural provider. The objectives under paragraph 7.b moreover include the following fields:

a) aid for the operation of **National Archive**;

b) aid to state and local municipality **libraries**: provides financial means for developing and storing libraries' collections and for enabling their availability to the public, for covering the personnel and maintenance costs, as well as, for ensuring international cooperation, support is also rendered to the activities of the mobile libraries;

c) **cultural education institution** and intangible heritage centre;

d) **theatres and concert** organisers receive grants for their operational cost;

e) **museums**: support for maintenance of the museums (operational costs), organisation of exhibitions and cultural events in the museums, improvement of

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\(^5\) Cultural institution is defined according to the Cultural institution law as an agency whose core activities are creation, distribution or conservation of the cultural values.
museums' personnel skills and knowledge, maintenance of museums' collections;

f) civic centres;

g) in the field of visual art the aid is directed at the Latvian contemporary Art centre that ensures promotion of Latvian visual art abroad and is supporting Latvian artists e.g. by ensuring their participation in international art projects. It also organises exhibitions and maintains a data base of Latvian visual art;

h) in the field of literature: aid to the Latvian Literature Centre that ensures cooperation with other literature and cultural organisations, translations of Latvian literature works which would not be translated using private funding, visit organisation of foreign authors to Latvia for demonstration readings, organisation of Latvian author participation in various international events etc.;

i) book industry: support is granted for publication of Latvian authors' works that are not commercially profitable and would not be published using private funding;

j) in the field of architecture the support is aimed at research (studies available for public use) and supporting studies and trainings in the field of architecture, publication of materials in the field of architecture available for public, participation in exhibitions etc..

11. These cultural institutions are to a major extent in the ownership of local authorities and include for example the National opera, Daile theatre, Liepaja theatre. However, they might be also in a private ownership for example in case of galleries, museums, etc. The activities of these cultural institutions are mainly of a local nature (for example activities of civic centres of local authorities, of local museums, etc.). The aid is therefore granted in the major part from the local authorities' budget and to a lesser extent from the State budget. Some of the cultural institutions nevertheless have national or even international character where internationally recognized artists take part in the cultural events, with foreign audience. Such institutions are, for example, the National opera of Latvia, new Riga theatre, the state academic chorus "Latvija", the National symphonic orchestra of Latvia, the chamber orchestra "Kremerata Baltica", etc. Some of the cultural institutions provide, in addition to their cultural services, ancillary services of commercial character (for example gift shops, café, restaurant, renting of the conference room etc.).

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6 The Latvian authorities mentioned that also Latvian National library (presently under construction) will have international significance with a wide number of visitors from other Member States.

7 The Latvian authorities are of the view, that those services are an integral part of any modern cultural institution as long as the scale remains such that it cannot be considered a business operation on its own. They also explained that those services usually generate very little profit (are in many cases rented out to an external company) which is used to cover only some part of their maintenance costs. Moreover the price list for these services are harmonised and approved by the regulations of the Cabinet of Ministers.
12. Support under 7.c (Cultural events) is aimed at keeping the Latvian culture traditions alive, facilitating quality and creativity as well as creation of new cultural events, and promoting international turnover of culture and art of Latvia. Cultural events are arranged at the local (for example local authorities organise cultural events for the local population) and regional level. Some events arranged in the cities and towns are events of international level e.g. music concerts, festivals or Song days.

13. Activities covered by 7.d of the present decision support digitisation of tangible (buildings, structures, monuments, cultural and historic places, works of art, etc.) and intangible (ideas, traditions, symbols, etc.) objects relating to cultural heritage. This sub-programme is to the great extent financed from the ERDF. The main beneficiary for these activities is the Cultural Information System Agency.

14. The Latvian authorities have clarified that audio-visual aid is excluded from the scope of the present scheme.

15. **Duration:** The scheme is intended to cover the period until April 2017\(^8\).

16. **Beneficiaries:** The scheme is open to beneficiaries in all regions of Latvia. Applicants for aid may be natural and legal persons, registered in the Registry of Enterprises or Registry of Foundations in Latvia, who carry out cultural functions. The Latvian authorities clarified that the obligation to be registered in the Register of Enterprise or Registry of Associations and Foundation of the Republic of Latvia is a purely formal requirement, which applies, in accordance with Article 1 of the Latvian Commercial Law, to all companies acting on the territory of Latvia.

17. The estimated number of beneficiaries is over 2000 (132 sub programme a), 2000 sub programme b), 50 sub programme c), and 5 sub programme d)). Applicants which have citizenship other than Latvian nationality or have head offices elsewhere than Latvia may apply for support under the scheme under the same conditions as Latvian applicants, i.e. there is no requirement of permanent establishment in Latvia.

18. Beneficiaries may be public bodies (such as municipalities and their institutions, cultural institutions: museums, theatres, archives, libraries, civic centres, cultural education institutions), non-profit organisations (NGOs), and private persons (who have cultural objects in their ownership, use or management).

19. The Latvian authorities explained that beneficiaries are typically State or municipal institutions or non-profit organisations, which are not profit-seeking but offer local cultural supply.

20. **Form of the aid:** The aid may take the form of a direct grant\(^9\), tax relief\(^10\) and dividends\(^11\).

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\(^8\) The Latvian authorities stated in their reply of 31 October 2012 that some of the subsidies were already paid out. In their views it was only in cases which they considered not to constitute State aid. Accordingly the Commission reclassified the case as a non-notified aid measure.
21. Budget: The approximate\textsuperscript{12} annual budget of the measure is LVL 223 million (~ EUR 318.525 million\textsuperscript{13}) and the overall budget is LVL 1116 million (~ EUR 1594.02 million). The budget is split among the sub-measure in the following way:

<table>
<thead>
<tr>
<th>Sub-programme</th>
<th>Amount in million LVL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cultural infrastructure</td>
<td>575</td>
</tr>
<tr>
<td>Culture institutions</td>
<td>450.5</td>
</tr>
<tr>
<td>Cultural events</td>
<td>75.5</td>
</tr>
<tr>
<td>Cultural heritage digitisation</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Financial source\textsuperscript{14}</th>
<th>Amount (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>State budget</td>
<td>54</td>
</tr>
<tr>
<td>European Regional Development Fund</td>
<td>12</td>
</tr>
<tr>
<td>European Economic Area Financial Mechanism</td>
<td>1.3</td>
</tr>
<tr>
<td>Climate Change Financial Mechanism</td>
<td>0.7</td>
</tr>
<tr>
<td>Municipal budget</td>
<td>32</td>
</tr>
</tbody>
</table>

22. Selection of projects for the grant of aid: the aid is granted in two ways: through a call for projects organised by the granting authority or by way of direct financial allocation from the State or municipal budget where no call for projects takes place.

23. Aid may be granted without a call for applications exclusively in the following cases:

a) the cultural object or objective has national or international cultural impact and has strategic importance for the cultural development;

b) by the grant of the aid a significant advantage may be achieved, or a significant disadvantage may be prevented;

c) to cover operational costs of the cultural institution of local, regional or national significance when it cannot maintain it itself.

A decision to award the aid without call for projects is taken by the Latvian Parliament when approving the law on annual budget or by way of a so called protocol decision on financing allocation for building, improvement, renewal and conservation works in particular cultural objects (e.g. the project "National Library

\textsuperscript{9} The aid granted in the sub measures a, c and d takes exclusively the form of direct grants.

\textsuperscript{10} According to the Law on Value Added Tax of the Republic of Latvia cultural events such as theatre and circus performances, exhibitions, concerts and social gatherings in cultural objects, services of libraries and activities of museums are exempted from VAT. In addition, a reduced tax rate applies to publications.

\textsuperscript{11} The Latvia authorities explained that the cultural institutions usually generate only little or no profit. However when the cultural institution generates profit, the dividends are not paid out and are used for development of the cultural object.

\textsuperscript{12} The Latvian authorities submitted an estimation of the budget as the annual allocations from the State and municipal budgets cannot be fixed in advance.

\textsuperscript{13} Taking the LVL/EUR exchange rate as 1 LVL = 1.42834 EURO as of 25 February 2013.

\textsuperscript{14} Other financial sources may become available in the future, such as new EU cultural programmes. Money from such additional sources will also need to comply with the conditions of the present decision.
of Latvia). Financing from a municipal budget needs the approval of the municipal authorities. Such exceptional treatment, where no call for applications takes place, may occur for unforeseen events relating to the preservation of culture and cultural heritage which are not foreseen in the yearly preparation of calls for applications. (e.g. immediate need for restoration of monuments damaged by a natural disaster to prevent their further deterioration), or advantageous opportunities (e.g. participation at foreign cultural festivals or participation in activities initiated by non-governmental actors). In these situations it is not possible to wait until the end of a long procedure, but a prompt reaction is indispensible in order to prevent further damage or not to miss an opportunity.

24. In the more usual case of calls for applications a separate tender procedure is organised by the particular granting authority for each granting programme. The award of aid is based on clear conditions and the evaluation criteria set out in the Regulations defining implementation of particular grant programmes.\(^\text{15}\)

25. The Latvian authorities have given assurance that all procedures of call for projects would be in full compliance with EU procurement rules.

26. Moreover, each granting authority establishes a separate evaluation committee for each grant programme. The evaluation committee consists of granting authority experts and independent cultural sphere experts from other institutions. In certain cases external experts are used, however they have only advisory status in the committees.

27. The evaluation committees award particular points to the project applications and select the best ones based on the quality assessment within the available financing. Each grant programme has its own minimum limit of awarding points that needs to be achieved to receive the grant, thus it is ensured that the best project applications are selected for available financing.

28. The project application has to include the description of project activities, project timeline, cost projections and the necessity justification. Where the beneficiaries are undertakings, they need to demonstrate that available private funds do not suffice to maintain the cultural heritage conservation. In addition for the sub programme a) the project applicants need to submit all information relevant to the cultural object, describing its current status, technical documentation for the planned works, strategic plan for this cultural object in the upcoming years and a detailed statement of the reasons why European Union Fund co-financing for the

\(^\text{15}\) The documentation is available on the web site of the granting authorities:
- The State Cultural Monuments Protection Inspection – http://www.mantojums.lv/?cat=748&lang=lv
- State Culture Capital Foundation http://www.kkf.lv/#54
- Local authorities publish information about calls for project proposals in their web sites.
conservation and renovation of the cultural monument is requested. The applicants need also to demonstrate that they carry out cultural functions for the public.

29. Selection criteria are defined for each grant programme separately and approved by the granting authority or higher institution responsible for the grant (for instance, for EU fund programmes selection criteria are approved by the Monitoring Committee that consists of all institutions involved in the EU fund implementation in Latvia and social partners).

30. The main selection criteria can be resumed as:16

a) Project applicant compliance – the project applicant has in his ownership, use or management a cultural object or the project applicant carries out a cultural function;
b) The project complies with the objectives of the grant programme;
c) The planned budget is reasonable and does not foresee overcompensation;
d) Sustainability of project results will be ensured;
e) The project application complies with all the necessary requirements and all the necessary information is included therein.

31. Eligible costs: Latvia confirmed for all sub-programmes that the expenditure which has taken place before the approval of the grant, i.e., before the agreement on the project implementation has come into force, is not eligible, except costs of preparation works, such as technical project for planned construction works within sub activity “Cultural infrastructure” as well as for operating costs as mentioned in paragraph 35.

32. The scope of the eligible costs is specified for each sub programme.

For the sub programme A) eligible costs include:

- costs related to elaborating a construction design:
  - cost of elaborating a construction design,
  - engineering study costs,
  - construction design examination costs,
  - cultural and historic study and inventory costs;
- The cultural infrastructure construction costs (renovation, restoration and conservation of buildings and structures) and preserving the authenticity of protected cultural monuments;
- Renewal and conservation costs of the cultural infrastructure’s interior and elements thereof;
- Cultural infrastructure’s improvement costs including the expenses related to the acquisition of cultural service equipment and the costs related to modernization;
- Building supervision costs (building, field and archaeological supervision).

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16 Concrete example of the selection criteria can be seen in the decision SA. 29624 (ex N 564/2009), pp. 6-8, paragraph 39.
 Costs related to the improvement of the territory directly adjacent to the cultural infrastructure;
 Public informing costs (of non-commercial character);
 Other costs (in the sector of culture directly related to measures under sub-programme A)\textsuperscript{17}.

For the \textbf{sub programme B}) eligible costs include:

 Cultural institutions personnel costs;
 Expenses of provision of the cultural institution premises and their public utilities (rent of the premises and expenses of all public services available in those premises e.g. telecommunication);
 Expenses of cultural institutions related to activities popularization, to provision with work including the costs related to activities of the cultural institutions to ensure acquisition of the required equipment;
 Development of methodological materials (including curriculum);
 Costs of educational material and copying and distribution of the methodological material;
 Experts’ and lecturers’ costs;
 Educational premises expenses (renting of premises and the necessary equipment, public catering costs);
 Travel and maintenance costs (including transport charges; costs related to stay at a hotel or rent of apartment; domestic and abroad travel permits subject to regulatory enactments);
 Public informing costs (of non-commercial character);
 Other costs (in the sector of culture directly related to measures under sub-programme B).

For the \textbf{sub programme C}) eligible costs include:

 Copyrights costs;
 Technical costs related to event arrangement: (printing out works; translation service costs; cost of materials; equipment leasing costs related to the cultural events arrangement; cultural events service costs (including the public catering costs).
 Experts’, lecturers’ costs;
 Travel and maintenance charges (transport costs; costs related to stay at a hotel or rent of apartment; domestic and abroad travel permits subject to regulatory enactments; public informing and publicity costs);
 Other costs (in the sector of culture directly related to measures under sub-programme C).

For the \textbf{sub programme D}) eligible costs include:

 Costs related to carrying over the cultural heritage unit in the digital format creating the cultural heritage digital database;
 Cost of development and maintenance of the database software;
 Cost of dissemination of audiovisual heritage;
 Virtual exposition creation costs;

\textsuperscript{17} The Latvian authorities explain that these might be for example VAT in case the beneficiary cannot retrieve it from the State budget.
33. The aid is paid ex-post and the beneficiaries receive the public funding only once the granting authority approved the expenditure supporting documents.

34. Beneficiaries have to provide detailed costs explanations of their project activities, in order to enable that a full assessment of the level of the aid amount takes place and to justify that the aid is limited to the minimum necessary (preventing overcompensation).

35. However, in certain cases the aid is paid ex-ante. Indeed, this is the case of cultural institutions which receive the financing at the beginning of the year to cover their operating costs during the year and for certain cultural events approved by local or state institutions beforehand (where there is no call for applications taking place).

36. In case of state support without calls for applications, it is the decision to grant aid which determines the aid amount. The payment of the aid and its monitoring is conducted according to the same procedures as in case of the granting of aid through calls for applications.

37. **Aid intensity:** Aid may be granted up to 100% of the eligible costs. The aid intensity is different for each support activity and differs among granting programmes.

<table>
<thead>
<tr>
<th>Support Activity</th>
<th>Aid intensity (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cultural infrastructure</td>
<td>85-100</td>
</tr>
<tr>
<td>Cultural institutions</td>
<td>100</td>
</tr>
<tr>
<td>Cultural events</td>
<td>85-100</td>
</tr>
<tr>
<td>Cultural heritage</td>
<td></td>
</tr>
<tr>
<td>digitisation</td>
<td>85-100</td>
</tr>
</tbody>
</table>

38. **Cumulation rule:** The support under the notified measure can be received from the different sources of financing (including state, municipality budget and foreign financial instrument) for the same purpose as long as the planned activities do not overlap with each other i.e. the aid does not cover the same eligible costs. However, the overall aid granted to a project may not exceed the maximum of the support intensity, i.e. corresponding to maximum of 100% of the eligible costs. The same beneficiary can apply for aid in all sub programmes. The grantor of the aid ensures that the support comes only from one financial source where the activities overlap with other financing instruments.

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18 When financing is implemented under several financial resources, the final beneficiary has to ensure separation of all works and expenses in order to keep transparency of what expenses were covered by which financial instrument, thus ensuring that the aid among
39. The Latvian authorities put in place several measures to prevent overcompensation by ensuring transparency of public financing allocated for cultural needs such as separate accounting for allocated public funding to ensure sufficient control of the use of funding and use of procurement procedures whenever possible to ensure lower cost expenditures. Annual controls of the aid used are also carried out.

40. **Monitoring and control:** Every granting authority is responsible for control and monitoring of the projects implementation to ensure compliance of the funding with the purpose for which it was provided. All monitoring requirements are described in the grant agreements with beneficiaries\(^19\). Beneficiaries must regularly submit reports and expenditure supporting documents to the granting authority.

41. In general, State Budget grants are monitored by the internal audit unit of the grantor or the State Audit Office. The municipality budget is monitored by the elected municipality deputies. Furthermore, each municipality prepares an annual report on their expenses which is submitted to State Treasury and the Ministry of Finance for the monitoring purposes. In addition, the State Audit Office carries out the content check. In the case of foreign financial instruments the programming documentation sets the reporting and accounting obligations of the beneficiaries for the proper use of the aid. In addition, the program administrators carry out spot and payment claim checks.

42. Accordingly, the granting authority has the right to claim repayment of unduly granted financing from the beneficiaries.

43. In addition, in case of cultural monuments, the Latvian authorities have indicated that on the market of renting out the monuments, the beneficiaries will have to behave as normal market players. For this purpose, the Latvian authorities undertake to stipulate in the project-execution contract that beneficiaries may not offer services for a lower price than competitors. This provision will prevent the subsidies being passed on to the rental prices and so minimize the potential negative effects on competition and trade of the aid measure.

44. Similarly, the national legislation prescribes various restrictions if owners of cultural monuments are interested in selling their property e.g. the cultural monuments renovated with public support will have to remain under the ownership of beneficiaries for at least five years after the completion of project execution and the State has certain rights to refuse the sale of the monument (State's right of first refusal\(^20\)).

\(^\text{19\%}\) several financial instruments do not overlap and that there is no duplication of financing of the same eligible costs.  

For the foreign financial instruments the monitoring procedure is described in programming documents.  

\(^\text{20\%}\) The State Inspectorate for Heritage Protection is initially advised about the owner’s intention to sell the cultural monument they own, which is included in the national list of protected cultural monuments. The Inspectorate examines the cultural monument’s owner’s proposal and, having regard to the cultural monument’s cultural-historical value, prepares a proposal regarding the utilisation of the State’s right of first refusal and sends it to the Ministry of Finance and the Ministry of Culture.
45. In case of cultural institutions all incomes (including the incomes from their commercial activities to the extent that these institutions carry out such activities) are monitored by the responsible institution and are controlled as separate accounts. In fact, the commercial services have to be offered at market prices (approved by the Cabinet of Ministers and controlled by the granting authorities). The Latvian authorities confirmed that income from commercial activities will be deducted from eligible costs under the Culture Programme.

III. ASSESSMENT OF THE MEASURE

Existence of State aid within the meaning of Article 107 (1) of the TFEU

46. The Commission has to assess whether the notified measure can be characterised as State aid within the meaning of Article 107(1) of the TFEU, according to which "save as otherwise provided in the 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 internal market".

47. Presence of State resources: The notified scheme clearly involves the transfer of State resources, since it is financed from the budgetary appropriations of the Ministry of Culture, municipalities' budget and foreign financial instruments under the control of Latvian authorities.

48. Indeed, the Latvian authorities manage and control the European Regional Development Fund (ERDF), the European Economic Area Financial instrument and the Climate Change Financial Mechanism, select beneficiaries and implement the payments from the funds/instruments. There are no direct transfers of resources between the Community budget and the beneficiary. Therefore, the funds/instruments are at the disposal of the Latvian authorities and under their control are considered to be financed from State resources. The granting authorities are the Ministry of Culture and regional and local authorities.

49. Consequently, the public financing of the projects under the present scheme is imputable to Latvia and constitutes State resources.

50. Economic advantage to undertakings: The beneficiaries get an advantage through the measure, since they would not receive the direct grants, dividends or tax reliefs under normal market conditions. However, certain beneficiaries may not be considered as undertakings within the meaning of Article 107(1) of the TFEU, as they do not carry out an economic activity, which consists in offering goods or services on a given market. Other beneficiaries whose activities include commercial exploitation are likely to qualify as undertakings as confirmed by the Commission in previous decisions on aid to culture and heritage21. Therefore, in the case of a

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21 For example the decision dated 30.01.2008 on SA.23514 (N 357/07) – HUN – Appropriations of the Ministry of Education and Culture and the National Cultural Fund, e.g. paragraph 34. See also Decision dated 27 April 2010, SA.29624 (N 564/2010), e.g. paragraph 52 (footnote 4 above).
programme covering both undertakings and other beneficiaries, the Commission cannot exclude that an economic advantage is provided to undertakings.

51. Consequently, undertakings may be beneficiaries under the scheme.

52. **Selectivity**: The economic advantage is selectively granted by the scheme, since its scope is limited to the cultural sector. Furthermore, projects are usually selected through a tender mechanism or, less frequently, on an individual basis, in which case it needs to be specifically demonstrated that the object is of national or international importance or significant advantages can be achieved or disadvantage prevented.

53. **Effect on trade between Member States and distortion of competition**: The Commission considers that certain activities supported by the notified scheme are of a local nature, and the probability that they would affect intra-EU trade, in particular by attracting cross-border tourism, is negligible. Such beneficiaries are e.g. cultural infrastructure objects of local significance, institutions of the local municipalities such as civic centres or activities of local museums, local libraries, or the organisation of local cultural events most often in Latvian language which focus on the local community cultural life.

54. Nevertheless, it cannot be excluded that certain activities promoted by the measure (e.g. aid to the object of cultural heritage (e.g. Rundale Castle, Riga historic centre) or to the cultural institutions (e.g. National Opera, New Theatre of Riga) organising cultural events which may attract wide number of foreign visitors) may attract cross-border tourism, so that the aid granted could have an impact on trade between Member States. The promotion of large-scale cultural events, such as the Latvian Song and Dance celebration festival, the series of events related to the Riga – the European capital of culture in 2014 program series may have an effect on intra-EU trade. Similarly, in case of the promotion of the Latvian participation at outstanding international cultural events, an effect on trade between Member States cannot be excluded.

55. In view of the above, the Commission cannot exclude that the notified scheme, which consists of a conglomerate of measures, in some of its many applications constitutes State aid within the meaning of Article 107(1) of the TFEU.

**Compatibility of the aid**

56. Article 167 of the TFEU provides that "the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore." "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."

57. According to Article 107(3)(d) of the TFEU, "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" may be considered to be compatible with the internal market.
58. All four sub-programmes of the present scheme are indeed aimed at the promotion of culture and heritage conservation.

59. The Commission accepts the view of the Latvian authorities that the promotion of activities covered by the measure is necessary for achieving the objective of culture and heritage conservation. Most cultural activities supported under this scheme are not profit-seeking and revenues often do not cover the costs related to such activities. The beneficiaries targeted by the scheme are mostly institutions lacking capital, for which the resources provided by State aid are indispensable.

60. When beneficiaries are undertakings, the objective of the aid is to enable the creation of products and services which otherwise would have no demand or their high costs would entail the crowding out of those who are the targeted beneficiaries of cultural policy (such as students, low income people, disadvantaged). Indeed, without the aid the offer of cultural services provided to the public would be narrower or the admission fees would increase substantially. The support to private institutions is granted on a selective basis, i.e. based on the result of the project selection.

61. The support to privately owned cultural monument was considered necessary and approved in the decision N 564/2009 (see paragraph 7 above)\(^22\). Concerning the proportionality of this modification, the implementation of this scheme has shown the aid intensity to be insufficient for the objective set. Indeed, some of the agreements were terminated in the course of implementation due to insufficient co-financing of the final beneficiaries. All other provisions of the measure SA.29624 remain unchanged. The Commission accepts the explanation of the Latvian authorities (see footnote 4) and finds the aid intensity increase for this sub-programme a) necessary and b) proportionate.

62. The Commission considers that the measure is proportional. The supported activities under the present aid scheme are aimed at projects exclusively promoting culture and cultural heritage conservation. The Latvian authorities confirmed that the conservation of cultural infrastructure, the operation of cultural institutions, the arrangement of cultural events and the digitisation of cultural heritage are rarely profitable activities and will usually not take place without State aid. The Commission has therefore approved aid schemes in other Member States in favour of the types of activities foreseen in the sub-programmes of the present scheme\(^23\).

63. Moreover, State support may exclusively be given to the additional costs related to the cultural objective, up to 100% of eligible costs. The Latvian authorities put in place appropriate arrangements (acceptance of expenses only against proper documentation of costs, detailed description of eligible expenses in individual aid

\(^{22}\) Indeed, many owners of cultural monuments began to regain ownership of their property when the Republic of Latvia became independent in 1990. The monuments were in technically poor condition. According to the Latvian authorities their conservation costs exceed in many cases the owners’ limited financial possibilities. Without public financial support the adequate preservation of those cultural monuments would not be guaranteed what would cause irreversible losses in the Latvian cultural heritage of national or local importance.

\(^{23}\) For example: N 357/07 – HUN – Appropriations of the Ministry of Education and Culture and the National Cultural Fund, N 293/08 – HUN –Aid for multifunctional Cultural Centres, Museums, public Libraries.
contracts, monitoring and repayment obligation in case of misuse) to guarantee that aid is actually used for the pursued objectives. In this way, aid is limited to the minimum necessary and over-compensation is avoided. The objective of supporting culture is achieved with as little extra distortion as possible as all beneficiaries have to purchase the goods and services necessary for the investments via an open and transparent tender.

64. The Commission notes that despite the broad scope covered by the scheme, there are a number of conditions for the grant of aid which ensure the compatibility of the measure with Article 107(3)(d) of the TFEU, in so far as it promotes culture and heritage conservation and does not affect trading conditions and competition in the EU to an extent that is contrary to the common interest. Such elements are in particular the conditions that eligible costs have to be directly related to the cultural objective and that aid under the notified scheme may be granted exclusively to activities in respect of which it is justified that they are aimed at the preservation of culture and cultural heritage. Furthermore, the control mechanisms foreseen and including the separate accounting for allocated public funding to ensure sufficient control of the use of funding (as described in paragraphs 33-36 and 40-45) offer an additional guarantee that only cultural projects falling under Article 107(3)(d) will be supported and that only the cost of such projects can be compensated without any possibility of overcompensation.

65. In case the cultural object or institutions offers other commercial services (such as cafés, restaurants, and organisation of conferences) the prices are set at the market level and approved by the Cabinet of Ministers. All incomes from commercial activities are controlled by the granting authority on separate accounts what limits the eventual distortion of competition.

66. For these reasons the Commission considers that, to the extent that the measure constitutes State aid, it is necessary and proportionate for the promotion of culture and heritage conservation and does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest within the meaning of Article 107(3)(d) of the TFEU.

IV. CONCLUSION

67. On the basis of the foregoing assessment, the Commission has come to the conclusion that certain measures of the notified scheme do not constitute State aid, while certain measures of the scheme constitute State aid within the meaning of Article 107(1) of the TFEU. Measures under the notified scheme which constitute State aid are compatible with Article 107(3)(d) of the TFEU.

V. DECISION

68. The Commission regrets that Latvia put the aid in question into effect, which is in breach of Article 108(3) of the TFEU. However, it has decided, on the basis of the foregoing assessment, not to raise any objections to the above-mentioned measure on the ground that it partly does not constitute State aid and partly constitutes State aid which is compatible with Article 107(3)(d) of the TFEU.
69. If this letter contains confidential information, which should not be published, please inform the Commission services within 15 working days after receipt of this letter by providing reasons. If the Commission does not obtain a reasoned request within this delay, it will presume that you agree with the publication towards third parties and with the publication of the entire wording in the authentic language on the following internet website:


Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
Place Madou 1 / Madouplein 1
B-1049 Brussels

Fax No: +32 2 29 61242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President
ANNEX

LEGAL BASIS

The national legal basis of the cultural measure includes the following:

- Law „On Protection of Cultural Monuments“;
- Dom Cathedral Monastery and Ensemble Law;
- Law „On the International Significance of Holy Sites in Aglona‟;
- Riga Historic Centre Preservation and Protection Law;
- Museums Law;
- Occupation Museum Law;
- Law of the state culture capital foundation;
- Cabinet Regulation No. 702 of 02.09.2008 “Regulations on supplementing the national and regional “Operational programme “Infrastructure and Services” with activity 3.4.3.1 “Establishing of the Multifunctional Centre”;  
- Cabinet Regulation No.477 of 25.05.2010 “Regulations on supplementing the operational programme “Infrastructure and Services” with 3.4.3.2 activity "Renewal of the objects of cultural heritage of the socioeconomic significance”;
- Cabinet Regulation No. 675 of 30.06.2009 “Regulations Regarding Activity 3.4.3.3 “Support to Private Owners of Cultural Monuments in Monument Preservation and in the Effective Use of Their Socio-economic Potential” of the Supplement to the Operational Programme “Infrastructure and Services”;
- Cabinet Regulation No.91 of 26.01.2010 “Regulations on supplementing the operational programme “Infrastructure and Services” with activity 3.6.1.1 “Growth of the national and regional significance development centre in favouring the balanced state development”;  
- Cabinet Regulation No.615 of 06.07.2010 “Regulations on supplementing the operational programme “Infrastructure and Services” with activity 3.6.1.2 “Sustainable Development of Riga City”;  
- Cabinet Regulation No.843 of 14.09.2010 “Regulations on supplementing the operational programme “Infrastructure and Services” with activity 3.6.2.1 “Support for the Integrated Development of the Administrative Area Local Authorities””;  
- European Economic Area financial instrument programme “Conservation and Renewal of the Cultural and Natural Heritage”;  
- Cabinet Regulation No. 241of 29.04.2003 Nr.241 “Regulation of the Ministry of Culture”;
- Law on Self-governments;
- Law on the state budget;
- Regular annual decrees of the Ministry of culture on granting financing for study, restoration and conservation of the monuments of culture;
- Local authorities’ issued regulatory enactments (binding provisions);
- Cabinet Regulation No. 1185 of 28 December 2010 “Climate change financial instrument funded open tender "The Regulation relative to “Consumption Buildings”;
- Latvian National Library project implementation law;
- Law on cultural agencies;
- Law on libraries;
- Law on archives;
- Law on Latvian National Opera;
- Law on the state and local authorities’ capital shares and capital companies;
- Law on Immovable property tax;
- Law on Enterprise income tax;
- M C Regulations No. 241 of 29.04.2003 „Regulation of the Ministry of Culture”;
- European Economic Area financial instrument programme „Conservation and Renewal of the Heritage of Culture and Nature”;
- Internal regulation of the Ministry of culture No.6-4-2 as of 10.01.2012 „State budget grant calculation procedure for the state-established theatres”;
- Cabinet Decree No.472 of 06.08.2008 „On preserving the Song and Dance celebration and development programme for 2008–2013” ;
- Cabinet Decree No.400 of 24.08.2011 „On the state programme of co-partnership in the project "Riga – the capital of European culture in 2014 ″;
- Song and dance celebration law.